

**Central Administrative Tribunal Lucknow Bench Lucknow.**

**O.A. No. 319/2007**

This, the 10<sup>th</sup> day of July, 2008.

**Hon'ble Shri M. Kanthaiah, Member (J)**

Sujat Hussain aged about 29 years son of late Sri Sarwar Hussain, r/o 99/193, Nala Road, Kanpur.

**Applicant.**

By Advocate: Shri A.Moin

**Versus**

1. Union of India through Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Head Post Office, Kanpur.
4. Assistant Director (Recruitment) Department of Post, Office of Chief Post Master General, U.P. Circle, Lucknow.

**Respondents.**

By Advocate: Shri S.K. Awasthi.

**ORDER**

**By Hon'ble Shri M. Kanthaiah, Member (J)**

The applicant has filed O.A. with a prayer to quash the impugned order dated 26.2.2007 (Annexure A-1) passed on behalf of the respondent No.2, with a direction to the respondent No. 2 to appoint the applicant on any class IV post in terms of approval of the appointment dated 18.8.1997 covered under Annexure A-4 within a specified time.

2. The respondents have filed counter affidavit denying the claim of the applicant.
3. The applicant has filed Rejoinder denying the stand taken by the respondents and also reiterate his pleas in the O.A.
4. Heard both sides.
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.
6. The admitted facts of the case are that the father of the applicant Sarvar Hussain died on 19.5.1996 while working as Postman in Kanpur Head

Post Office under the respondents. When the applicant made request for compassionate appointment, the respondent No. 2 by means of order dated 18.8.1997 approved the appointment of the applicant on a Group 'D' post and directed the respondent No. 3 to appoint the applicant in the Kanpur Head Post Office. Annexure A-4 is the copy of the order dated 18.8.1997. Subsequently, the respondents have issued an order dated 27.5.1999 stating that the name of the applicant was in waiting list at Sl. No. 3 and also stated that his turn for appointment would come by the end of the year 2000. Annexure A-5 is the copy of order dated 27.5.1999. But there was no appointment of the applicant but in the mean time, similarly situated claimant Shivakanti filed O.A. No. 187/2003 aggrieved against the appointment of Smt. Bubai. This Tribunal disposed of the said O.A. on 21.11.2003 with a direction to consider the claim of Smt. Shivakanti and to take suitable steps to comply with their own orders approving appointment of Smt. Shivakanti on compassionate grounds on any available post within a period of 2 months. In compliance of such judgment and orders passed by this Tribunal, the 2<sup>nd</sup> respondent appointed Smt. Shivakanti at the office of Superintendent, Postal Stock Branch, Lucknow and she also joined on the said post. Annexure A-6 is the copy of appointment order of Smt. Shivakanti dated 1.2.2005.

7. Thereafter, the applicant also filed O.A. No. 238/2005 praying for a direction to the respondent No. 2 to appoint him on any class IV post in terms of the approval of the Appointment dated 18.8.1997 as made by the Respondent No. 2 as contained in Annexure A-4, within a specified time. After due consideration, the said O.A. was disposed of on 26.9.2006 with a direction to the respondents to consider the approved name of the applicant for appointment on any Group 'D' post in terms of approval by granting three months time from the date of receipt of copy of the order. Annexure A-7 is the copy of order dated 26.9.2006. When there was no compliance of the orders of the Tribunal, the applicant also preferred contempt

petition CCP No.4/2007 but during the pendency of that CCP, the respondents have passed the impugned order dated 26.2.2007 (Annexure A-1) under which they have rejected the claim of the applicant.

8. The applicant has filed the present O.A. challenging the impugned rejection order Annexure A-1 dated 26.2.2007. After dismissal of the O.A. No. 238/2005 on 26.9.2006(Annexure A-7), the respondents have passed the impugned order Annexure A-1 dated 26.2.2007, rejecting the claim of the applicant for compassionate appointment, whereby the case of the applicant could not be recommended by the CRC for appointment on compassionate ground on the following reasons:-

- i) That some one has been appointed on compassionate grounds does not entitle him to be appointed.
- ii) Fresh cases of indigence would get precedence over past cases.
- iii) The applicant did not accept the offer of Gramin Dak Sewaks which was made available by the Department of Posts to the wait listed candidates for a limited period of 2 years.
- iv) The applicant did not accept the offer of Gramin Dak Sewaks indicates that he had adequate means of substance and as such dependents cannot be considered to be in the indigent condition.
- v) The basic purpose of appointment on compassionate ground is to provide immediate assistance to the family of the deceased but the same does not arise to the applicant after lapse of about 10 years of the death of his father.

