

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
THIS THE 9th DAY OF MAY, 2006
Original Application No.12 OF 2005

CORAM:

HON. Mr. JUSTICE KHEM KARAN, V.C
HON. Mr. A.K. SINGH, MEMBER(A)

Om Prakash, a/a 27 years, Son of Late
Shri Ram Swarup, R/o village & P.O.
Sikanderpur Kalloo (Anjhi R.S.) District
Hardoi

.. Applicant

(By Adv: Shri R.S.Gupta))

Versus

1. Union of India through Secretary
Department of Posts, Dak Bhawan
New Delhi.
2. Chief Post Master General, U.P.
Lucknow.
3. The Superintendent of Post Offices,
Hardoi

.. Respondents

(By Adv: S/Shri S.P.Singh/G.K. Singh)

ORDER

By Hon.Hon.Mr.Justice Khem Karan, V.C.

The applicant Om Prakash applied for appointment on the post of Postal Assistant, on compassionate grounds, as his father died while in service of postal department. There is no dispute that he was duly approved for such appointment and also received Theoretical and Practical training for over a period of 2 months at different places as per rules. He received a communication dated 27.4.2001 (Annexure 10), asking him to give his willingness, as to whether he was ready to work in other Ministries/departments, as vacancies in the 5% quota for such compassionate appointments were not ^{available} possible so as to give him appointment on the post of Postal Assistant. The applicant gave his consent (Annexure A-11). The matter remained at that for few months. Later on, the department enquired from him, by sending letter dated 27.8.2001 (Annexure 1) as to whether he was agreeable to work as Gramin

Dak Sewak (GDS) if so, he should send his willingness. This letter/offer interalia provided:

“ It is made clear that if you accept any of the post of Gramin Dak Sewaks, you will have no further claim for appointment on any special consideration against regular departmental vacancies.....”

2. The applicant gave his willingness for being appointed as GDS and the department appointed him as such vide order dated 24.1.2002 (Annexure 12) and he joined. He is working on the post, he joined. Now he wants his appointment as Postal Assistant, on the ground that several such vacancies occurred in that and many of similarly situated persons such as Babu Ram Tripathi and Nadeem Faridi have subsequently been accommodated as Postal Assistants. The prayer is for striking down the above mentioned stipulation in Annexure 1 and for commanding the respondents to appoint him as Postal Assistant with all consequential benefits.

3. The respondents have contested the claim by filing written reply. Their main ground of defence is that once the applicant accepted the offer of appointment as GDS, by joining on the post, he lost his claim for the post of Postal Assistant. According to them the cases of Babu Ram Tripathi pr Nadeem Faridi have no relevance in the context of the claim of applicant. In rejoinder, the applicant highlighted the alleged similarity in between his case and the case of Babu Ram Tripathi and has also annexed the copy of orders passed by this Tribunal at Lucknow in OA No.555/2001 Babu Ram Tripathi Vs. Union of India and also the copy of order dated 27.1.2003 passed by the Division Bench of High Court Allahabad at Lucknow, in writ petition No. 35 of 2003 (SB), Union of India and another Vs. Ram babu Tripathi.

4. We have heard Shri R.S. Gupta, the learned counsel for the applicant and Shri S.P. Singh holding brief of Shri G.K. Singh, for the respondents and have gone through the record.

5. Let us see, whether the cases of Babu Ram Tripathi and Nadeem Faridi , can be cited so as to claim the post of Postal Assistant.

The full facts relating to case of Shri Nadeem Faridi, are not before us. Though the applicant has averred in para 4.12. of OA, and in para 4 and 7 of rejoinder reply, that Shri Babu Ram Tripathi, approved for appointment as Postal Assistant, on compassionate grounds, gave consent for being appointed as G.D.S, and was subsequently appointed as Postal Assistant, but it has no where been specially alleged that Tripathi joined as G.D.S, before he filed OA No.555 of 2001, before this Tribunal at Lucknow. Moreover, a close perusal of order (specifically its last few lines) dated 11.10.2002 passed by the Tribunal in OA No.555/2001, gives an impression that Shri Tripathi did not join as GDS. Shri Tripathi was appointed as Postal Assistant, in compliance of the orders dated 11.10.2002, after the department remained unsuccessful in writ petition. We are of the view that the applicant cannot compare his case with the case of Shri Tripathi especially for the reason that while Shri Tripathi did not join as GDS and the applicant did. Thus allegations of official discrimination are found to be illfounded.

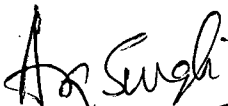
5. Relying on judgment and order dated 14.7.2004 of Cuttack Bench of this tribunal in OA No.1145 of 2002 Pankajani Sahoo Vs. SSRM, RMSN Division Cuttack (Annexure 1 to rejoinder), Shri Gupta has argued that the rule of 5% quota for compassionate appointment, will not apply to the case of applicant as his father died in 1997 before this rule came into force in October 1998. We think this argument is misplaced. Had the applicant come with this plea, before he accepted the appointment as GDS, there could have been a point for consideration. The facts of the case before Cuttack Bench were different. There alternative appointment was neither offered nor accepted.

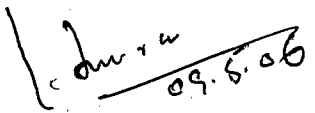
6. One of the arguments of Shri Gupta is that the Government has spent a lot of public money on training of applicant and so in all fairness and also in public interest, the applicant should be given chance to serve as Postal Assistant. Reliance has been placed on 'Ajit Kumar Das Vs. Manger Postal Printing Press; decided by Cuttack Bench of this

Tribunal referred to in order dated 11.10.2002 of this Tribunal at Lucknow in OA No.555/2001 (Annexure 3 to rejoinder): Again we are unable to accept the argument of Shri Gupta. These arguments could have been relevant, before accepting appointment on the post of GDS. Once the applicant accepted that offer by joining as GDS, he cannot be allowed to go beyond the terms of officer of such appointment, unless of course any of the terms is found contrary to rules or unfair or unjustified.

7. The applicant accepted the offer of appointment as GDS, knowing well the stipulation in Annexure 1, as extracted in the beginning of this judgment. Compassionate appointment is itself a special consideration and if the department puts a rider that there shall be no further claim for appointment on such by special consideration(compassionate), no fault can be found with such rider. The acceptance by the applicant of this offer, was not qualified one. The stipulation in Annexure 1 was as per policy of the Government and this Tribunal is not expected to examine the correctness or otherwise if that policy abovementioned stipulation in (Annexure 1) cannot be said to be against the rules or otherwise unfair or unjustified

8. In the result this OA has no force and is dismissed but in the circumstances the parties are directed to bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated:
Uv/