

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No. 386/2008

This the 4th day of September, 2009

Hon'ble Dr. A.K. Mishra, Member-A

Ashok Kumar Verma, Aged about 28 years, S/o late Sri Satguru Prasad Verma, R/o 592 D/35 Rajiv Nagar, Kharika, Telibagh, Lucknow.

.....Applicant

By Advocate: Sri A. Asthana.

Versus

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Postmaster Lucknow GPO, Department of Posts Lucknow GPO.

.....Respondents

By Advocate: Sri Mohd. A.P. Usmani

ORDER

This application has been filed challenging the orders dated 23.7.2008 and 9.9.2008 of respondents in which his representation for appointment on compassionate grounds was rejected.

2. The applicant's father, who was working as Postal Assistant in Lucknow General Post Office (GPO), died in harness on 1.2.2005. The applicant applied for appointment in 2005 itself. According to him, he had produced 'No Objection Certificate' from his brothers. His application was rejected on 21.3.2007 on the ground of non-availability of posts. He challenged the said order in O.A. no. 13 of 2008, which was disposed of on 4.3.2008 with a direction to the respondents to reconsider the claim of the applicant by passing a reasoned and speaking order as per rules. The impugned orders were passed by the respondent no.2 on the ground that the case of the



applicant, though reconsidered by the Circle Relaxation Committee (CRC) on 28.6.2008, could not be allowed in view of availability of limited number of vacancies and his over all position on inter-se merit amongst other applicants. Nevertheless, he was kept in the waiting list for consideration once more in the next meeting of the CRC as and when suitable vacancies were to be released.

3. The grounds taken in the application are:

that the respondents have a legal duty to appoint the applicant under dying-in-harness rules; that he was greatly in need of work as he was unemployed and living in indigent circumstance; that a supernumerary post could have been created in order to accommodate his case; that the impugned orders are mechanical in nature without proper appreciation of the circumstance of the applicant.

4. The respondents have stated that the case of the applicant was reexamined by the CRC on the directions of this Tribunal and could not be accommodated for want of sufficient number of posts. The name of the applicant has been kept in the waiting list and he would be considered in the next sitting of CRC when more posts would be released. The learned counsel for the respondents in support of his contention has relied upon the following case laws:

- (i) *Himanchal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 {5} SC 319.***
- (ii) *Hindustan Aeronautics Ltd. Vs. Radhika Thirnmalai (JT 1996 {9} SC 97).***
- (iii) *LIC of India Vs. Mrs. Asha Ram Chandra Ambekar and Others (JT 1994 {2} SC 183)***

The following observations of the Hon'ble Supreme Court in **Himanchal Road Transport Corporation Vs. Dinesh Kumar** (supra), which is relevant for our purpose, is quoted below:

“In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint

h

persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorized. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post."

5. This Tribunal cannot direct the respondent-authorities to create supernumerary post in order to accommodate the case of the applicant. The authorities have clearly mentioned that his case would be considered again in the next meeting of CRC as and when suitable vacancies were released. I find no infirmity in the impugned orders.

6. In the result, the O.A. is dismissed. No costs.



(Dr. A.K. Mishra)
Member-A

Girish/-