

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 204/2008
with
MISC. APPLICATION NO. 97/2008**

Date of order: 19-7-2010

CORAM:

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Vinod Kumar Meena S/o Late Ratan Singh Ji, by caste Meena, Aged 33 years, Resident of Village & Post Saroli, Kherwara, Dist. Udaipur – father was Post Master under R. No. 4.

...Applicant.

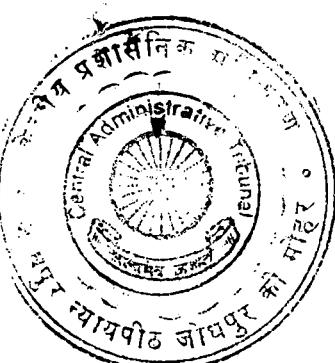
Mr. Nitin Trivedi, counsel for applicant.

VERSUS

1. Union of India through Secretary, M/o Communication to the Government, 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 Sr. Superintendent of Post Offices, Main Post Office, Udaipur Division, Udaipur.

... Respondents.

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



ORDER
(Per Hon'ble Mr. V.K. Kapoor, AM)

Shri Vinod Kumar Meena has preferred the present O.A. against the order dt 13.9.2001 (ann A-1) passed by respondent-5. The applicant has sought the relief that are as follows:

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"(A). An appropriate order or direction may kindly be issued in favour of the applicant and the order dated 13-09-2001 (Annex.-A/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 deceased employees of the Respondent department, has been provided compassionate appointment, who had applied after the date of applying by the applicant for 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 that applicant's father late Shri Ratan Singh joined respondent-department in 1972 and was serving as post master. Shri Ratan Singh died on 05.12.1994 due to accident, he left behind his wife, two sons and three daughters; out of them the applicant is the eldest issue of his parents. The applicant has studied upto IX standard. He moved an application for appointment in respondent-department on compassionate ground. It is averred by the applicant that the dependent family was in indigent condition, getting pension as Rs. 1500/- + D.A. per month, terminal benefits released as Rs. 1,31,844/-, adjusted towards personal loans taken by the applicant's late father, owns no agriculture or other land as per ann A-2,A-3. The respondents rejected the applicant's claim for appointment on compassionate ground vide letter dt 13.9.2001 (ann A-1) on the ground of applicant having own house and their financial condition was not in bad shape. The applicant has prayed to quash this order dt 13.9.2001 (ann A-1) and give appointment in respondent-dept on compassionate ground.

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3. The respondents in reply have stated that Shri Ratan Singh Latta, PA, Udaipur Division expired on 05.12.1994. The applicant applied for appointment on compassionate grounds, his case was put up before the Circle Relaxation Committee (CRC) which considered his case along with 44 other cases as per instructions of Department of Personnel & Training, New Delhi OM dated 09.10.1998, OM dated 03.12.1999 & OM dated 24.11.2000. There was only 01 vacancy available for appointment on compassionate grounds. The applicant was not found fit. The compassionate appointment cannot be granted after a lapse of reasonable period, it is not a vested right which can be exercised at any time in future. While considering belated requests where the death of Govt. employee took place long back, it should however be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of assistance. The CRC has gone through the applicant's case at length three times. The applicant is getting revised pension as Rs. 3500/- + D.A. per month, all two sons and two daughters are major and not dependent on deceased employee, the terminal benefits of Rs. 1,31,844 were given in 1995. Accordingly, applicant's economic condition was not found to be indigent, thus he was not recommended for appointment on

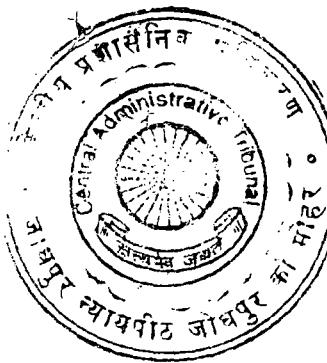
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compassionate grounds, which is to be given in deserving cases; this cannot be claimed as a matter of right.

