

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No.24/2011

This the th28 day of February 2012

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

Smt. Archana Tiwari aged about 41 years W/o Late Vanshdhar Tiwari alias (Late Sri V.P. Tiwari), Resident of Shastir Nagar, Akbarpur, District-Ambedkar Nagar, U.P.

...Applicant.

By Advocate: Sri D. P. Misra.

Versus.

1. Union of India through its Postal Director General (Appointment Anubhag) Govt. of India, New Delhi.
2. Assistant Director (Rectt.), U.P. Lucknow.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Assitant Director Postal Service (Rectt), Lucknow (Legal Cell).
5. Senior Superintendent of Post Office, Lucknow Division, Lucknow.
6. Senior Superintendent, Post Office, Faizabad Division, Faizabad.

....Respondents.

By Advocate: Sri S. K. Singh.

(Order reserved on 25.02.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed seeking direction against opposite parties to appoint him on compassionate ground under dying in harness rules.

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2. The case of the applicant is that her husband was working in the postal department on the post of postal assistant. But, unfortunately he died on 15.11.2003 while in service. Immediately thereafter the applicant moved an application for compassionate appointment on 03.04.2004, but her case was not considered. She moved another applications dated 15.4.2006 followed by yet another application dated 09.02.2007, 21.07.2008, 8.9.2008, 03.11.2008, 5.5.2009, 22.06.2009, 25.6.2009 and 10.07.2009. Then, she collected certain information under Right to Information Act in respect of compassionate appointments under dying in harness rules made during last few years, which have been brought on record. She again moved an application dated 29.01.2010 (Annexure-48).

3. The claim has been contested by filing a Counter Affidavit by the official respondents saying that the deceased employee died on 15.11.2003, while working as postal assistant in bariyawan sub Post Office, Ambedkar Nagar. He was survived with his first wife Smt. Tara Devi, who was issueless and the applicant Smt. Archana Tiwari with two children. An amount of Rs.2, 21,315/- was paid as terminal benefits and Rs.2500/- + DAR was sanctioned as family pension to the wife. Further, an amount of Rs.2, 49,825/- was sanctioned through death claim of Postal Life Claim Policies. The family has its own house to reside and Agricultural land of 0.716 hectare also belongs to the family with annual income of Rs.18000/-. The case of the applicant, (the second wife of the deceased employee) was considered by Circle Relaxation Committee U.P. Circle, Lucknow in March, 2005 and then January, 2007 and again in December,

2009. But, her name could not be recommended taking into account the inter-se merit of all the cases in terms of assets and liabilities and indigence of the families like total number of dependents, minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailments, financial condition and other relevant factors. Feeling aggrieved with the rejection order, the applicant has filed this O.A. It has been also averred that in the case of **State of J&K Vs. S.A. Mir 2006 SCC (L&S) page-1195**, it was held that compassionate appointment after long time during which period the dependents of the deceased employee survived, should not be given at the cost of others ignoring the mandate under Article-14 of the Constitution of India. The only object is to offer relief to the family against destitution and penurious condition so that the family gets out from the emergency.

4. Rejoinder Affidavit has also been filed reiterating the averments made in the O.A. and further adding that Agricultural land of 0.716 hectores belong to the joint family, which consists of the applicant, her two children and also two brother of her husband namely Shankhdhar and Rejendra Prasad and their family. It is also said that income is Rs.12,000/- and not Rs.18,000/- per annum which is divided in three parts of Rs.4000/- each.

