

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

(13)

Original Application No.238/2005

This the ²⁶ of September 2006

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

Sujat Hussain aged about 27 years S/o Late Sri Sarwar Hussain
R/o 99/193 Nala Road, Kanpur.

...Applicant.

By Advocate: Shri Amit Verma for Shri A. Moln.

Versus.

Union of India, through

1. Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Head Post Office, Kanpur.

...Respondents.

By Advocate: Shri S.K. Awasthi.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed this O.A. for issuance of direction to the
IIInd Respondent to appoint the applicant on any Class-IV post in
terms of approval of appointment dated 18.08.1997 within the
specified time with the following grounds.

2. The applicant is the son of deceased Sarwar Hussain who died on 19.5.1996, while working as Postman leaving behind his wife, son (applicant) and three daughters. When the applicant made an application for appointment on compassionate ground, the IInd Respondent by order dated 18.8.1997 (Annexure-4) approved the appointment on Group-'D' post and directed the IInd Respondent to appoint the applicant in the Kanpur Head Post Office. But he was not appointed on the ground that sufficient vacancies are not available in the office and asking the applicant to wait for his turn. In the meantime, the respondents have appointed one Smt Bubal, whose date of approval for appointment was 8.3.2002 and she joined on a Class IV post at Fatehpur within the jurisdiction of Respondent No.3 and directly under the control of IInd Respondent. Thereafter one Smt Shiva Kanti whose date of approval for appointment was 15.01.1998 by the IInd Respondent had also been appointment on 1,2,2005 at the office of Superintendent, Postal Stock Branch, Lucknow, where there was directions from the Tribunal in her application in O.A.No.187/2003. Annexure-7 is the copy of the appointment order of Smt Shiva Kanti. It is the case of the applicant that inspite of several representations dated 25.4.2005, 2.5.2005, the respondents have failed to initiate any action for his appointment on any Group-'D' post hence he filed this application making allegations against the respondents that they are acting in a patently arbitrary, illegal and malafide manner.

3. The respondents have filed Counter-Affidavit denying the claim of the applicant stating that due to non-availability of vacancies in

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Group-'D' post in Kanpur Head Office, the applicant could not be absorbed in the said post on compassionate grounds. And when they advised the applicant to submit his willingness for the post of GDS cadre (Gramin Dak Sewek) vide latter dated 23.1.2003 and 12.4.2003, there was no response from him which shows that the applicant or his family was neither in indigent circumstances nor in distress condition. They have further stated that the waiting list of approved candidates has been discontinued by the Department of Post vide D.G. Post No.24-1/99 S.P.B.-1 dated 8.2.2001 and a new Policy has been framed by the D.G. Post for absorption of candidate who was approved prior to 8.2.2001 against the vacant post of GDS and since the applicant has not given his consent for absorption in GDS cadre, it was not considered.

4. The applicant also filed Rejoinder-Affidavit asserting his claim made in the O.A. and also stated that initially there was a post vacant at Kanpur on which Shri Satya Narain S/o Late Mathura Prasad was posted on compassionate grounds but later-on his appointment was cancelled. Shri Satya Narain's names find place at Sl. No. 5 in the waiting list and person below him had already been absorbed leaving the applicant who is most eligible candidate whose turn for appointment had come in terms of the waiting list but the respondents without appointing the applicant, they appointed Smt Bubai on 8.2.2002 and later Smt Shiva Kanti on 1.3.2005. He further stated that whatever benefits they received, spent it for the marriages of his sisters.

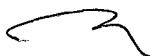
5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief's as prayed for.

7. It is the main arguments of the learned counsel for the applicant that the name of the applicant was approved by the IInd Respondent for the post of Class IV in the year 1997 but till now no appointment has been given to him and during pendency of his appointment, the respondents have given appointment to Smt Bubal and Smt Shiva Kanti whose names were approved subsequently and thus attributed malafides stating that they are acting arbitrary and illegal manner.

8. It is the main arguments of the respondents that when they offered to provide appointment to the applicant in GDS cadre, he has not given any consent and on that ground they want to find fault with the applicant. Admittedly, the applicant is eligible for the post of Group-'D' and the IInd Respondent also approved his name and also shown his name at Sl.No.3 in the waiting list in 1997 itself for the post of Group-'D' cadre on 18.8.1997. When the applicant was eligible for the post of Group-'D' and IInd Respondent also approved his name for the said post, giving his consent for the post of GDS is not at all justified and as such there is no justification in such arguments of the respondents.

9. The respondents have also taken another objection stating that in the year 2001 department has framed new Policy for absorption of candidates who are appointed prior to 8.2.2001 against the vacant post of GDS and relied on Annexure R-1 dated 12.4.2003. The said document is the letter issued by IInd Respondent asking the



applicant, Smt Shiva Kanti and three others to submit their unconditional willingness for GDS Post and thus the same is not helpful to prove any change of policy, disentitling the applicant for his appointment in the post of Group-'D'. The respondents have offered GDS post to Smt Shiva Kanti, they have appointed her in the post of Group-'D' only. As such there is no justification in the argument of the respondents, to say any change of policy of the department.

10. The respondents have also admitted the appointment of Smt Bubai on 8.3.2002 and Smt Shiva Kanti on 1.3.2005 in the post of Group-'D' cadre by the IIInd Respondent himself and non providing such appointment to the applicant whose name was approved in 1997 itself prior to the approval of the names of Smt Bubal and Smt Shiva Kanti it self supports the allegations of arbitrary and illegal acts on the part of the respondents.

11. Insofar as availability of vacancies are concerned in the light of D.O.P.T O.M. dated 5.5.2003, the waiting list is to be operated for three years and the fact that once the PMG had taken a decision and approved the appointment of the applicant on compassionate grounds, the recommendations of the Circle Relaxation Committee as to most deserving cases are to be presumed. In the instant case, though the name of the applicant was approved on 18.8.1997 and they have not given any appointment to him on the post of Group-'D' and also no material is placed to show such steps are taken by the respondents. Further providing such appointments to Smt Bubai and Smt Shiva Kanti, whose names are subsequently approved, naturally causes prejudice to the claim of the applicant and in such circumstances he is

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justified to approach the Tribunal against the acts of the respondents for their discrimination and kept the matter pending for years together without providing appointment, which he sought on compassionate grounds.

12. In view of the above discussions, the claim of the applicant is allowed directing the respondents to consider the approved name of the applicant for appointment on any Group-'D' post in terms of approval by granting three months time from the date of receipt of the copy of this order.

13. In the result the application is allowed. No order as to costs.

(M. KANTHAIAH)
MEMBER (J)

26.9.08

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