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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 251/2006
with
Misc. Application No. 126/2006

Date of order: 07.09.2007

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Kamal Kumar Soni S/o Late Sh. Babu Lal Ji Soni, By caste Soni, Aged 26 years, Resident of - Ward No. - 7, Near Bus Stand, Bidasar, District - Churu.

Father of the applicant was Sub-Post Master working under respondent No. 5.

...Applicant.

Mr. Nitin Trivedi, counsel for applicant.

VERSUS

1. Union of India through: Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Department of Posts, Jaipur.
4. The Post Master General, Rajasthan Western Region, Department of Posts, Jodhpur.
5. The Superintendent of Post Offices, Main Post Office, Churu Division, Churu.

...Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

The applicant, Shri Kamal Kumar Soni, has filed Original Application No. 251/2006, requesting to set aside and quashing the impugned order dated 26.04.2005 (Annexure A/1) vide which his request for compassionate appointment has been rejected.

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2. The applicant has explained that his father late Shri Babu Lal Soni joined the services of the respondent-department as ED Master and appointed as Postman w.e.f. 10.08.1977. He was promoted as Sub Post Master/Postal Assistant w.e.f. 13.08.1982. He died on 19.11.2003. The deceased Govt. servant left behind his wife, one married son, two married daughters and one unmarried son i.e. the applicant. The applicant has studied upto VIII standard.

3. Due to the death of the deceased Govt. servant, it became very difficult for the family members i.e. applicant and his mother to survive without any livelihood. Therefore, the mother of the applicant moved an application along with required documents within the stipulated period for compassionate appointment of his son. The application filed by the mother of the applicant along with the relevant documents is given at annexure A/2 and A/3.

4. The applicant has stated that the elder son and two daughters of the deceased Govt. servant are already married and they have given no objection certificate (Annexure A/4) to the department to give appointment to the applicant on compassionate grounds.

5. The family of the deceased Govt. servant is getting a

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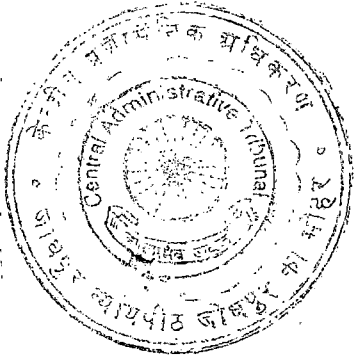


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pension of Rs. 4174/- per month only and the amount of terminal benefits was paid Rs. 3,41,435/- which has been adjusted towards the personal loans taken by the father of the applicant from the relatives and neighbours for the marriages of the daughters.

6. The application of the applicant for appointment on compassionate grounds has been rejected by the respondents vide impugned order dated 26.04.2005 (Annexure A/1) on the ground that the amount received under the head of terminal benefits and family pension is sufficient for the maintenance of the family of the deceased. They are having their own house to live in and the financial condition of the family of the deceased is not found to be in indigent, therefore the applicant is not entitled to be appointed on the compassionate grounds.



7. After receiving the impugned order dated 26.04.2005 (Annexure A/1), the applicant made various representations dated 25.06.2005, 27.09.2005 and 15.02.2006 which were sent through the ordinary post as the official staff refused to receive the same by hand. But on the same, he has not received any response from the respondents.

In these circumstances, aggrieved by the impugned order dated 26.04.2005 (Annexure A/1) under which his request for appointment on compassionate grounds has been rejected, the

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applicant has filed this Original Application and asked for the relief as given in para one above.

8. On the contrary, the respondents have filed a detailed reply to the Original Application and has not agreed to any of the relief asked for by the applicant. The respondent-department has explained that late Shri Babu Lal Soni, father of the applicant, died on 19.11.2003 and after his death, all the retiral benefits amounting to Rs. 3,41,435/- were paid along with family pension of Rs. 5385/- was granted.

9. Subsequently, the widow Smt. Kalyan Devi submitted an application dated 16.11.2003 for appointing her younger son on the compassionate grounds. On receipt of the application, the same was forwarded to the competent authority for consideration. The competent authority considered it in its meeting held on 01.02.2005 and 10.02.2005 and the committee after making its objective assessment, did not find the case of the applicant in the most indigent condition and his case was rejected.

10. The respondents have pleaded that the applicant has not levelled any kind of allegation like biasness, arbitrariness on the part of the answering respondents at any stage, therefore, the Hon'ble Tribunal would not like to Interfere in the matter as the applicant has no legal right for appointment on the

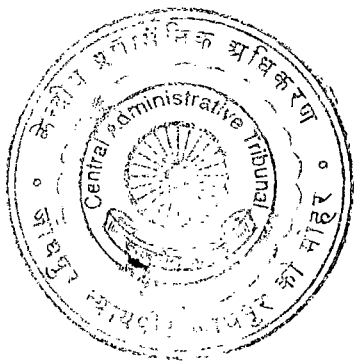


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compassionate grounds.

