

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 272/2006

This, the 1st day of March, 2012.

HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

Sabhajeet aged about 27 years son of late Sri Bhawani Pher, resident of village-Rampur Bhagan, pergana Paschim Rath, P.S. Tarun, Tehsil Bikapur, Distt. Faizabad.

Applicant

By Advocate: None.

VERSUS

1. Union of India through its Secretary Department of Post & Telegraphs Central Secretariat, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Senior Superintendent of Post Offices, Faizabad Division, Faizabad.

Respondents

By Advocate: Sri N. H. Khan.

(Reserved on 29.2.2012)

ORDER

By Hon'ble Shri Navneet Kumar, Member (J)

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):

- (i) *That a relief may kindly be granted thereby granting/directing the oppo. Parties to make the appointment of petitioner on the post of sorting Postman in Head Post Office, Faizabad on compassionate grounds under the Dying in Harness Rules on the basis of compensatory.*
- (IA) *That a relief order or direction may kindly be granted quashing the impugned order dated 13.4.2005 contained in Annexure-11 to the O.A.*
- (ii) *That any other relief, order or direction may also be granted in favour of the applicant as this Hon'ble Tribunal may deem just and proper under the facts and circumstances of the case."*

2. Since, none has put in appearance on behalf of the applicant, as such Rule 15 (1) of CAT (Procedure) Rules 1987 is invoked and the O.A. is taken up for final hearing. The aforesaid Rule reads as under:-

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"15(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit."

3. The brief facts of the case are that the applicant's father who was working with respondents died on 18.1.2002 and posted as Shorting Postman. The applicant applied for compassionate appointment and the case of the applicant was subsequently rejected in 2005 stating therein that the case of the applicant was not recommended for appointment by the Circle Relaxation Committee taking into account the inter-se merit of all the cases in terms of assets and liabilities and indigence of the family like total number of dependents, minor children, marriage of daughters, responsibility of aged parents prolonged and major ailments finical condition and other relevant factors.

4. The applicant submitted that the decision taken by the respondents is arbitrary and it is liable to be quashed. The applicant also submits that the said order has been passed in arbitrary manner with malafide intention and is also not a speaking order and without showing the sufficient reasons.

5. On behalf of the respondents, counter reply was filed wherein, it is stated that the case of the applicant was considered for appointment on compassionate ground by Circle Relaxation Committee in its meeting held on 10,11 and 12th March 2005 and the case of the applicant could not be recommended for appointment and accordingly the applicant was informed vide letter dated 13.4.2005. The respondents also pointed out that the decision taken by the authorities is absolutely in accordance with law and there is no malafide intention therein.

6. In the absence of the counsel for the applicant, the records were perused and heard learned counsel for the respondents.

7. As per the averments made in the pleadings, it is admitted that the applicant's father died on 18.1. 2002 and subsequently the application was

made by the applicant for appointment on compassionate ground. But the same was considered and rejected vide order dated 13.4.2005. The Circle Relaxation Committee was constituted in accordance with instructions issued by the respondents authorities and as per scheme of compassionate appointment, the compassionate appointment can be made up to 5% vacancies fallen under direct recruitment in Group C and Group D posts. It is also clarified that the decision of Committee was fully justified because only 5% vacancy can be filled up on the ground of compassionate appointment by the authorities.

8. Apart from this, the applicant has received terminal benefits as well as the family members are also getting the family pension and apart from this, there is an annual agricultural income of the applicant's family.

9. The Hon'ble Apex Court has already observed a number of cases that compassionate appointment scheme is applicable to a dependent family member of a Government Servant who died in while in service or is retired on medical ground and the same is for family member to come out all the immediate financial crises. It is apparent that in the instant case, the father of the applicant died in 2002 and the case was rejected in 2005 itself whereas, and 2012 since they could manage the family as such there appears no financial hardship to the applicant's family. As such, I think there is no requirement to interfere in the present O.A.

10. Apart from above, since the family of the applicant could survive for a long period from the date of the death of the applicant's father, the case is clearly covered by the decision rendered by the Hon'ble Supreme Court in the case of **Haryana State Electricity Board v. Hakim Singh reported in (1997)**

8 SCC 85. The relevant portion is reproduced below:-

"12. We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of

inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crises befallen the dependants on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in **Haryana SEB v. Naresh Tanwar**. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in *Umesh Kumar Nagpal v. State of Haryana*, the other in *Jagdish Prasad v. State of Bihar*. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to ride over the sudden crises. The object is not to give a member of such family a post much less a post for the post held by the deceased." In the latter decision, which also was rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family". The learned Judge pointed out that if the claim of the dependant which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased government servant "which cannot be encouraged, de hors the recruitment rules".

14. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. The respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

15. We, therefore, allow the appeal and set aside the impugned judgment of the High Court."

11. In another decision in the case of **Jagdish Prasad v. State of Bihar (1996) 1 SCC 301** the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules.

5. The appeal is accordingly dismissed."

12. In the case of **Life Insurance Corporation of India v. Smt. Asha Ramchandra Ambekar(Mrs.) and Another** reported in **JT 1994(2)SC 183** the Hon'ble Supreme Court has been pleased to observe that the court and Tribunals cannot give direction for compassionate appointment on the ground of sympathy disregarding the instructions on the subject, but can merely direct consideration of the claims for such an appointment. Relevant portion of the judgment reads as under:-

"Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar v. M.P.S.R.T. Corpn.* it is stated as under :

"The provisions of the Motor Vehicles Act and in particular Sections 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorized trafficking in permits. Therefore the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his bus as nominee of the Corporation on the route in respect of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee."

13. In the case of **Umesh Kumar Nagpal v. State of Haryana and Ors.** reported in **JT 1994(3)SC 525** it has been observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Relevant portion of the said judgment is reproduced below:-

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

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14. From the aforesaid, it is clear that the applicant's father died in 2002 and 10 years has already lapsed. Since the family of the deceased employee could not get the help immediately after the death of the deceased employee, now it cannot be said that they cannot manage the family for a long period. Apart from this the family members of the deceased employee also received terminal benefits and also getting the family pension. Therefore, there appears to be no infirmity or illegality in the order dated 13.4.2005 rejecting the claim of the applicant for appointment on compassionate ground, as such, I do not think it proper to interfere in the impugned orders. As such, the present original application is liable to be dismissed.

15. Accordingly the O.A. is dismissed. No order as to costs.

VR. Arora
(Navneet Kumar)
Member-J

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