

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR**

**ORIGINAL APPLICATION NOS. 232 and 233 of 2008
THIS THE 14TH DAY OF NOVEMBER, 2008..**

CORAM :

HON'BLE MR. TARSEM LAL, MEMBER [A]

....

Pravindera Kumar Barasa S/o Late Shri Ram Das Ji, aged about 33 years, resident of Tilak Nagar, Udal Mandir, Jodhpur (Raj) working as G.D.S.M.C., Gandhi Maidan Post Office, Jodhpur, in Postal Department, Jodhpur (Raj).

.....Applicant in OA No. 232/2008.

Vinod Bhati S/o Late Shri Lal Ram Ji, aged about 29 yeas, resident of Quarter No. 33, Ram Bhag, Kaga Man Mandir, Jodhpur (Raj) working as GDMC in Postal Department, Head Post Office, Jodhpur (Raj).

.....Applicant in OA No. 233/2008.

Versus

1- Union of India through through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi (India).

Chief Post Master General, Postal Department, Jaipur (Raj).

Senior Superintendent of Post Office, Jodhpur Division, Jodhpur (Raj).

Assistant Superintendent of Post Office, West Sub-Division, Jodhpur (Raj).

.....Respondents in the OAs

Mr. Kamal Dave, Advocate, for the applicants.

Mr. Mahendra Godara, Advocate, proxy for Mr. Vineet Kumar Mathur, for the respondents.

**ORDER (ORAL)
(BY THE COURT)**

The applicants' have approached this Tribunal against similar cause of action and claimed the same relief(s), against the same respondents. Both these OAs were heard together with the consent of concerned counsel and are being disposed of by this common order.

The facts of the case have been taken from OA No. 233/2006 and supplemented from OA No. 232/2006 wherever necessary.



2- The father of the applicants' were employed as Postmen under the Chief Post Master General and were posted at the Head Post Office, Jodhpur and died on 11.11.1992 and 08.04.1995 respectively. The deceased Govt. servants left behind widow, sons and daughters and since the dependants have no source of income, hence they filed these OAs for providing appointment on compassionate grounds.

3- The applicants applied and requested for appointment on compassionate grounds which was duly considered and the Chief Post Master General, Rajasthan Circle, vide his letter dated 17.10.1996 (Annex.A-2). The respondents informed that they have been approved for appointment as Postmen. Thereafter, after a prolonged period, applicants received letter dated 1.3.2001 (Annex.A-3) expressing their inability to give appointment as such. They were also asked to fill-up the requisite forms so that their case could be referred to other departments. Subsequently, the respondents by their letter dated 7.9.2001 (Annex.A-4) communicated that there is no vacancy in other departments also and as an alternative, applicants were asked about their willing to be appointed as Gramin Dak Sevak which, the applicants accepted due to their indigent condition(s) as already 7-10 years had been elapsed by that time and resultantly, fulfilled the required formalities desired by the respondents. It is contended in the Applications that applicants were appointed as Gramin Dak Sewak vide order dated 30.6.2003 (Anex.A-5) that too, on contract basis. Since this was a contractual job, hence, the applicants, sent a notice for demand of justice in September 2005 (Annex.A/1) requesting the respondents to provide the applicants a regular and permanent post of



Postmen on the basis of compassion, however, no heed was paid by the respondents hence these OAs claiming the aforesaid relief as envisaged in order dated 17.10.1996 (Annex.A-2) were filed.

4- The respondents have contested the OAs, inter alia, stating that after the sad demise of the Government servant Shri Lal Ram Bhati (father of applicant No.2) in April, 1995, the admissible terminal benefits were paid to her widow and thereafter, on submitting an application by her son (Vinod Bhati) the same was forwarded to the competent authority and Shri Vinod Bhati's case was referred and considered by the Circle Relaxation Committee held on 11.10.1996. The decision of the said Committee was communicated vide order dated 17.10.1996 keeping the applicant's name in the waiting list due to non availability of vacancies under 5% fixed quota, from 1996-2000, to the applicant. The respondents have pleaded that as the waiting list could not be cleared hence, the maintenance of the waiting list of the approved candidates including the applicant was discontinued vide letter dated 8.2.2001.

5- As regards the case of Parvendra Kumar, respondents have taken the similar view and stated that his case was also considered by the Circle Relaxation Committee and its decision that; due to non availability of vacancies under the ceiling of 5% vacancies for direct recruits since 1994, his name was kept in waiting list of approved candidates but could not be offered appointment, had been conveyed to the applicant and as per the letter dated 24.11.2000 the maintenance of the waiting list of the approved candidates were discontinued. The respondents have further stated that subsequently, on



asking and giving willingness by the wait-listed candidates including the applicants, to be considered on compassionate grounds, in other Ministries/Departments but, no such Ministry or the Departments' gave offer of appointment to them. In the meanwhile, instructions were received to dis-continue maintaining the waiting list subject to considering such candidates for the post of Gramin Dak Sewak if so willing and eligible for the post. It was also made clear that with their acceptance of Gramin Dak Sewak post, they would have no further claim for appointment on any special consideration against regular departmental vacancies on compassionate grounds. On receiving applicants' consent, they were absorbed and joined on the said post on 14.1.2003. As regards the notice for demand of justice to absorb them as postman, it is contended in the reply that as per the prevailing rules on the subject, the compassionate appointments are given to provide the immediate assistance to the deceased family to over-come the financial crises and these appointments are not made for maintaining the status or against a particular post which the deceased was holding.