11. The family will get monthly family pension @ Rs. 4174+1211 = Rs. 5385/- at present rate of dearness allowance which is not a meager amount and it is more than allowance of a clerk (LDC) appointed in the government service. Besides that, the deceased employee did not left any liability of education of minor children and marriage of daughter. The elder son of the deceased employee is employed in government service. Hence, the elder son and married daughter cannot be said to be dependent on the deceased employee. Thereafter, only widow and the applicant remain dependent on the deceased employee and amount of family pension is sufficient for two members family. Further, the family had received the terminal benefit to the tune of Rs. 351435/-. If this amount as whole or part has been deposited in the MIS/SCSS claimant may receive monthly interest Rs. 1500/- per month. It is presumed that Rs. 3 lac has been invested. Thus, the widow may manage her family easily and cannot be said indigent condition.



12. The respondents have further submitted that terminal benefits are also taken into account while considering the case as held by the Hon'ble Apex Court in the case of Punjab National Bank & Ors. vs. Ashwani Kumar Taneja (2004) Vol. 7 SCC 93 held that the retiral benefits and other sources of income has to be counted.

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13. The applicant has right of consideration only, which has been considered, therefore, the Original Application filed by the applicant may be dismissed. The respondents has also pointed out that the Original Application also suffers from delay.

14. The applicant has also filed Misc. Application No. 126/2006 stating that the department of Posts rejected the application for appointment on compassionate grounds vide letter dated 26.04.2005 (Annexure A/1) on the ground that the amount received under the head of terminal benefits and family pension is sufficient for maintenance of the family of the deceased, they are having the house of their own to live in and the financial condition of the family of the deceased is not found to be in indigent condition, therefore, the applicant is not entitled to be appointed on the compassionate grounds. On receipt of above order, the applicant further made representations dated 25.06.2005, 27.09.2005 and 15.02.2006 sent through ordinary post and no reply to the above has been received by the applicant. The applicant is not highly educated and is only middle passed person belonging to rural area does not know much about the legal provisions. Consequently, in view of the facts stated above, the delay of few months has been caused in filing the Original Application before this Hon'ble Tribunal.

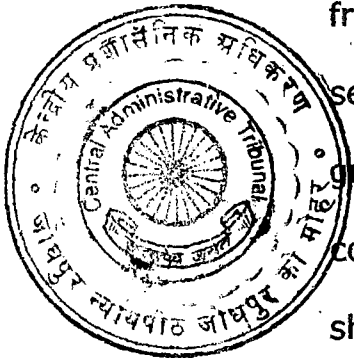


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The applicant has pleaded that the delay caused in filing the O.A. is bonafide and O.A. filed is not highly belated, which cannot be condoned in the facts of the case. So looking to the genuine claim of the applicant, his poor financial condition and his education and the rural background, the legal claim of the applicant may not be thrown out and the delay caused in filing the O.A. may kindly be condoned in the interest of justice.

15. The respondents have opposed the filing of the delayed Original Application stating that none of the grounds mentioned by the applicant are sustainable in the eyes of the law being frivolous and baseless. The respondents have pleaded that it is settled proposition of law that unless bonafide reasons and grounds are proved for not preferring or approaching to the competent court within the limitation prescribed, the same should not be condoned and the Original Application preferred after expiry of the limitation period is not maintainable, therefore, the respondents has pleaded that the Misc. Application preferred by the applicant is devoid of any merit and may be rejected.



16. Learned counsel for both the parties have been heard and documents perused. As regards the Misc. Application filed by the applicant for condonation of delay, it is seen that the impugned order rejecting the compassionate appointment was passed on 26.04.2005. Although the applicant has been

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making repeated representations after that but no response has been received from the respondents. Finally, the Original Application has been filed on 12.10.2006. Hence, there is a delay in filing the Original Application for a period of less than six months. In view of the position explained by the applicant and in the interest of justice, the delay in filing the Original Application is condoned and the Misc. Application No. 126/2006 is allowed.

17. Learned counsel for the applicant pleaded that deceased Govt. servant joined his services on 10.08.1977 and died on 19.11.2003. An application for compassionate appointment was filed by the mother of the applicant vide annexure A/2. An affidavit was also filed by the mother of the applicant vide annexure A/3 stating that her son may be given appointment on compassionate basis. The applicant also filed an affidavit that on giving appointment on compassionate basis, he will support his other family members. No objection certificate for giving appointment on compassionate basis to the applicant was furnished by the brother and sisters of the applicant vide annexure A/4.



18. The request of the applicant for compassionate appointment has been rejected by the Superintendent of Post Office Churu, District Churu vide letter dated 26.04.2005 on the plea that the family of the deceased Govt. servant has been

given terminal benefits. They also have their own house to live in. The learned counsel for the applicant pleaded that Scheme for providing compassionate appointment has been formulated in view of the fact that the family will be getting pension and terminal benefits, therefore, this plea for rejection of compassionate appointment ^{on} from the basis of terminal benefits and availability of house is not in order.

