

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Original Application No.362/2003.

this the day of 26.3.2004.

HON'BLE SHRI M.L. SAHNI, MEMBER (J).

Mohd. Khalid aged about 29 years, son oof Sri Rafiq Ali, resident of Hata No.164/106, Khatoon Manzil, Haider Mirza Road, Golaganj, Lucknow.

... Applicant.

By Advocate:- Shri Gulam Rabbani.

Versus.

Union of India, through Secretary, Department of Post, New Delhi.

2. The Chief Post Master General, U.P. Circle, Hazratganj, Lucknow.

3. Post Master General, Agra Region, Head Post Office Compound, Agra.

4. Senior Superintendent of Post Offices, Agra Division, Sanjay Palace, Agra.

... Respondents.

By Advocate:-Shri S.P. Singh.

O R D E R ( O R A L )

(BY SHRI M.L. SAHNI, MEMBER (J) ).

In this O.A., the applicant Shri Mohd. Khalid S/o Late Shri Rafiq Ali has requested for quashing of the order dated 19.4.2002 (Annexure-A-5) whereby, he has challenged recommendation for his appointment on compassionate grounds as DMCP & EDDA, and thereby

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seeking his consent, within fourteen days, inter-alia, on the grounds, that the <sup>same is</sup> just to circumvent the directions given by this Tribunal in O.A.No.691 of 2001, because the job offered does not <sup>come</sup> within the definition of Civil Service and is not a Group-'C' or 'D' post. His claim is that he fulfilled <sup>all</sup> on the terms and conditions of O.M. dated 30.6.1987 and is qualified and entitled to be appointed on Group-'C' post in any of the Departments under the Respondents, on the basis of undertaking given by counsel for the respondents in O.A.No.691 of 2001.

2. Chronologically detailing the past history of litigation and the events <sup>leading</sup> to the filing of present O.A., applicant has stated that his father Sri Rafiq Ali, who was working as a Driver in the office of Senior Superintendent of Post Office was retired compulsorily on 19.1.1998 on account of cancer in his eyes. Being son of the retired govt. employee, applicant, who is a Graduate possessing Diploma in Computer Science applied for his appointment on compassionate grounds under the dying in harness etc Rules on 16.3.1998, he was recommended on 29.7.1999 (Annexure-2) and he was asked to give his willingness vide letter dated 10.5.2001 (Annexure-3), which he communicated vide letter dated 14.5.2001. When nothing happened till 18.1.2002, the applicant filed O.A.No.691/2001 which was finally disposed-off on January 18, 2002, with the direction to the respondents therein to expedite making an offer of appointment to the applicant and also to indicate a probable time frame for making such an offer within three months. In pursuance of the above order,

impugned order was issued offering the appointment to the applicant in Gramin Dak Sewak or Extra Department Agent which was declined by the applicant vide letter dated 1.5.2002, because offer was for the post which was neither Group-'C' nor Group-'D' as assured by the counsel for the respondents at the time of <sup>disposed of</sup> his O.A.No.691/2001. When nothing happened again, the applicant filed Civil Contempt Petition on 20.2.2003 (Annexure-8), which, however, had to be dismissed, because the Tribunal found that no direction for appointment was given on the post of Group-'C' as claimed by the applicant.

3. In the present O.A., the applicant has, inter-alia, stated that there are lying number of vacant posts of Group-'C' Class-III in the Postal Department but the respondents despite assurance given in the O.A.No.691/2001, are not making him any offer of appointment in Group-'C' post.

4. Contesting the claim of the applicant, respondents have taken the plea that due to non-availability of vacancies in Group-'C' cadre against 5% quota for compassionate appointments, the offer for the same could not be made to the applicant, who ~~is~~ genuinely interested in the employment to tide over the crisis and meet the <sup>state of his family</sup> pecuniary need, would have accepted the offer made vide the impugned order, but the applicant did not respond thereto, which implies he is not in need of employment.

5. I have heard the learned counsel for the parties and have gone through the pleadings. I have also examined the copies of documents annexed by the applicant with his O.A.



6. It is contended on behalf of the applicant that since the learned counsel <sup>for Respondents</sup> have given assurance at the time of disposal of earlier O.A.No.691/2001, the applicant is entitled to be offered a Group-'C' post while the offer made vide impugned order is for a job which is neither Civil Service, nor it falls in Group-'C' or 'D' cadre of Govt. Service. Learned Counsel <sup>for applicant</sup> referred to Annexure-9, which is copy of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001, Clauses (V) & (VI) of Note-II, where <sup>it is</sup> clearly provide that a 'Sevak' shall be outside the Civil Service of the Union and that he could not claim parity with the servant of the Govt. Now, referring to the assurance given by learned counsel of respondents, applicant's <sup>+</sup> learned counsel had relied upon the following observations made by this Tribunal in O.A.No. 691/2001 which reads as under:-

" The learned counsel appeared on behalf of the respondents submits that through some more time is likely to be taken in offering an appointment to the applicant, the commitment to appoint him in a group 'C' post in a different department of posts is beyond doubt. More time may, therefore, be given to the respondents to make an offer of appointment to the applicant."

Reading conjointly the above observations made <sup>in the O.A.</sup> ~~out~~ with the directions given in that O.A. by the Tribunal, <sup>it stands established</sup> that the applicant is justified in declining the offer made vide Annexure-5—the impugned order. However, the constrained <sup>+</sup> of the Department in offering appointment on compassionate grounds has also to be borne in mind, who express their inability to fulfil the assurance given by their learned counsel at the time when the earlier O.A. was disposed of on 18.1.2002. Since ~~to~~ when much water has flow ~~ed~~ down the stream. It is also well-settled that

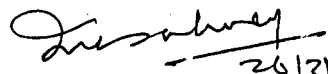
appointment on compassionate grounds cannot be claimed as a matter of right, but the Rule was adopted to tide over the immediate crises in the family of deceased employee or who has retired on account of his ill health and his family is in a pecuniary state being indigent. The observation of the Hon'ble Apex court in this regard made in the case of Umesh Kumar Nagpal vs. State of Haryana reported in (1994) 4 SCC-138 are quote-worthy. These as stated as follows:

" The question relates to the considerations which should guide while giving appointment in public services on compassionate grounds. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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."

7. Considering the facts and circumstances of the case, I feel satisfied that if the O.A. is disposed of with the following directions to the respondents, it shall meet the ends of justice fully.

8. Accordingly, without expressing any view on the legality or otherwise of the impugned order (Annexure-5), I direct the respondents, that an order to honour the commitment/assurance as given by their learned counsel in O.A.No.691/2001 (Annexure-4) quoted above; to make an offer to the applicant for appointment on Group-'C' post against the first available vacancy under the quota meant for recruitment on compassionate grounds in any of the departments under their jurisdiction.

9. O.A. stands disposed off in above terms without any order as to costs.

  
MEMBER (J). 26/3/04

Dated:-26.03.2004.  
Lucknow.  
Amit//