

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 441/2010

This the 2th day of January, 2013

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

Sarvesh Kumar Shukla aged about 38 years son of late Ram Prasad Shukla r/o village Khaddakki Purwa, H/o and Post Usraina, P.S. Kaudia, District- Gonda.

Applicant

By Advocate: Sri S.K. Mishra

Versus

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P.Circle, Lucknow.
3. Superintendent of Post Offices, Gonda Division, Gonda

Respondents

By Advocate: Sri S.K.Awasthi

(Reserved on 7.1.2013)

ORDER

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

This O.A. has been filed for quashing of the impugned order dated 8.2.2010, by means of which, the compassionate appointment has been denied to the applicant.

2. Admittedly, after serving the Department of Post for about 20 years, the father of the applicant died about 5 years before his retirement i.e. on 5.4.2003 leaving behind him five sons. According to the applicant, he is the eldest son and at the time of death of his father, his two younger brothers were minor. He also claims that all the remaining three brothers including himself are unemployed.

3. The respondents have filed a detailed counter affidavit saying that the mother of the applicant had already expired. The three sons namely Sarvesh Kumar (applicant), Harish Kumar and Krishna Kumar are married and they are majors. Sri

Sarvesh Kumar, the applicant has passed High School and had applied for compassionate appointment. The total terminal benefits amounting to Rs. 2,13,961/- were paid to the family of the deceased. Besides, the family also owns a house with agricultural land measuring 0.220 hectares and according to income certificate submitted, all the dependents were having annual income of Rs. 18,000/- individually. Thus, the total income of the family is Rs. 90,000/-. His case was considered in the Circle Relaxation Committee (CRC) in its meetings held on 8.12.2009, 9.12.2009, 10.12.2009 and 16.12.2009. After considering the indigence of the family like total number of dependents, minor children, marriage of daughters, responsibility of aged parents prolonged and major ailments, financial conditions and other relevant factors and inter-se consideration of all other similar cases of compassionate appointment and in view of limited number of vacancies due to ceiling of 5% in Group 'D' posts under the Direct Recruitment quota, the case of the applicant could not be recommended. In all 431 cases were put up before the committee against 93 vacancies. It has also been said that as per O.M. dated 5.5.2003, upto a maximum time of three years, a person's case can be kept for consideration for offering compassionate appointment. . Thereafter, it would be finally closed. It has been also said that sufficient time has already passed and bereaved family has maintained themselves. Therefore, the claim is not justifiable.

4. I have heard the learned counsel for the parties and perused the entire material on record.

5. At the outset, as far as the averments made in para 19 of C.A. that sufficient time has passed and bereaved family has maintained themselves is concerned, suffice to say that the death took place in the year 2003. Immediately, thereafter, the

application for compassionate appointment is claimed to have been moved. But it appears that the respondents took a long time of about 7 years in deciding the matter. Therefore, the respondents themselves are responsible for such a long delay for which there does not appear to be any plausible and reasonable explanation. Therefore, this plea has no substance.

6. From the record, it appears that probably the deceased was not entitled for any pension. It has been specifically averred in the O.A. that no pension has been sanctioned and this averment has not been specifically denied. Indeed, terminal benefits as mentioned hereinabove has been paid to the family of the deceased consisting of five sons. But receipt of terminal benefits or even a family pension cannot be a sole ground for denying claim of compassionate appointment. Otherwise no dependent of Central Govt. can get such appointment because monthly pension is invariably more than 1800/- p.m. which is approximate the poverty line. In the case of **Govind Prakash Verma Vs. Life Insurance Corporation of India and others reported in (2005) 10 SCC 289**, it was clearly laid down that scheme of compassionate appointment is over and above whatever is admissible to the legal representative of the deceased employee as benefit of service which they get on the death of an employee. It was also held that an inference of gainful employment of elder brother of claimant for compassionate appointment can not be acted upon.

7. Further, the contention of the respondents is that the family owns about 0.22 hecets (17 biswas) of land and there is an annual income of Rs. 18000/- per annum per brother. It has been further said that family of the deceased was not found in indigent condition in comparison to other cases which were also considered by the CRC.

8. From this contention, it appears that some comparative study of other cases vis-à-vis applicant's case was made wherein some other cases were found to be more deserving. If such an exercise was done, then their ought to have been a comparative chart in a tabular form or some other material to substantiate this contention. But no such details have either been given in the impugned order or have been now brought on record.

9. Today, we are living in a age of transparency. At least some particulars or details of those deserving cases ought to have been given for the purpose of making proper judicial review. The principle of natural justice and fair play applies not only to the judicial orders but also to the quasi judicial and administrative orders. On administrative side, any discretion cannot be unguided and it cannot be absolute. Every administrative orders should indicate reasoning showing due application of mind. Giving reasoning ensures application of mind and it also reduces unnecessarily litigation. Transparency is supposed to be one of the significant components of real justice which is certainly lacking in the impugned order. Further, as mentioned in para 16 of the C.A., respondents have also unnecessarily referred to the O.M. dated 5.5.2003 issued by DOP&T itself, which has already been struck down as ultra virus and the DOP&T has now withdrawn it vide O.M. dated 26.7.2012.

10. In view of the above, the impugned order dated 8.2.2010 is quashed. Respondents are directed to reconsider the case of the applicant afresh expeditiously subject to availability of prescribed vacancy, keeping in view the observations made in the body of this order. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 8.1.13
Member (J)