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

DATE OF DECISION 3-12-2010.

ORIGINAL APPLICATION NO. 13/2010

CORAM

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

Hafij Khan son of late Shri Habib Khan,
By caste Musalman, aged 27 years, resident of
Idgarh Colony, Siwana, District Barmer
(father was working as a Group-D employed in
Sub Post Office, Siwana) ...Applicant

(By Advocates M/s Rajesh Shah & Sunil Samaria)

Vs.

1. Union of India, through Secretary
Ministry of Communications and Information
Technology, Department of Posts, Government
Of India, New Delhi.

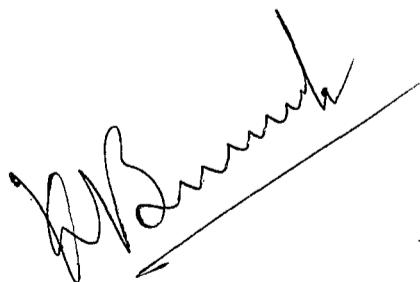
2. The Circle Selection Committee
Through the Chief Postmaster General,
Department of Posts, Rajasthan Circle,
Jaipur.

3. The Postmaster General
Rajasthan, Western Region,
Jodhpur.

4. The Superintendent of Post offices.,
Barmer Division, Barmer. ..Respondents

(By Advocate Mr. Vinit Mathur)

This application having been heard on 2.12.2010, the Tribunal delivered the following:



ORDER

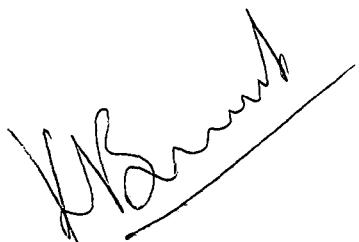
Per: Hon'ble Dr. K.B.Suresh, Judicial Member

The applicant challenges Annexure.AI order which he would say was not served on him but much later on his application the concerned official had given a photo copy of the order which seems to be handed over to him only for the purpose of information.

2. The rejection of compassionate appointment was on the ground that the family has got a family pension amounting to Rs. 1825/- plus

Dearness Relief per month and also the family had received terminal benefits at the tune of RS. 1,95,148/-. The family has left the widow, two married sons and one unmarried daughter. It would go on to say that after an objective assessment of the financial condition of the family, they did not find the family in an indigent condition and his case was rejected. It however, gone on to say that the applicant has to be informed of the order.

3. In the reply the respondents have challenged the validity and maintainability of the original application on the ground that the present challenge is of an order passed on 21.9.2005. The respondents would say that the applicant can have only the right to consideration and not a right for appointment and he had been objectively considered taking into consideration of the entire liabilities and responsibilities left behind by the deceased at the time of his death. They would say that even though the



retirement benefit of Rs. 1,95,148/- was paid to him; at present because of efflux of time and the various government orders, the family pension is more than Rs. 4000/-. They would say that the order was forwarded to the applicant vide letter dated 30.9.2005 by registered post. They did not say whether the registered post was received by the applicant or not. Since they themselves are the masters of the field then they should have been able to say whether the order was actually served on the applicant or not and if not served why the order was returned and when the order was returned. No details are forthcoming on this account. Therefore, the finding has to be arrived at is to the effect that the applicant may not have been served with a copy of the order.

4 The respondents would say that the scheme for compassionate appointment requires immediate succour to be made available to the family and in the absence of it such appointment becomes unnecessary. If they can survive till, then the meting out of compassion to them is not justified. The applicant would say that this is putting injury on insult and if the delay occasioned due to the respondents, then the respondents cannot be allowed to agitate that the delay must defeat the cause. The respondents would say that 5% of the vacancies of direct recruitment quota in a three year span have to be allotted for compassionate appointment and therefore, three years

span having been eclipsed, the OA cannot lie. The Hon'ble Apex Court while dealing with compassion have mentioned that the three year is the period within which such consideration has to be made, which has been followed by the DOPT in their circulars. But going by the entirety of the order it is clear that the three years of consideration means only marshalling of vacancies in each year and consideration to be made thereafter. Thus it would mean only that three opportunities and not that the consideration, if it cannot be completed within three years, they cannot be considered at all and if any vacancy will not arise for three years span and 10 vacancies arises in the 4th year it cannot be stated that the mandate of the Hon'ble Supreme Court order is carried out. Not only the letter but actually the spirit of the order might be more important.

5 The respondents would say that even if the Registered letter was not served on the applicant he need not have waited for 4 ½ years for coming to the court and therefore, on this ground his claim must be negatived. We have noted earlier, it will be putting premium on wrong premises. Whether the applicant has received the order or not would be available to the respondents as allegedly the order was sent by registered post. The persons sending a communication which was required to be served on the recipient has also a corresponding duty to ensure that it has

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been so served on him. Such not being the case in the present context, it can only be held that the applicant may not have received the order. That leaves us with the matter whether the non-receipt of the order should have immediately prompted the applicant to approach the court of law.