6- The respondents have reiterated that applicants' case was considered but due to non-availability of the vacancies, they could not be given appointment but the departmental authorities by taking sympathetic and lenient view provided an alternative employment to them and once, applicants accepted the same, they have no right to challenge the same. If they were not willing for the above job, then it was open to them to refuse the same at the relevant point of time and at this stage, it is not permissible to post them as desired. It is further averred that according to the orders on the subject and the



judgements of Hon'ble Apex Court, applicants cannot be given appointment after three years or more as the family of the deceased is able to maintain and survive for all these years and no assistance is required. In view of above, respondents have prayed that the O.A., being devoid of any merit, be dismissed.

7- Applicants have filed rejoinder reiterating the pleas already taken in the OAs. It is stated that the grievance of the aggrieved persons can generate out of any specific order or in view of series of order having impact of denial of right of applicant and the objection raised that no order is challenged, is contrary to the scheme for which the Act of 1985 is enacted. It is further stated that such appointments cannot be equated with ordinary employment and ban on such appointments cannot be extended. The applicants further states that in response to his application under the Right to Information Act, the respondents' have informed that no information is available relating to the vacancies for the period 1992 to 1997 is not correct. This statement of the respondents clearly reflected that even the 5% vacancies have not been filled-up by the department during the period in question.

8- The learned counsel for respondents raised a preliminary objection that applicant has not filed this OA against any impugned order but is asking for implementation of the order at Annex. A-2 dated 17.10.1996. He has also raised objection regarding limitation as the cause of action arose to the applicants in 1996 and they should have filed the OA at the relevant point of time. Similarly, they were given appointment in 2003 and if they felt that any of their grievance

still survives, they should have approached this Tribunal earlier. The respondents' counsel emphasized that the period of limitation provided under the Administrative Tribunals Act, is one year and three years under the C.P.C. which was already over before filing these OAs.

9- On a query to the learned counsel representing the respondents regarding whether appointments on compassionate grounds can be accorded on 'contract basis', he specifically replied that no contract appointment can be offered. However, as applicants had given their willingness for Gramin Dak Sewak, therefore, they were appointed on those posts.

10- Heard the learned counsel for both the parties and they have generally reiterated the arguments given in their respective pleadings.

11- The learned counsel, while reiterating his stand as stated in the OA, argued that applicants case was considered and approved by the Circle Relaxation Committee in 1996 and no communication was sent to them till 2001. They were issued appointment as Gramin Dak Sewak in the 2003 and the respondents have failed to inform as to how the vacancies of compassionate ground were filled during 1992-1997. Applicants had consented to the post of Gramin Dak Sewak under compulsion because they were in need of the job whereas the post of Gramin Dak Sewak could not be offered in the instant case as is also told by the department in response to the information asked for by the applicants.

12- The learned counsel Mr. Kamal Dave has relied on the case of *Central Inland Water Transport Corporation Ltd., and Anr. Vs. Brojo*



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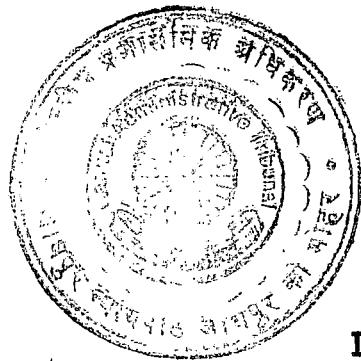
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Nath Ganguly and Anr. reported in AIR 1986 SC 1571, wherein
Hon'ble the Apex Court has held at Para No. 19 as under :

"19. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. The principle is that the courts will not enforce any will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power."

13- In Balbir Kaur and Anr. Vs. Steel Authority of India Ltd. and Ors.
reported in 2000 SCC (L&S) 767, the Apex Court has held as under :-

"The Family Benefit Scheme cannot in any way be equated with compassionate appointment. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by the family by lump-sum amount provided to it - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns, and at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner but that would undoubtedly bring some solace to the situation."



In view of above, the learned counsel Mr. Kamal Dave, prayed that both the OAs should be allowed and applicants given appointment as Postman on compassionate grounds.

14- The learned counsel for respondents further explained that the applicants were given an option for joining as Gramin Dak Sewak instead of Postmen and if they were not in favour of joining as Gramin Dak Sewak, they were under no compulsion for joining those posts. He further stated that the recommendations as made vide letter dated 17.10.1996 (Annex.A-2) does not create any vested right with the applicant for claiming the job. It is within the domain of the respondents whether to fill-up a vacancy or a particular post(s) or not. However, in this case, no vacancies were available within the ceiling

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provided under the policy guidelines of the Government of India for filling-up the post(s) on compassionate basis.