19. Learned counsel for the applicant relied in the case of **Vishnu Singh vs. Managing Director SBBJ & anr.**, reported in RLW 2004 (3) Raj. 1742, wherein the Hon'ble Rajasthan High Court, Jaipur Bench has held as under: -



"Scheme for Appointment on Compassionate Ground for Dependents of Deceased Employees - Appointment on compassionate ground - Declined on the ground that the family owned house and getting family pension of Rs. 3351/- per month and three grown up sons could earn financial support for the family - Held - Grant of family pension cannot be taken as a ground for rejecting employment under dying in harness scheme - They had to repay huge bank loan of Rs. 3,33,293/- - The power to give appointment on compassionate ground is coupled with a duty which creates a corresponding right in the dependents - Directed to reconsider the case. Writ petition allowed."

20. Learned counsel for the applicant further relied in the case of **Kuldeep Kalla vs. State Bank of India & Ors.**, reported in 2007 (1) RLW 398, wherein the Hon'ble Rajasthan High Court has held as under: -

"Appointment on compassionate ground- Declined the claim on the ground that the family of the deceased employee receives a monthly family pension of Rs. 7035/-

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and possesses a skeleton of house – Scope of the words “Penurious condition” - Held – The term “penurious” means poor condition, it does not mean the bagging condition – The life is required to be dignified, that means some thing more than survival which includes minimum requirement for an honourable member of a society with adequate source to provide education, medical facility and have capability to discharge simple social liabilities – The family of deceased got total cash amount of Rs. 78,000/- after deduction of total liabilities of Rs. 8.35 lac from total assets of Rs. 9.21 lac – A daughter of 22 yrs. and a major son is yet to be married – The case falls very well in the category of penurious condition – Directed to give appointment. Writ petition allowed.”

In view of the above, learned counsel for the applicant pleaded that impugned order dated 26.04.2004 (Annexure A/1) may be quashed and set aside and the respondents may be directed to provide compassionate appointment to the applicant.



21. Learned counsel for the respondents explained that the case of the applicant has been considered and no mala fide or arbitrariness has been alleged by the applicant. The case of the applicant has been considered in accordance with the policy formulated and circulated by the Government of India, Department of Personnel and Training vide its O.M. No. 14014/6/94-Estt. (D), dated 09.10.1998. His case has been considered in a fair manner by the competent authority after taken into account the assets and liabilities of the applicant.

22. Learned counsel for the respondents relied in the case of **Punjab National Bank and Others vs. Ashwini Kumar**

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Taneja, reported in (2004) 7 Supreme Court Cases 265, wherein the Hon'ble Apex Court has held as under: -

"B. Service Law - Compassionate appointment - Considerations therefor - Denial of, on ground of non-existence of financial hardship - Propriety - Retiral benefits received by the heirs of the deceased employee, held to be considered, as has been categorically held in Kunti Tiwary case, (2004) 7 SCC 271 - More so, when the Scheme applicable, also requiring amounts received under various heads to be taken into account while determining the financial status and necessity of compassionate appointment - High Court erred in holding to the contrary - Punjab National Bank Scheme for Employment of the Dependants of the Employees Who Die While in the Service of the Bank."

23. Learned counsel for the respondents further relied in the case of **General Manager (D&PB) and others vs. Kunti Tiwary and another**, reported in (2004) 7 Supreme Court Cases 271, wherein the Hon'ble Apex Court has held as under:-

"Service Law - Compassionate appointment - Criterion for - Employer Bank's Scheme, formulated pursuant to Umesh Kumar Nagpal case, (1994) 4 SCC 138, providing for compassionate appointment only in case where the deceased employee left his family in penury and without any means of livelihood - Terminal benefits received, and other movable and immovable property possessed, by the family of the deceased employee showing that its financial condition was not penurious - Employer Bank therefore denying compassionate appointment to the deceased's son - In such circumstances, held, High Court erred in diluting the criterion of penury to one of "not very well-to-do" and directing the Bank to appoint the deceased's son."

24. This case has been considered carefully and documents perused. It is seen from the impugned order dated 26.04.2005 (Annexure A/1) issued by the Superintendent of Post Office Churu, District Churu, that the same is not detailed speaking

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order. It has not been indicated as to how many total vacancies were there for direct recruitment and how many have been filled on the basis of compassionate basis. The marks obtained by the candidates who were appointed vis-a-vis the marks obtained by the applicant has not been indicated. The comparative indigent conditions of the candidates who were considered for compassionate appointment have also not been explained. It is also not clear from the impugned order as to how many times the case of the applicant has been considered by the competent authority.



25. The case law quoted by the learned counsel for the applicant as well as learned counsel for the respondents is not relevant in this case as the same pertains to the different banks which have separate Scheme for compassionate appointment. It appears that the Banks are not covered under the Scheme formulated and circulated by the Government of India, Department of Personnel and Training vide its O.M. No. 14014/6/94-Estt. (D), dated 09.10.1998.

26. In view of the above discussion, the respondents are directed to re-consider the applicant's request for compassionate appointment and if he is found otherwise suitable, the applicant could be offered compassionate appointment depending upon the vacancy position and the rules and regulations to fill up such vacancies. The above case may

Recult copy (Nisara)

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for Nisara Birji
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