

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 312 of 97

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Jahanara Begum, wife of Sk. Sawkat Ali, Invalid Extra-Departmental Delivery Agent of Janardanpur Extra-Departmental Branch Post Office, District-Midnapore.

...Applicant.

-v e r s u s-

1. Union of India, service through the Secretary, Ministry of Communication (Postal), New Delhi.
2. Post Master General, West Bengal G.P.O., Calcutta-1.
3. Director of Postal Services, South Bengal Region, Office of the Chief Post Master General, Calcutta-12.
4. The Senior Superintendent of Post Offices, Midnapore Division, P.O. and District-Midnapore.
5. The Sub-Divisional Inspector of Post Offices, Kharagpur Sub-Division, District-Midnapore.

...Respondents.

For the applicants : Mr. R.N. Ghorai, counsel.

For the respondents : Mr. S.P. Kar, counsel.

Heard on 18.3.98

OL 18.3.98

Order on 18.3.98

O R D E R

D. Purkayastha, JM

The applicant, Smt. Jahanara Begum, wife of Sk. Sawkat Ali, Invalid Extra-Departmental Delivery Agent of Janardanpur Extra-Departmental Branch P.O. has filed this application before this Tribunal seeking direction upon the respondents to appoint the applicant as postal peon on compassionate ground since her husband ~~90 per cent~~ ^{90%} became invalid in the year of 1991. It is also stated that her application for appointment on compassionate ground has been refused wrongly by the respondents on the ground that there is no provision for making such appointment in case of invalidation of Govt. employee during his service period. Hence the petition.

2. The respondents filed written reply denying the claim of the applicant supporting the reasons disclosed in the reply filed by the

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respondents is under challenge. Ld. counsel Mr. R.N. Ghorai submits that the respondents did not apply their mind to the relevant provision of the rules and instructions contained at pages 136, 137 and 138 of the Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department where there is a provision for consideration for appointment on compassionate ground in case of infirmity of the Extra-Departmental Agent. And thereby the order of refusal contained the reasons is contradictory to the instructions issued by the Govt. of India under the said rules. So the order is liable to be struck down. Ld. counsel, Mr. Kar, appearing on behalf of the respondents submits that the respondents rightly communicated the order of refusal since there is no provision indicating that the compassionate appointment should be granted in case of Govt. employee retires on invalidation. So the application is devoid of merit. I have considered the submission of the Ld. counsel for both the parties and gone through the records. It remains undisputed in this case as appears from the letter dated 5.9.91 issued by the Director of Post Offices that the applicant's husband was deemed to have been retired from service on superannuation on invalidation ground with effect from 1.1.91 and she applied for appointment on compassionate ground on 27.7.92 followed by the reminders dated 16.7.92, 2.9.92 and 18.9.92 respectively. Ultimately the respondents by a letter dated 29.8.96 Annexure-F to the application intimated that there is no provision in the rule for consideration of appointment of the dependent of the Extra-Departmental Agent who retires on invalidation. Ld. counsel, Mr. Kar has drawn my attention to a para 5 II(b) ^{the reply} and submits that no representation has been received by the respondents as alleged in the application. And no representation has been filed by the applicant to the Department for getting compassionate appointment. ~~SECRET~~

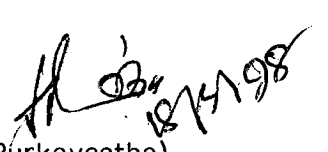
~~SECRET~~ Regarding the dispute question of fact in respect of filing of representation as raised by the Ld. counsel, Mr. Kar appearing on behalf of the respondents, the applicant produced some postal receipts which show that she made some correspondence to the Deptt. concerned on 18.9.92. It also found from the ^{records} ~~representation~~ that the ^{applicant} ~~respondents~~

~~Received~~ ^{Sent} representation dated 16.7.92 which has been received by the Sub Divisional Inspector of Post Offices, Kharagpur on 23.7.92 with seal and signature. So it cannot be said that no representation has been filed by the applicant as stated ~~by~~ by the Id. counsel for the respondents before me during hearing of this case. However, the question is whether the person is entitled to be considered for appointment on compassionate ground in case of invalidation during his service.

3. On perusal of the instructions contained in the D.G.P&T letter No. 43-212/79/Pen dated 4th August 1980 as embodied at page 136 of the said book and sub para 3 of instructions contained in D.G. letter No. 14/25/91-ED & Trg. dated 16th December 1991, it cannot be ~~said~~ ^{said} ~~that~~ that there is no scope for consideration for appointment on compassionate ground in case of infirmity of EX agent during his service. In view of the matter I find that the department is not justified to inform applicant that there is no provision for appointment on compassionate ground in case of Govt. employee on invalidation as ED agent during service. So reasons disclosed by the respondents are liable to be struck down. Id. counsel, Mr. Kar also raises the question of limitation since the application was filed after a lapse of five years and the applicant did not approach the Tribunal during the period of five years. I have considered the submission of the Id. counsel, Mr. Kar and I find that the applicant made representation immediately after the order of invalidation of her husband which is apparent from the representation dated 16.7.92 and that has been received by the respondents. Thereafter she made so many representations. But the Department slept over the matter without communicating any reply to her and ultimate the Deptt. informed the applicant by a letter dated 19.8.96 disclosing therein that there is no provision for consideration of appointment on compassionate ground under the present circumstances. Since the reason is not tenable and thereby, I am of the view that the ~~letter~~ ^{small} of ~~refusal~~ ^{moderate delay} for consideration of his application can be attributed to the respondents because respondents remained silent over the matter. In view of the aforesaid circumstances, the application cannot be said to be barred by limitation on the ground that the decision of the department was communicated to the applicant

by the respondents on 19.8.96 as per Annexure-F to the application. In view of the aforesaid circumstances, I allow the application with a direction upon the respondents to consider the case of the applicant in accordance with the instructions mentioned above within three months from the date of the communication of this order ^{if vacancy is available} and the respondents are also directed to pass a speaking order to that effect. If such consideration goes in favour of the applicant and vacancy is ^{also} made available, the respondents should consider her case for appointment.

No order is passed as to costs.


(D. Purkayastha)
M e m b e r (J)

a.k.c.