

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 104/2008**

**Date of Order: 14-2-2011**

**CORAM:**

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER  
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

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

...Applicant.

Mr. Nitin Trivedi, counsel for the 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**

**( Per Mr. Justice S.M.M. Alam, Judicial Member )**

The applicant, Kamal Kumar Soni S/o Late Babu Lal Ji (deceased employee), has preferred this Original Application seeking following reliefs:

"(A). An appropriate order or direction may kindly be issued in favour of the applicant and the order dated 7-01-2008 (Annex.-1) may kindly be quashed and set aside and the respondents may kindly be directed to give appointment to the applicant on compassionate ground on the post for which he is qualified and eligible, on & from the date when the dependents of the other

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deceased employees of the Respondent department, has been provided compassionate appointment, who had applied after the date of applying by the applicant for the appointment on the compassionate ground.

(B). Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(C). The cost of the O.A. may kindly be awarded in favour of the applicant".

2. The brief facts of the case are as follows:

In the year 1972, the father of the applicant late Shri Babu Lal Ji Soni entered into the service of the respondent-department as ED Master. He was promoted as Sub Post Master / Postal Assistant w.e.f. 13.08.1982 and while he was in service he died on 19.11.2003 living behind him his wife, one married son, two married daughters and one unmarried son namely Kamal Kumar Soni, the present applicant. In the month of December, 2003, the mother of the applicant filed an application before the respondent-department for appointment of the applicant on compassionate ground. However, by order dated 26<sup>th</sup> April, 2005 passed by the respondent no. 5, the department rejected the application for appointment of the applicant on compassionate ground, on the ground that the applicant has got sufficient source of income for maintenance as substantial amount has been paid to the family of the deceased employee towards terminal benefit and that the family of the deceased employee is getting family pension and have got their own house. After refusal of the claim, the applicant preferred O.A. No. 251/2006 before this Bench of the Tribunal challenging the validity of the order dated 26<sup>th</sup> April, 2005. The said O.A. was

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disposed of by order dated 07.09.2007 whereby this Tribunal issued direction to the respondents to reconsider the applicant's request for compassionate appointment and if he is found otherwise suitable, he should be offered compassionate appointment depending upon the vacancy position and the rules and regulations to fill up such vacancies. The Tribunal allowed four months period to the respondents to reconsider the request of the applicant. After passing of the order by this Tribunal, the respondents again considered the case of the applicant for appointment on compassionate ground and by a non-speaking order dated 07.01.2008 (Annex. A/1) they again rejected prayer of the applicant for compassionate appointment which gave rise to the cause of action for filing this Original Application.

3. On filing of the Original Application, notices were issued to the respondents and in compliance of the notices; the respondents appeared in this case through lawyer and filed reply of this Original Application.

4. The respondents have pleaded that the applicant has no legal right for appointment on compassionate ground as the family of the deceased employee is not living in penury. It has been stated that after the death of the deceased employee, the family of the deceased employee received terminal benefit amounting to Rs. 3,51,435/-, besides that the family is getting monthly pension @ Rs. 5385/-. Moreover, the widow of the deceased employee has got her own house in which she is residing along with the applicant. It has also been stated that the elder son of the

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deceased employee is employed in Government service and both the daughters are married and so they cannot be said to be dependents of the deceased employee. It is stated that the terminal benefits and the family pension of the deceased employee are sufficient to maintain the widow of the deceased and his son who is the applicant before this Tribunal. On the basis of above facts and on the basis of some decision of the Hon'ble Apex Court in the case of Punjab National Bank Ors. vs. Ashwani Kumar Taneja - (2004) Vol. 7 SCC 93, the respondents have prayed to dismiss this Original Application.

5. The main contention of the learned advocate of the applicant is that the impugned order dated 07.01.2008 (Annexure A/1) whereby the prayer of the applicant for appointment on compassionate ground was rejected by the respondents on 2<sup>nd</sup> time is not in accordance with the direction of the Tribunal given at para 24 of the order of this Tribunal dated 07.09.2007 passed in OA No. 251/2006 and therefore it cannot be held that the respondents have reconsidered the case of the applicant for compassionate appointment as per the order of this Tribunal dated 07.09.2007 passed in OA No. 251/2006 and so the impugned order dated 07.01.2008 (Annexure A/1) deserves to be set aside.

6. On the other hand, the contention of the respondents' lawyer is that the impugned order dated 07.01.2008 (Annexure A/1) was passed by the respondents in compliance of the order dated 07.09.2007 passed by this Tribunal in OA No. 251/2006 and on objective assessment of financial condition of the family and availability of vacancy in the cadre and also the source of income

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of the family, the Committee did not find the claim of the applicant for compassionate appointment as just stand proper and so again rejected the claim.

7. It is true that it is not denied by the applicant that after the death of Shri Babu Lal Ji Soni (the father of the applicant) the family of the deceased employee received terminal benefits amounting to Rs. 351435/-, besides that the family is getting monthly pension @ Rs. 5385/- per month. It is also not denied that the family of the deceased has got its own house to live. However, it appears that these facts were also before the Tribunal while the Tribunal was considering the case of the applicant for compassionate appointment in OA No. 251/2006. In spite of presence of those facts regarding the financial condition of the family of the deceased employee, the Tribunal at para 24 of its order has observed that the respondents have not indicated in the order 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-à-vis the marks obtained by the applicant has not been indicated. The Tribunal further observed that the comparative indigent conditions of the candidates who were considered for compassionate appointment have also not been explained and 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. This observation at para 24 of the order dated 07.09.2007 passed in OA No. 251/2006 clearly establishes that at para 24 certain observations were given by the Tribunal for the respondents for reconsideration of the applicant's request for

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compassionate appointment and for passing speaking order on the application for compassionate appointment. But when we look to the order which is under challenge i.e. the order dated 07.01.2008 (Annexure A/1), we find that the respondents while rejecting the prayer of the applicant for compassionate appointment did not consider the application of the applicant for compassionate appointment as per the observations given by the Tribunal at para 24 of its order, and therefore we have no alternative except to set aside the impugned order dated 07.01.2008 (Annexure A/1) and to issue a fresh direction to the respondents to again consider the case of the applicant for compassionate appointment in the light of the specific observations given by this Tribunal at para 24 of its order dated 07.09.2007 passed in OA No. 251/2006.

8. In the result, we allow this Original Application and set aside the impugned order dated 07.01.2008 (Annexure A/1) and issue direction to the respondents to reconsider the case of the applicant for compassionate appointment in the light of the observations of this Tribunal at para 24 of its order dated 07.09.2007 passed in OA No. 251/2006 and to pass speaking order in this regard. It is observed that such consideration should be made within a period of six months from the date of receipt / production of copy of this order. In the circumstances of this case, there will be no order as to costs.



**( SUDHIR KUMAR )  
ADMINISTRATIVE MEMBER**



**[JUSTICE S.M.M.ALAM]  
JUDICIAL MEMBER**

R/C  
MBA  
12/2/17

दिनांक ..... के आदेशानुसार  
मेरी उपस्थिति में दिनांक .....  
को कान-II व III नष्ट किए गए ।

अनुभाग अधिकारी  
केन्द्रीय प्रशासनिक अधिकरण  
जोधपुर न्यायपीठ, जोधपुर

दिनांक 21/4/16 के आदेशानुसार  
मेरी उपस्थिति में दिनांक 8/7/16  
को कान-II व III नष्ट किए गए ।

अनुभाग अधिकारी  
केन्द्रीय प्रशासनिक अधिकरण  
जोधपुर न्यायपीठ, जोधपुर