The learned counsel relied on the case of *State of Rajasthan Vs. Shri Umrao Singh* reported in 1994 (5) SLR 638 wherein, Hon'ble the Apex Court has held as under :-

"Constitution of India, Article 16 - Rajasthan Recruitment of Dependents of Government Servants (Dying while in Service) Rules, 1975, Rule 5 - Appointment / Compassionate appointment - Once the right of appointment on compassionate ground has been consummated, any further or second consideration for a higher post on the ground of compassion does not arise."

15- On limitation, the learned counsel relied on the case of *S.S.Rathore Vs. State of Madhya Pradesh* reported in AIR 1990 SC 10, wherein, Hon'ble the Apex Court has held as under :-

"In the case of service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.

This principle has no application when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

16- This case has been considered carefully and documents placed on record perused. It is seen in this case that the Government servants had died in the year 1992 and 1995. Applicants preferred their application for appointment on compassionate grounds which was considered and approved by the Circle Relaxation Committee in the year 1996 and applicants' names were entered in the waiting list but, on account of non-availability of vacancies, they could not be offered appointment. Not only this, the respondent-department made genuine efforts in this regard and their names were also circulated to the other Departments/Ministries for the purpose. In the meantime, orders to

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dis-continue the waiting list were issued by the competent authority as there were very few vacancies and available deserving candidates were more.

As a matter of concession, the applicants' were given offer that they could join as Gramin Dak Sewak instead of as a Postman, if they so desire and they gave their willingness and joined as such.

17- As regards the preliminary objections raised by the learned counsel for respondents on account of not filing any impugned order it is considered that in this case, their names were approved for appointment in the year 1996 and no impugned order was passed. Subsequently they have been given appointment as Gramin Dak Sewak which is not a post to be offered according to the respondents, therefore, applicants have sufficient grievance to come to this Tribunal for seeking appointment on compassionate grounds as Postmen.



18- As regards the limitation relating to filing of the OA belatedly beyond the prescribed period under the Act from the date of 17.10.1996 when their cases were approved by the Committee and the date of joining in 2003 as Gramin Dak Sewak, it is considered that the Hon'ble Apex Court in the case of *Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and ors.* reported in AIR 1987 SC 1353 would be necessary to be quoted to resolve this controversy of limitation. In Para 3 of the said case, Hon'ble the Apex Court has adopted liberal approach on this issue and laid down the following principles to enable the Courts to do substantial justice to the parties and further opined that the word "sufficient cause" employed in the

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legislature is adequately elastic to a meaningful manner which subserves the ends of justice.

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. -It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing Injustice and is expected to do so."

19- In view of the above pronouncement, I am inclined to follow the same and consider the cases in hand on merits.

20- It has been provided in the guidelines issued by the Government of India, Ministry of Personnel, Department of Personnel & Training, O.M. No. 14014/19/2002-Estt(D) dated 5.5.2003 that "maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.

21- It has also been provided in the scheme provided for compassionate appointment issued by the Government of India, Department of Personnel & Training O.M. No. 14014/6/94-Estt.(D) dated 9.10.1998 that when a person has been appointed on compassionate grounds to a particular post, the set of circumstances, which led to such appointment, should be deemed to have ceased to exist. Therefore, - (a) he/she should strive in his/her career like his/her colleagues for future advancement and any request for appointment to any higher post on considerations of compassion should invariably be rejected. The plea raised by the learned counsel for applicants that Gramin Dak Sewak is not a post for compassionate appointment, if this is so, the applicants should not have joined the same. If they had joined the post of Gramin Dak Sewak at that point of time, their cases could have been processed differently by the Department for a suitable post.

22- In fact, the applicants' wanted to derive double benefit in this case./They joined the post of Gramin Dak Sewak when they were in dire need of the job and no other posts were available. Now, they want to upgrade their job on the plea that Gramin Dak Sewak is not a post for compassionate appointment. This sort of concessions are not permissible under the scheme of compassionate appointments.

23- As regards non-availability of records for the period from 1992 to 1997, the applicants cannot pass the blame to the respondents as they themselves came to the Court very late in the year 2006 whereas they were actually required to approach the Court in the year 1996 or in 2003.

24- It has also been stipulated in the scheme of compassionate appointments issued under the O.M dated 9.10.1998 that compassionate appointments cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. In this case, the father of the applicants died in 1992 and 1995 respectively and a period of more than 13-15 years have elapsed, therefore, there is no justification for the applicants to seek compassionate appointment particularly when they have already been offered the post of Gramin Dak Sewak.

25- In view of the above discussions, this Court would not like to interfere with the orders already passed by the respondents. The O.As are accordingly dismissed with no orders as to cost.

Tarsem Lal 14/11/08
(Tarsem Lal)
M(A)

Part II and III destroyed
in my presence on 19/11/2014
under the supervision of
Section officer () as per
order dated 19/11/2014

Section officer (Record)

Recd
10/12

11/12/2014