

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. 237/2005

(17)

This, the 9<sup>th</sup> day of February 2007.

Hon'ble Mr. A. K. Singh, Member (A)

Barun Tripathi, age about 23 years, son of Late Hare Krishna Tripathi, r/o3/13, Mohalla Bagh Rushtam, Farrukhabad.

By Advocate Shri S.K. Khare.

Applicant.

Versus

1. The Union of India through the Secretary, Departments of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Post Chief Master General, U.P. Circle Lucknow.
3. The Post Master General, Bareilly Region, Bareilly.
4. The Superintendent of Post Officers, Shahjahanpur Division Shahjahanpur.

Respondents.

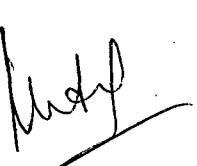
By Advocate Dr. Neelam Shukla.

Order (Oral)

By Hon'ble Mr. A.K. Singh, Member (A)

O.A. 237/2005 has been filed by applicant Shri Barun Tripathi against the order dated 24.5.2004 of respondent No. 2 rejecting the case of the applicant for compassionate appointment on the ground that the same was not recommended for appointment by the CRC as he did not have any liability like education of minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailment of a member of the family availability of dependable and secure shelter and adverse financial conditions etc.

2. The applicant submits that a similar O.A. No. 100/2003 has already been decided by this Tribunal involving identical issues and points of law. The applicant submits that the ground on which, the case of the applicant for appointment on compassionate grounds has been rejected are valid and maintainable in law in view of various pronouncement of the Apex Court and the



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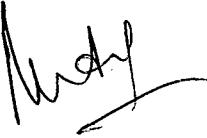
High Courts on the issue. In this connection, he cited decision of Apex Court in the case of Balbir Kaur and another etc. versus Steel Authority of India Ltd. And others reported in [(2003) 3 UPLBEC -2055] in support of his case.

3. Learned counsel also relied on judgment of Hon'ble Delhi High Court in the case of Jagwati Devi Vs. Union of India and Others decided on 25<sup>th</sup> September, 2002 in which the same view is reiterated [reported in (2003) 1 Civil Nirnaya Patrika 377]. He submits that the conditions on the basis of which his case for compassionate appointment has been rejected are not maintainable in law as per the above pronouncement of the Apex Court.

4. In view of the above, the learned counsel for the applicant prays for quashing and setting aside the order dated 24<sup>th</sup> May 2004 and to direct the respondents to re-consider the case of the applicant for compassionate appointment in accordance with law.

5. The counsel for the respondents Smt. Dr. Neelam Shukla while opposing the O.A. submits that there are limited number of vacancies in the 5% quota and hence, it may not be possible to appoint <sup>the applicant</sup> on the basis of limited number vacancies in the quota. She submits that the O.A. is devoid of any merits and hence should be dismissed.

6. I have carefully considered the submissions made by the learned counsels on both sides, and have also perused the records of the case. I find that decision of this Tribunal dated 15.12.2006 passed in O.A No. 100/2003 will serve as beacon light even for this case. The relevant extract of the aforesaid decision dated 15.12.2006 reads, as under:

  
"It is our considered view that CRC have not applied their mind correctly to the facts and circumstances of this case while deciding the claim of the applicant for compassionate appointment. The grounds taken for rejecting the claim (1) that the applicant had competed 33 years of service and that he had no liabilities of a marriageable daughter or a minor son cannot act as a bar for grant of compassionate appointment. The person who has suffered most on account of demise of Sheri Hanuman Prasad Gupta are is the widow of the deceased namely Smt. Laxmi Devi and her two dependant sons who at the material point of time of

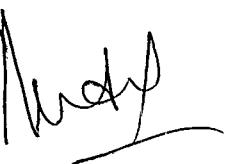
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death of Shri Hanuman Prasad Gupta were aged about 19 years and 16 years respectively. It is a common knowledge that dependents of deceased employee get their normal benefits in all cases and their claims not rejected only on that basis of the fact receipt of these terminal benefits. Hence the fact that applicants mother received terminal benefits of Rs. 3,71,849/- or that she was granted a family pension of Rs. 1940/-+ D.A. every month cannot be taken as a valid grounds for rejection of applicants claim for compassionate appointment. It is a trite law that retiral dues or family pension shall not be taken for consideration while deciding the case of compassionate appointment of the eligible dependents of the deceased employees. This point of law is well settled by the various Hon'ble High Courts in the country. The other two grounds that applicant's father namely Shri Hanuman Prasad Gupta had put in more than 33 years of service or the dependants of the deceased employee did not include a marriageable daughter or minor son/sons as his liability cannot also be considered as a valid grounds for rejection. It is on record that his two sons were aged 19 and 16 years only respectively at the time of death of the deceased employee. Thus the whole basis on which the claim of the applicant has been rejected clearly appears to be arbitrary and perverse. It is a well-settled principle of law that arbitrariness and Rule of law and sworn enemies of each other. An arbitrary decision by an authority is anti-thesis to the rule of law and hence cannot stand the test of judicial scrutiny. Since the decision of respondent No. 2 namely Chief Post Master, GPO, Lucknow vide order No. B-2/Synopsis /01-02 dated 25.7.2002 itself is based on the recommendation of the CRC, the same is not maintainable in law and deserves to be quashed and set aside."

The Apex Court in Para 19 of their Judgment in the case of Balbir Kaur and another Vs. Steel Authority of India Ltd. [Reported in (2003) 3 UPLBEC-2005] have also reiterated the same view. The relevant extract of the judgment is reproduced here below:

"Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the Constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law Courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavor of the law Court would be to administer justice having due regard in the direction."

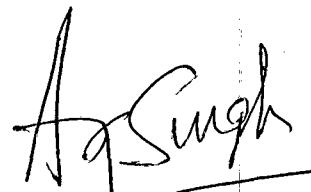
7. The Hon'ble Delhi High Court in the case of Jagwati Devi Vs. Union of India and Others reported in (2003) 1 Civil Nirnaya Patrika 377 decided on 25<sup>th</sup> September 2002 has also reiterated the same view. Thus I find that the parameters on the basis of which the case of the applicant for compassionate ground has been rejected is not maintainable in law.



(4)

8. Hence, I quash and set aside impugned order dated 24th May 2004 of CPMG Lucknow and direct the respondents to re-consider the case of the applicant for appointment on compassionate grounds. The whole exercise should be completed within a period of two months from the date of receipt of a certified copy of this order.

9. In consequence, the O.A. is allowed. No costs.

  
(A.K. Singh)  
Member (A)