

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 157/2011

This the 9th day of November , 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Pankaj Kumar Srivastava aged about 38 years son of late Sri Devki Nandan Srivastava, resident of V.Nathaipur, Kanoongo P. Laukiya Tahir, Sadulla Nagar, District- Balrampur. U.P.

Applicant

By Advocate: Sri Dharmendra Awasthi

Versus

1. Union of India through the Secretary, Ministry of Communication, New Delhi.
2. Chief Post Master General, Uttar Pradesh Circle, Lucknow.

Respondents

By Advocate: Sri S.K.Singh

ORDER (Dictated in Open Court)

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) The Hon'ble Tribunal may kindly be pleased to issue order or direction quashing/ setting aside the impugned order dated 16.4.2010 contained in Annexure No. A-1 to the O.A.
- ii) The Hon'ble Tribunal may kindly be pleased to issue order or direction to the respondents to give appointment to the applicant on compassionate ground by taking decision in his matter.
- iii) The Hon'ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper in the circumstances of the case.
- iv) The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.

2. Consequent upon death of his father, who died in harness, the applicant sought compassionate appointment. His claim was

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lastly rejected by passing a detailed order dated 16.4.2010 placed at Annexure -1.

4. Claim has been contested by filing a detailed C.A. / Supple. CA by the respondents.

5. From the side of the applicant, a Rejoinder Reply has also been filed.

6. The learned counsel for applicant confines his arguments only to the point that as mentioned in para 8, the impugned order appears to have been passed keeping in view the instructions contained in DOP&T O.M. dated 5.5.2003 which prescribes a maximum limit of three for consideration of case of compassionate appointment and then to close it. Accordingly, as mentioned in para 9 of this order, the case of the applicant has been treated as closed.

7. During the course of time, the aforesaid O.M. dated 5.5.2003 was held ultra virus by Hon'ble High Court, Allahabad in case of Hari Ram Vs. FCI and others reported in (2009) 3 UPLBEC 2212. On that basis, several orders/ judgments have been passed by this Tribunal. It is also worthwhile to mention that recently the DOP&T itself has now withdrawn this O.M. vide their letter dated 26.7.2012.

8. In view of the above, this Tribunal has no other option but to quash the aforesaid impugned order which has been passed on the basis of above O.M. dated 5.5.2003 which has now been withdrawn. Therefore, this O.A. stands allowed. The impugned order dated 16.4.2010 (Annexure -I) is hereby quashed.

9. The learned counsel for respondents points out that as mentioned in the impugned order, the claim of the applicant has already been considered thrice. This contention is true but the closure of the case of the applicant on the basis of the above O.M. dated 5.5.2003 cannot be permitted because as said above,

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this O.M. has been declared ultra virus and has also been withdrawn by none other than DOP&T itself. Therefore, the status quo ante has to be restored by the respondents in favour of the applicant. In other words, the case/ claim of the applicant would not be treated as closed as on the date of the impugned order i.e. on 16.4.2010 and the relevant consequence would follow in accordance with the existing law. No costs.

Alok Kumar Singh 9.11.12
(Justice Alok Kumar Singh)
Member (J)

HLS/-