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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application no. 300/2005
With Misc. Application no. 136/2005

Date of decision: this the 9th day of May 2006

CORAM:
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

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Jagdish Lal Meena S/o Shri Heera Lal Meena aged 22 years resident of Village Kachotiya District Chittorgarh, Shri Heeralal S/o Shri Shrimogha Ji, Ex GDS, BPM Post Office Village Kachotiya, District Chittorgarh.

.....Applicant.

Mr. Vijay Mehta, Counsel, for applicant.

Vs.

1. Union of India through the Secretary to the Government Ministry of Communication (Deptt. of Posts), Sanchar Bhavan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Chittorgarh.

.....Respondents.

Mr. Mahendra Modhara, Proxy Counsel for
Mr. Vineet Mathur, Counsel for respondents.

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ORDER

Shri Jagdish Lal Meena has questioned the validity of order dated 27.8.2004 at Annex. A/1 and has sought for quashing the proceedings of Central Relaxation Committee (for brevity CRC) with a mandate to the respondents to give appointment to the applicant on compassionate grounds.

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission itself; keeping in view the short controversy involved. I have accordingly heard the arguments advanced at the Bar and carefully perused the pleadings as well as records of this case.





3. The brief facts as pleaded on behalf of the applicant are that applicant is the son of Late Shri Hira Lal Meena. The said Shri Hira Lal was in the employment of the respondent-department on the post of G.D.S. B.P.F. Village & P.O. Kushetia Distt. Chittorgarh and expired on 10.1.2003 while on active service. The deceased government servant was survived with his two sons including the applicant, four married daughters and his widow. His eldest son has been residing separately with his own family from the life time of the deceased father. In support of these contentions separate ration cards have been placed on records. The family was left in indigent condition, without there being any bread-winner. The family also has a small piece of agricultural land, fetching no income. The terminal benefits to the tune of Rs. 48,000/- was received by the family. It has further been averred that the case of the applicant was taken up for consideration for appointment on compassionate grounds but the same has been turned down on the pretext that the family is having an income of Rs. 10,000/- from the salary of one of earning member.



4. The respondents have contested the case and filed an exhaustive reply. It has been averred that applicant's candidature was duly considered by the CRC and the same has been rejected contending that there is an income of Rs. 5,000 per annum from the agriculture land and the income from the salary to the tune of Rs. 10,000/- per month and in comparison, applicant's case was not found most indigent and the same has been rejected. The grounds raised in the O.A. have been generally denied.

5. A Misc. Application No. 136/2005 has been filed for seeking condonation of delay in filing the O.A. wherein it has been averred that the applicant requested the respondents No. 2 and 3 for reconsideration

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of his case since his brother was neither dependent on the deceased government servant nor sustaining the family. He sincerely waited for the response but did not receive any reply. The factual position has been refuted by the respondents in their reply.

6. Both the learned counsel for the parties reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has tried to demonstrate that the candidature of the applicant has been turned down by taking extraneous material into consideration inasmuch as the brother of the applicant neither supports the family nor was dependent family member of deceased government servant. Had the factor relating to salary paid to his brother not been taken in to consideration, the findings of the CRC would have been different. Therefore, the case of the applicant needs to be reconsidered. Per contra the learned counsel for the respondents has stressed on the defence version as set out in the reply and submitted that one has only a right of consideration and there is no right to appointment on compassionate ground as such. The case of the applicant has been duly considered and warrants no interference by this Bench of the Tribunal.



7. Before examining the case on merits, I find it expedient to dispose of the preliminary objections regarding limitation in maintainability of the application. The cause of action to the applicant had arisen on 27.8.2004 when his request was turned down and as per the law of limitation envisaged under Section 21 of the Administrative Tribunals Act, this O.A. ought to have been filed by 27.8.2005 but the same has been filed on 6.10.2005. Thus, there is a delay of about 1 month and 11 days. I am satisfied that there are good and sufficient reasons for condoning the delay. The applicant has otherwise a

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meritorious case and it is considered expedient that a judice oriented approach should be applied in such cases. In this view of the position, the delay in presenting this application is hereby condoned and M.A. stands accepted accordingly.