9. In the earlier O.A. No. 238/2005 also the respondents have taken similar grounds of grounds iii and iv raised in Annexure A-1 and after considering such grounds, this Tribunal has rejected the objections of the respondents on those reasons and as such reconsidering such pleas in respect of deciding indigent condition for not joining GDS post in the present O.A. is not at all tenable and further it is not open for the respondents to raise similar grounds in the rejection order (Annexure 1).

10. In respect of last reasons, i.e. reason No. v that the basic purpose of providing immediate assistance to the family of the applicant by way of giving compassionate appointment at this stage i.e. after a lapse of about 10 years of the death of his father is not relevant, when there was a direction from this Tribunal in O.A. No. 238/2005 to consider the claim of the applicant for his appointment in terms of approval, it is not open to the respondents to agitate on the ground that basic purpose of the scheme for providing immediate assistance by way of compassionate appointment after lapse of 10 years is not relevant. As such, the respondents are not justified to reject the claim of the applicant on such ground.

11. The respondents have rejected the claim of the applicant on the reason No. I, i.e. some one has been appointed on compassionate ground does not entitle the applicant to be appointed. Admittedly, the respondent No. 2 had approved the name of the applicant for his appointment on any Group 'D' post in the year 1997 itself i.e. by way of order 18.8.1997 (Annexure A-4) and also directed the respondent No. 3 to appoint the applicant in the Kanpur Head Post office but respondent No. 3 did not appoint the applicant. When the appointment of the applicant was pending, admittedly the respondents have appointed Smt. Bubai, whose claim was approved for compassionate appointment in the year 2002 and subsequently she also joined on Class IV post. After knowing such appointment, Smt. Shiva Kanti, whose date of approval for appointment was made by the respondent No.2 on 15.1.1998 filed O.A. No. 187/2003 questioning the attitude of respondent for appointing Smt. Bubai, whose name was approved in 2002 keeping her claim pending. Basing on the direction given by the Tribunal, the respondents also appointed Smt. Shiva Kanti by means of order dated 1.3.2005. From these, it is clear that during the pendency of appointment of the applicant, whose name was approved by the respondent No.2 on 18.8.1997, the authorities have appointed subsequent approved candidates i.e. Smt. Bubai in the year 2002 and Smt. Shiva Kanti in the year 2005. When the respondents authorities

have discriminated in giving appointment to the applicant, though his name was approved earlier to the other appointed candidates, he is justified in raising such appointments of subsequent approved candidates and the same is also relevant to show the discrimination and arbitrary attitude of Respondent authorities in considering the claim of the applicant. As such, the reasons given by the respondents that some one has been appointed, does not entitle the applicant to be appointment is not at all maintainable and justified.

12. The respondents have also rejected the claim of the applicant on the ground No. ii that the fresh cases of indigence would get precedence over past cases. The respondent authorities wants to give preference and importance to the fresh cases of indigence. It is their duty to give reasons how such fresh cases would get precedence over the past approved cases. Without furnishing any such reasons, it is not open to the respondents to say that fresh cases of indigence would get precedence over past approved cases, without giving and deciding most deserved candidates.

13. From the above discussions, it is clear that whatever reasons given by the respondents in the impugned rejection order dated 26.2.2007 covered under Annexure A-1, are not at all justified reasons, when the claim of the applicant was already approved in the year 1997. It is their duty to give importance for such long pending approved candidates and without giving any preference for such approved candidates, rejecting the claim of the applicant for compassionate appointment covered under Annexure A-1 dated 26.2.2007 is not at all justified and the same is liable to be quashed.

14. In the result, the O.A. is allowed, quashing the impugned order dated 26.2.2007 (Annexure A-1) with a direction to the respondents to consider the claim of the applicant for compassionate appointment as per Rules, whose name was approved for such appointment covered under Annexure A-4

dated 18.8.1997, within a period of three months with a reasoned order from the date of receipt of copy of this order. No order as to costs.

  
(M. KANTHAIAH)  
MEMBER (J)

10.07.2002

HLS/-