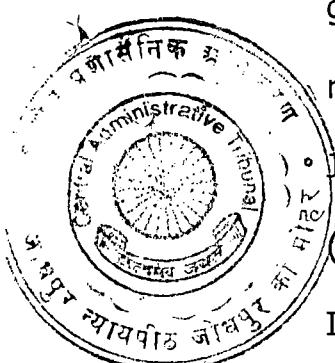
4 (a). Learned counsel for applicant in argument has stated that there are six dependents of deceased, applicant is the eldest out of them. At the time of submitting application he was of 23 years of age, the dependent family were getting pension of Rs. 1500/- + DA per month, they got terminal benefits of Rs. 1,31,844/-. The Gram Panchayat, Saroli and Office of Patwar Circle, Kherwara have given certificates vide ann A-2 & A-3 in which he is shown below poverty line. The dependent family is getting pension and having house of their own, their financial condition was not bad, his case for compassionate appointment was rejected vide order dt 13.9.2001 (ann A-1). This order is non speaking and un-reasoned one, applicant's case cannot be rejected on the grounds of pension & terminal benefits. The division of pension each member-wise is meager; the dependent family is in indigent condition. The learned counsel for applicant has contended that the citation 2004 (3) CDR 2056 (Raj.) put forth by the respondents is not applicable in the present context. He has further argued on delay factor in filing the present O.A., filed a separate M.A. for condonation of delay. Accordingly, the papers were handed over to one Shri Kaushal Chand to file OA in January 2002 but he failed to file the case. The mistake was bonafide and beyond the applicant's control, he contacted concerned person but in vain. There are no dilatory tactics or malafide on applicant's part. The court should normally consider

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the delay sympathetically and decide the case on merits. In support of his contentions, applicant has relied on the decisions of apex court i.e. Collector, Land Acquisition, Anantnag & anr. vs. Mst. Katiji & ors. (1987 AIR SC 1353) & N. Balakrishnan vs. M. Krishna Murthy 1998 (7) SCC 123 = 1998 (7) Supreme 209.

4 (b). Learned counsel for respondents in arguments narrated that applicant's father died on 05.12.1994 while serving the respondent-department. The applicant moved an application for appointment on compassionate grounds, the CRC examined his case along with 44 other cases, only one vacancy existed at that time. The CRC considered applicant's case on three occasions, did not find this family under indigent condition. The matter came before Tribunal quite late, he moved an application seeking condonation of delay. The applicant was of 23 years while moving application before respondents, he was of 33 years of age while filing present OA, accordingly relief on compassionate grounds cannot be given. In support of his contentions, respondents' counsel has cited decision of Raj. High Court, Jodhpur in Om Prakash vs. UOI & Ors. 2004 (3) CDR 2056 (Raj.). The respondents quoted decision of apex court in L.I.C. of India vs. Mrs. Asha Ramchhandra Ambekar & Anr. JT 1994 (2) S.C. 183, Himachal Road Transport Corporation vs. Shri Dinesh Kumar JT 1996 (5), S.C. 319 & Hindustan Aero Nautics Ltd. vs. Smt. A. Radhika Thirumalai (JT 1996 (9) S.C. 197).



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5. The matter pertains to an order from respondents' side dated 13.9.2001 against which present O.A. was filed on 09.9.2008. The delay in filing this O.A. before Tribunal is to the tune of 06 years. The applicant has mentioned about this delay factor in M.A., his concerned file and relevant papers were handed over to one Shri Kaushal Chand who did not return these. Later he could not contact this person, the applicant filed the present O.A. through the present advocate. This error is termed as bona fide and was caused inadvertently and the circumstances were beyond his control. There was no malafide intent on his part. There is an inordinate delay but definitely circumstances were beyond his control, thus it should be better to decide the case on merits. The applicant gets support from the decision of apex court in Collector, Land Acquisition, Anantnag & anr. vs. Mst. Katiji and others 1987 AIR SC 1353 and N. Balakrishnan vs. M. Krishnamurthy 1998 (7) SCC 123 = 1998 (7) Supreme 209. The delay is definitely not malafide, applicant's case should be decided on merit, though there is inordinate delay in the matter.

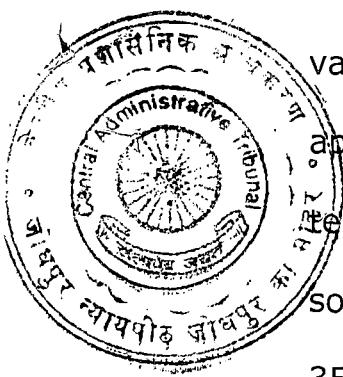
6. The applicant's father late Shri Ratan Singh was working in respondent-dept since 1972 and was working as postmaster till his death i.e. on 05.12.1994. Late Shri Ratan Singh left behind his wife, two sons and three daughters; applicant happens to be the eldest child. The applicant is said to be 9th standard pass, after Shri Ratan Singh's death, his wife and other dependents were getting family pension of Rs. 1500/- + DA pm and were in receipt of terminal benefits under different heads as Rs.