8. I have anxiously considered rival submissions put forth on behalf of the parties. As far as the factual aspect of the matter is concerned, respondents have not seriously disputed the version of the applicant that his brother has been residing separately. The separate ration cards issued to them makes it evident that applicant's brother is residing separately. It is not the case of the respondents that they have made any inquiry in this respect and ascertained the factual aspect regarding supporting the family by the elder brother of the applicant. There is also no material to such version the respondents. The averment of the applicant that his elder brother is residing separately and not dependent on the deceased government servant shall have to be taken as true. If that were so, rejection of the applicant's claim primarily on the ground of salary income to the tune of Rs. 10,000/- becomes extraneous/irrelevant consideration.



As far as the legal aspect is concerned, the ED Agents have a special type of employment status. They have been held to be civil servants and their employment has got a trapping of contract inasmuch as they are almost part time workers and required to perform duties for lesser period than other full fledged government servants. The normal scheme for grant of compassionate appointment to the dependents does not apply to their case. Separate instructions have been issued under Section 10 of the Service Rules for Postal Gramin Dak Sevak by Swamy's, for regulation such appointments. The scheme provides that such employment to the dependent should be given only in very hard

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and exceptional cases. It has been specified that the ED Posts are isolated and spread out; therefore, it is necessary that a vacancy caused due to death of ED Agent is filled up by his or her near relative on compassionate grounds. If it is not done, it would be quite difficult to give appointment in hard cases. Certain relaxations in qualification have been provided for the widow. In any case, the applicant possesses the requisite qualification for the post of EDBPM. It is surprising as to how question of comparative merit has been introduced by the respondents. The compassionate appointment can be considered only against the particular post and it is the dependent family member of the deceased government servant (who was holding a particular post (isolated post), who could be considered for the same. It seems the respondents have mechanically adduced the reasons for rejecting the claim of the applicant and his case has not been considered in true spirits of the scheme. As a matter of fact in cases relating to Extra Departmental Agents, the compassionate appointment may not have multiple constraint like that of vacancy constraint and comparative hardship constraint and the primary requirement is the fulfillment of eligibility conditions of the candidate and the indigence of the family. In the instance case, the position is quite clear and even if the version of the respondents is taken as true that the family gets income of Rs. 5000/- per annum from agriculture land, it is hardly anything in the present days of price spiral. The family pension is also not admissible in case of Extra Departmental Agents. Therefore, the indigence of the family can hardly be over emphasized.



10. It is expected from the administrative authorities that they would act fairly and shall not be misguided by extraneous or irrelevant consideration. The Apex Court has lucidly explained the same in case of **Management of M/s M.S. Nally B. Co. Limited Vs. State of Bihar**

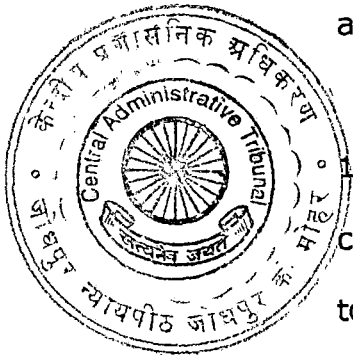
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reported in JT 1990 (2) 96 wherein, their Lordships have observed as under :-

"What is important in the modern administration is the fairness of procedure with elimination of element of arbitrariness, for fairness is a fundamental principle of good administration. It is a rule to ensure that vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant consideration. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. The concept that 'justice should not only be done but be seen to be done' is the essence of fairness and is equally applicable to administrative authorities.

Applying the aforesaid principles of law to the facts of instant case, I find that the case of the applicant has not been duly considered inasmuch as certain extraneous material was taken into consideration which has resulted into turning down the legitimate claim of the applicant. He has not been give fair treatment and there has been failure of justice. The impugned order, therefore, cannot be sustained and shall have to be declared as inoperative and illegal.



11.. The upshot of the aforesaid discussion leads to an inescapable conclusion that there is ample force in the O.A. and the same deserves to be allowed. The O.A. is allowed in part. The impugned order dated 27.8.2004 at Annex. A/1, stands quashed. The Respondents are directed to re-consider the case of applicant for grant of compassionate appointment in accordance with the rules keeping in view the observations made hereinabove, within a period of three months' from today. However, the parties are directed to bear their own costs.

[Signature]
[J.K.KAUSHIK]
JUDICIAL MEMBER

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