

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 432/2009

This the 29th day of April, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Anand Kumar Singh, S/o late Sri Amar Bahadur Singh, R/o Village & Post Office Aghiari (Inayat Nagar), Faizabad

.....Applicant

By Advocate: Sri S.P. Tripathi

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. CPMG, U.P. Circle, Lucknow.
3. Sr. Superintendent of Post Offices, Faizabad Division, Faizabad.

.....Respondents

By Advocate: Sri S.P. Singh

ORDER

The applicant has challenged the order dated 4.1.2008 passed with the approval of respondent no.2 rejecting the claim of the applicant for compassionate appointment. The applicant prays for quashing of the impugned order and also for a direction to the respondent-authority to appoint him on a class-III post on compassionate ground.

2. Father of the applicant, who was working as Branch Post Master at Aghiari (Inayat Nagar), Faizabad, died, while in service, on 17.7.2001. According to the applicant, he passed Intermediate examination in the year 1983 and was qualified to be appointed on a class III post. He represented for such appointment under Dying-in-harness rules. The

Circle Relaxation Committee (CRC) in its order dated 12.9.2003 rejected his application on the following grounds: (i) there were no social liabilities such as marriage of sister and education of minor children on him; (ii) family of the deceased employee had 3.09 hectares of agricultural land and annual income from landed property was Rs.1.08 lacs.

3. The applicant filed O.A. no. 240 of 2005, which was decided on 8.9.2006. This Tribunal directed the respondent-authority to consider the case of the applicant in the light of the instructions of Department of Personnel & Training, Government of India, which speaks about consideration of application thrice by CRC and also the fact that the applicant had only 1.514 hectares of agricultural land as his share of joint property and annual income from the agricultural land was about 26400/-. The respondent no.2 reconsidered the matter and rejected the application by passing the impugned order, which states the following grounds:

(i) Although, agricultural land standing in the name of the applicant was 1.544 hectares with annual income of Rs. 26400/-; agricultural land and annual income of widow of the deceased (mother of the applicant), which is equal to the share of the applicant, should also be taken into account; (ii) the applicant himself had submitted certificate of landed property, which indicates that the annual income of Rs. 1.08 lacs from the total agricultural land of 3.09 hectares; (iii) there are no instructions of DOP&T which enjoins that the CRC has to consider a case thrice. However, this case was considered earlier on two occasions: (i) 17.10.2002; then (ii) on 31.7.2003 and thereafter it was again considered on the direction of this Tribunal on 6.12.2007, but the Committee could not approve the case of the



applicant for compassionate appointment and gave following reasons :

(a) He had no family liabilities; (b) the family had income from the landed property; (c) the whole object of compassionate appointment was to enable the family to tide over the sudden crisis faced by a family on account of death of bread winner and to prevent the family to be reduced to state of financial destitution; and (d) compassionate appointment is not a vested right, which can be exercised at any time in future.

4. The learned counsel for the applicant submits that the CRC has repeated the same arguments which prompted them to reject his application earlier and these were not accepted by this Tribunal when the Tribunal directed that the matter should be considered afresh; therefore, he argues that the impugned order could not be sustained on the same very grounds.

5. The learned counsel for the respondents submits that the established legal principle is that the compassionate appointment is not a vested right to be obtained on the strength of descent and the main objective is to help the family to tide over the sudden crisis faced by it by the loss of sole bread winner. Further, Government's instructions also enjoin that different aspects such as responsibilities relating to unmarried sister, education and upkeep of minor children, non-availability of any other source of income are to be kept in view while considering such application.

6. There are a catena of decisions of Supreme Court, which have been highlighted the principle that appointment by public agency which are instrumentalities of the State have to conform to the right of equality as enshrined in



Article 14 & 16 of Constitution of India. Compassionate appointment which is a deviation from regular rules of recruitment has to strictly conform to the specific scheme formulated by the Government.

7. In the circumstances, admittedly, the applicant had no family liabilities, widow of the family was in receipt of family pension; besides there is some income from the landed property. These facts were duly considered by the CRC before coming to the conclusion that the applicant's is not a fit case. The Court cannot sit over in judgment, over the recommendations of the expert committee, which has been specially constituted for the purpose.

8. It would be worthwhile to refer to some of the judgments of Supreme Court in this regard. The observations of the Supreme Court in the latest decision in ***Santosh Kumar Dubey Vs. State of Uttar Pradesh and others (2009) ,6 SCC 481.*** (Paragraphs 11 and 12) are reproduced below:-

"11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service."



In the case of **National Institute of Technology and Others Vs. Niraj Kumar Singh (2007) 2 SCC 481**, the entire gamut of the case law on the subject was discussed and it was observed in paragraphs 13 & 14 that:

13. *Admittedly the appellant is State within the meaning of Article 12 of the Constitution of India. It, therefore, in the matter of appointment, is under a constitutional obligation to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India.*
14. *Appointment on compassionate ground would be illegal in absence of any scheme providing therefore. Such scheme must be commensurate with the constitutional scheme of equality.”*

In the case of **State of U.P. Vs. Paras Nath, (1998) 2 SCC 412**, the court has held as under:-

“ The purpose of providing employment to a dependant of a Government servant dying- in- harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time.”

9. Keeping in view the principles underlying the subject, I find that the CRC had thrice considered the representation of the applicant for compassionate appointment. I find that the instructions of DOP&T conveyed in O.M. no. 14014 dated 5.5.2003 does not suggest that each and every case of compassionate appointment should be considered thrice. On the other hand, it says that if a deserving candidate could not be accommodated due to non-availability of vacancy in a particular year, his case may be kept pending and considered by the department on two subsequent years provided the penurious condition of the family continues to exist at the end of Ist and IIInd year. Be that as it may, the CRC in the last meeting had also taken into account the

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directions of this Tribunal both as regards the agricultural land and the need for considering the case thrice. I find at paragraph 4.7 of the Application, the applicant himself had admitted that 1.514 hectare of land is recorded in his name and the remaining 1.580 hectare has been recorded jointly. There is nothing to find fault with the conclusions that the applicant did not have family responsibilities to discharge, he had some income from agricultural land and he could not claim compassionate appointment as a matter of right.

10. In the circumstances, I do not find sufficient reasons to interfere with the recommendations of CRC and the decision of respondent-authority thereon. The Application is dismissed. No costs.

Apri 22/04/10
(Dr. A.K. Mishra)
Member-A

Girish/-