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1,31,844/- . Besides, applicant and other dependents were said to be having a constructed house. The applicant moved his case for compassionate appointment, which was rejected vide order dt 13.9.2001. The grounds for rejection were that the applicant had a constructed house & agriculture land of 13 Bighas 01 Biswa, they got terminal benefits as Rs. 1,31,844/- and were regularly getting family pension of Rs. 1500/- + DA per month. The respondent-5 observed that the purpose of providing immediate assistance did not exist as the financial status of this family was sufficient to meet the family requirements.

7. The applicant later moved a certificate issued by Sarpanch, Gram Panchayat, Saroli and Patwari, Patwar Circle Saroli to the effect that there is no land on his name, that this family comes under below poverty line, they are economically downtrodden. The applicant's case for compassionate appointment was put up before CRC along with 44 such cases, this committee brooded over applicant's case on three times. There was only one vacancy available for appointment on compassionate grounds, applicant's case was not found fit and their condition was not termed as indigent. This is a fact that applicant has house and some land and presently they are getting revised pension as Rs. 3500/- + DA per month. This family has sustained themselves after the demise of Shri Ratan Singh on 05.12.1994. Thus, case of compassionate appointment is not maintainable in his favour and that too after a lapse of reasonably long period.

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8. The respondents have relied upon the case of Om Prakash vs. UOI & Ors. 2004 (3) CDR 2056 (Raj.), that speaks of dismissal of applicant's claim as regards a person over 25 years; that a person above 25 years of age cannot be said to be dependent on deceased. They have relied on the decision dated 11.08.2008 of Jaipur Bench of Tribunal in Kum. Archana Sharma vs. UOI (OA No. 288/2006) that compassionate appointment is not possible in case there is practically no vacancy. Moreover, the appointment on compassionate ground should only be given in deserving cases. The respondents have dwelt upon decision of Apex Court in the case of Life Insurance Corporation of India vs. Mrs. Asha Ramchhandra Ambekar & Anr. JT 1994 (2) S.C. 183 - it was held that Tribunal should not confer benediction impelled by sympathetic consideration and disregardful of law. They further dwelt upon the decision of Apex Court in the case of Himachal Road Transport Corporation vs. Shri Dinesh Kumar JT 1996 (5), S.C. 319 in which it was held that in the absence of any vacant post, it was not open for Corporation to appoint a person. In the present case, there was only 01 vacancy and there were 44 candidates in the fray. It is not possible to shower sympathetic consideration on a person like applicant. The respondents have relied upon the decision of the apex court in the case of Hindustan Aeronautics Ltd. vs. Smt. A. Radhika Thirumalai JT 1996 (9) S.C. 197 that reads as follows:

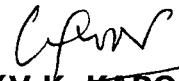
"Rule 78.3 for appointment on compassionate grounds - Such appointment can be made only if vacancy is available - Held on facts that in view of ban on fresh recruitment and reduction in work force, no vacancy being available, no appointment can be made - Appeal allowed and writ dismissed."

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In short, the compassionate appointment can only be made if some vacancies are available, in present case there was only one vacancy and 44 such candidates awaiting appointment on compassionate grounds. The applicant has crossed the age of 25 years. The present case is more than three years old, as per Government of India, Department of Personnel & Training OM No. 14014/19/2002-Estt. (D), dated 05.5.2003 this case is not to be considered. The applicant moved an application for appointment on compassionate grounds, while his age was of 23 years but now he is more than 33 years of age. As per different citations quoted and DOPT instructions 05.5.2003, applicant is beyond the orbit of getting employment on compassionate grounds, as such no case is made out in his favour. He is more than 25 years of age, has a house to live in, thus he is not to be considered as dependent on family of deceased. Under these circumstances, the applicant cannot claim relief as a matter of right for getting appointment on compassionate grounds.

9. In the light of deliberations made above, no interference is called for in order dated 13.9.2001 (annex. A-1). Accordingly, the present O.A. is dismissed with no order as to costs. The M.A. is also disposed of accordingly.



(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

दिनांक 17/12/15 के आदेशानुसार
मेरी उपस्थिति दिनांक 16/12/16

को भाग-II के 11 वें दिन गए।

अनुभाव लिखित है

द्वितीय प्रशासनिक अधिकार्या
खोदपुर न्यायदील, जोधपुर

RSC
MSRA
26/12/16

26/12/16