5. Heard the learned counsel for the parties and perused the material on record. At the outset, it may be mentioned that the O.A. consists of total 108 pages including 46 annexures, but, in O.A. total 48 annexures are mentioned. The pleadings appear to have been drafted in a haphazard and casual manner and not in a methodical manner disclosing proper sequence. The

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husband of the applicant died in the year November, 2003. The widow applicant applied for compassionate appointment. In that respect several unnecessary documents have also been brought on record. However her case was considered by Circle Relaxation Committee U.P. Circle, Lucknow in its meeting held on the followings dates;-10.03.2005, 11.03.2005, 12.03.2005, 16.01.2007, 18.01.2007, 08.12.2009, 10.12.2009 and 16.12.2009, but it could not be recommended after making a comparative study of all the cases in terms of assets and liabilities and indigency of the families like total number of dependents, minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailments, financial conditions and other relevant factors. The applicant was informed about the decision of the Circle Relaxation Committee. These averments are contained in para-4 of the Counter Affidavit which has been replied in para-4 of the Rejoinder Affidavit wherein, the contents of para-4 of the Counter Affidavit have been rather partly admitted. Thought, it is mentioned that the contents are also partly not admitted. But, it has not been specifically controverted that her case was considered alongwith other cases thrice i.e. in the year 2005, 2007 and 2009 as mentioned above. Further as said above in para-4 of the counter affidavit, it was also specifically averred that the case of the applicant could not be recommended taking into account the inter-se merit of all such cases in terms of assets and liabilities and indigency of the families like total number of dependents, minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailments, financial conditions and other relevant factors.

But, these averments have not been specifically refuted or controverted. The averments, which have been not specifically controverted and have been rather partly admitted, are to be treated as admitted and construed to be proved because the averments, which are admitted, are not required to be proved. Otherwise, also from the various papers collected under Right to Information Act, which have been brought on record by applicant himself in respect of several compassionate appointments made during the year 2003 to 2007 it appears that comparative study has indeed been done of the applicants and their economic status i.e. above poverty line or below poverty line and number of dependents in the family etc. are mentioned in the last two columns. Therefore, in the absence of any evidence this Tribunal has no reason to disbelieve that a thorough and comparative examination of all the applicants was made and thereafter within the ambit of available vacancies final recommendations were made. Nowhere, it has been pleaded that the case of the applicant stands on a better footing than any of the recommended candidates. The last intimation, which communicated refusal of compassionate appointment in favour of the applicant, has also not been challenged. Instead a relief has been sought for issuing orders to the respondents to appoint the petitioner on compassionate grounds. This relief appears to have been claimed in a careless manner twice under relief para-8 (a) and (b). The only request, which could have been made in such matters, is to consider the case of the applicant if it has been moved promptly by the family in distress but the same has not been properly considered. Otherwise, the law is settled on the point that such appointments

cannot be claimed as a matter of right. The only object of the scheme is to help the family to get out from the emergency, if the family is indigent and in a precarious condition. The object is to give relief to the family which is shocked by sudden death of the sole breadwinner. But, in the present case it is an uncontroverted averment in the counter affidavit that eight years have passed. The terminal benefits and also death claim of Postal Life Insurance Policy totaling to Rs. 4,70,000/- have already been paid immediately after the death of the applicant's husband. Besides, the applicant is also getting family pension of rs.2500/- + DAR. Besides an area of 0.716 of agriculture land is also available to her though, it is shared by the family of two brothers of applicant's husband. Nowhere it is said that any burden of brothers family is also upon her. Thus, she is left with herself and two small children. Though, in one of the affidavit of the applicant, it is mentioned that there is also a debt of one lakh upon her but, it could not be substantiated and the reason, justification and purpose for taking loan have also not been indicated. The applicant's family has survived for the last about eight years and therefore substantial burden is over. Her claim for compassionate appointment appear to has been considered thoroughly by Circle Relaxation Committee in 2005, 2007 and 2009 in comparison to other candidates having regard to all relevant factors as mentioned above. In such circumstances any direction for reconsideration of her candidature is not justified at the cost of interest of several others ignoring the mandate of Article-14 of the Constitution of India as was held in the case of **State of**

**J&K and Ors v. Sajad Ahmed Mir, 2006 SCC (L&S)
1195.**

6. In view of the above, this O.A. is dismissed. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 28.2.12

Member (J)

Amit/-