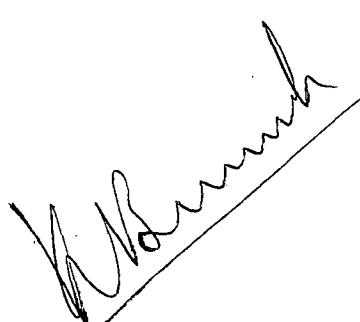
6 Persons in poor economic circumstances would be reluctant to approach the court of law for obvious reasons. In the quest for daily survival they may find it difficult to interject a margin therein for the continuance of a legal fight as well. The constitutional mandate under Article 44 coupled with Articles 20 and 21 are significant in this regard. Therefore, the action of the applicant in coming to the court when it was made clear to him that he will not be considered finally cannot be faulted for that.

7 The learned counsel for the applicant would rely on the judgment of the Hon'ble Apex Court in **Govind Prakash Verma Vs. Life Insurance Corporation of India and others**, reported in (2005) 10 SCC 289 wherein their Lordships held that compassionate appointment cannot be refused on the ground that any member of the family had received terminal benefits. It also held that it is wholly baseless to take into consideration the amount that has been paid to the family/the widow of the deceased. The applicant would also rely on another judgment of the Hon'ble Apex Court in **Balbir Kaul and another Vs. Steel Authority of India and others &**

John B. Burkhardt

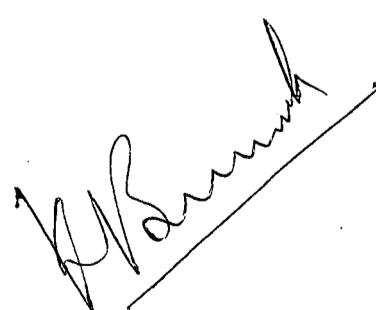
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T.K.Meenakshi (Smt) and another Vs. Steel Authority of India reported in (2000) 6 SCC 493 wherein their Lordships held that family benefit is not a substitute for compassionate appointment. Their Lordships further held that denial in such situation must be perceived as denial of social and economic justice as enshrined in the Constitution of India. Their Lordships also held that the socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning and law courts cannot be mute spectators where relief is denied to the horrendous sufferings of a family which has lost its breadwinner. Constitutional philosophy should be allowed to become a part of every man's life and then only the constitutional ethics can reach everyone. Their Lordships further held that greatest virtue of law is in its adaptability and flexibility and the law is made for the society and therefore, it has to be applied, depending upon a situation, for the benefit of society. Reliance is also placed on the judgment of the Hon'ble High Court of Rajasthan (Jaipur Bench) in **Nareshkumar Jhakhar Vs. Shekhawati Gramin Bank Sikar and another** reported in 2006(6) RDD 3287 (Raj) wherein the Hon'ble High Court held that terminal benefits received by a family cannot be considered as a basis for holding the applicant is disentitled for compassionate appointment. The applicant would say that one other decision of the Hon'ble Rajasthan High Court (Jaipur



Bench) has significance in this regard which is relating to **Smt.Maya L.Dhingrani and others Vs. Uco Bank and others (CWP No.3017/1997 dated 6.7.2001** wherein their Lordships held that in matters of compassionate appointment when daughter of the deceased employee had applied for appointment after five years since the petitioner therein was applying only after attaining majority, the application must be deemed to be in time. In this case the application has already been filed and rejected but indications are that the rejection was not made known to the applicant.

8 We have considered the quantum of relief which was made available to the destitute family. There is no finding by the respondents that the applicant and family are possessed of substantial landed property. The only finding is to the effect that that the terminal benefits of less than two lakhs had been paid and family pension of Rs. 1825/- at that time was also paid. It was also noted that there is an unmarried daughter in the family and therefore on comparison of assets and liabilities the applicant may not be far better than the starvation level. On this reason alone the finding on the applicant to be not in indigent circumstances cannot be termed as objective. There is no objection raised by the respondents at any time; whether it had to be in the order or in the reply that there was no vacancies for the applicant to be considered, only that they had rejected his application on the ground of

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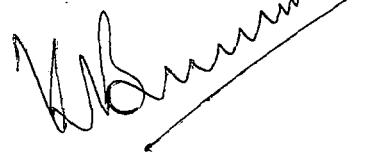
lack of indigence. Even if they have found lack of indigence on the basis of terminal benefits, since the Hon'ble Supreme Court have now laid down the law that grant of terminal benefits will not disentitle the applicant for being considered for compassionate appointment that matter is taken to be rested. Besides none of the other parameters of assets and liability are touched. Therefore, Annexure.A1 order cannot stand in the eye of law and has to be quashed.

9 Annexure.A1 is quashed and the respondents are directed to make an objective assessment of the comparative merits and demerits of the applicant in comparison with others and consider him for three consecutive opportunities starting from three months next notwithstanding the fact that he was considered first in the year 2005. Since that was not effective consideration, three opportunities must be made available to him.

The Original application is allowed to the extent as above. No order as to costs.


SUDHIR KUMAR
ADMINISTRATIVE MEMBER

KS212..


Dr.K.B. SURESH
JUDICIAL MEMBER

5/1/16
7/7/16

विनांक 7/7/16 के अनुसार उत्तर
सेरी उत्तराधीन 7/7/16
को अनुसार 7/7/16 का नाम दिए गए।

अनुसार उत्तराधीन
केन्द्रीय राजनीक अधिकरण
जोधपुर न्यायालय, जोधपुर