

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 263/2011

This, the ²⁴ day of October, 2013

Hon'ble Sri Naveet Kumar, Member (J)

Vivek Kumar Singh aged about 30 years son of late Harkaran Singh r/o Village Gopalkhera, Mohanlalganj, Lucknow

Applicant.

By Advocate: Sri A.P.Singh

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow
3. Senior Superintendent of Post Offices, Lucknow.
4. Prare Lal Rathour , ASP, CPMG, Office, UP Circle, Lucknow

Respondents.

By Advocate: Sri S.P.Singh

(Reserved on 21.10.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

1. The present Original Application has been preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

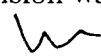
i) issuing/passing of an order or direction setting aside the impugned order dated 16.6.2010 passed by respondent No.2 as contained in Annexure No. A1 to the application and direct the respondents to reconsider the case of the applicant for appointment on compassionate ground against vacant post of EDDA , Purseni, Mohanlalganj, Distrcit- Lucknow.

ii) issuing/ passing an order or direction , directing the respondents to initiate inquiry against Sri Prare Lal Rathour (OP No.4) for receiving Rs. 5000/- fraudulently from the applicant and punish him accordance with law and also direct to initiate criminal proceedings against him.

iii) issuing/ passing an order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

iv) allow this original application with cost.

2. The brief facts of the case are that the applicant is the son of deceased employee who got retired in 1996 from service on the ground of invalidation and that time, the applicant was minor. Subsequently, the father of the applicant died on 31.8.1996 and the family pension was sanctioned in favour

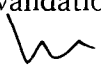


of the applicant for the period 1.9.96 to 10.10.2005. After attaining the majority, the applicant requested the respondents to consider his case for grant of compassionate appointment and when nothing was heard, the applicant preferred O.A. No. 402/2000, which was disposed of by the Tribunal while directing the respondents to consider the case of the applicant and subsequently, by means of an order dated 12.11.2001, the case of the applicant was considered and rejected by the authorities. Thereafter, the applicant submitted a representation to the Chief Post Master General on 1.1.2006 and 31.3.2006, annexing the copy of the order passed in O.A. no. 402/2000 along with letter dated 12.11.2001. The respondents thereafter finally passed an order on 16.6.2010, rejecting the claim of the applicant and passed detailed order and as indicated that there is no provision for consideration and approval of cases in absence of vacancies for compassionate appointment and keeping them in the waiting list. Since there was no vacancy available presently for grant of compassionate appointment in Group 'D' cadre, as such the case of the applicant was finally closed. The applicant feeling aggrieved by the said order, preferred the present O.A.

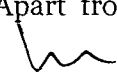
3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out by the respondents that prior to filing of O.A.No. 402/2000, the applicant had never applied for compassionate appointment before the competent authority. Therefore, the allegation for non-consideration of his case for compassionate appointment are vague and incorrect. After the decision of the Tribunal, the case of the applicant was considered and due to lack of vacancies, the case of the applicant was not recommended for appointment under dying in harness Rules and accordingly after the order of the Tribunal, the respondents have passed an order on 12.11.2001. On behalf of the respondents, it is also pointed out that since there is no vacancy against compassionate quota, as such the case of the applicant cannot be recommended for appointment under dying in harness rules.

4. No Rejoinder Reply is filed by the applicant despite number of opportunities given to him.

5. Admittedly, the applicant is the son of the ex-employee who retired from service on the ground of invalidation in 1996 and subsequently, he



expired on 31.8.2006. It is also not denied by the respondents that the applicant was sanctioned family pension for the period 1.9.96 to 10.10.2005. Earlier, the O.A. preferred by the applicant was for non-consideration of his case for grant of compassionate appointment was disposed of by the Tribunal and in pursuance thereof, the respondents have passed an order on 12.11.2001, wherein it is categorically stated that only representation of the applicant was received in the office of the respondents in 2000 and that too without any documents, as such representation submitted in 2000 could not be decided. The applicant submitted the relevant documents to the Sr. Superintendent of Post Offices, Lucknow Division on 31.8.2001 and thereafter his case was considered by the Circle Relaxation Committee. Apart from this, the respondents have also indicated in their letter dated 12.11.2001 that in terms of DOP&T, O.M. dated 4.11.2000 as well as circular of the Postal Department dated 8.2.2001 and 26.4.2001, there is no provision for consideration and approval of cases in absence of vacancies for compassionate appointment and keeping the candidate in the waiting list. As there is no vacancy available in the U.P. Circle in the quota for compassionate appointment, therefore, the case of the applicant was not considered. The applicant being not satisfied with the said order again preferred representation to the Chief Post Master General, U.P. Circle, Lucknow on 1.1.2006 and its reminder dated 31.3.2008 and in the said representation the applicant has again taken shelter of the earlier order dated 16.8.2000 passed in O.A. No. 402/2000 and the respondents thereafter finally passed an order on 16th June 2010, wherein it was again mentioned that the case of the applicant was considered by the Circle Relaxation Committee and since there was no vacancy of 5% quota for compassionate appointment, as such, the case of the applicant could not be considered. After the consideration in 2001, the case of the applicant was again considered in 2002 and the case of the applicant could not find place in the candidates approved for compassionate appointment within the limit prescribed. Apart from this, it is also pointed out by the respondents that the applicant is having sufficient agricultural land for livelihood and the family has already got terminal benefits as well. Apart from this, the respondents have also



considered the relevant circular in this regard and finally rejected the claim of the applicant.

6. Learned counsel for applicant has relied upon a decision of this Tribunal in O.A. No. 529/2010 (Smt. Ram Devi Vs. UOI and others) decided on 30th March, 2012, wherein the Tribunal has considered the case and directed the respondents again to reconsider the case of the applicant as the O.M. dated 5.5.2003 of the DOP&T is no more in existence but in the present case, the respondents have not taken the shelter of O.M. dated 5.5.2003 while deciding the case of the applicant.


7. As observed by the Hon'ble Apex Court in the case of ***Union Bank of India and Others Vs. M.T. Latheesh, reported in (2006) 7 SCC 350***, the appointment has to be exercised only in warranting circumstances. Not only this, but earlier also as observed by the Hon'ble Apex court in the case of ***State Bank of India and Others Vs. Jaspal Kaur reported in (2007) 9 SCC 571***.

"A major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made. The criteria of penury has to be applied and only in cases where the condition of the family is "without any means of livelihood" and "living hand to mouth" that compassionate appointment was required to be granted."

8. In the case of ***State of Chhatisgarh Vs. Dhirjo Kumar Sengar reported in (2009) 13 SCC 600***, the Hon'ble Apex Court, the Hon'ble Apex Court has been pleased to observe as under:-

"10. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance. In *SAIL Vs. Madhusudan Das* this Court held:

"15. this Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme must be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have been fallen vacant. Appointment on



compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession not a right."

12. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof his dependants have been living in penury."

9. As observed by the Hon'ble Apex court in the case of **Umesh Kumar Nagapal Vs. State of Haryana 1994 SCC (L&S) 930**, the Hon'ble Apex Court has been pleased to observe as under:-

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

10. The Hon'ble Apex Court has also been pleased to observe in the case of **State Bank of India and Others Vs. Raj Kumar reported in (2010) 11 SCC 661** and has been pleased to observe that the compassionate appointment is not a source of recruitment. It is an exception to general rule, that recruitment to public services should be on basis of merit, by open invitation, providing equal opportunity to all eligible persons to participate in selection process. Further it was observed by the Hon'ble Apex Court as under:-

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis."

11. Considering the submissions made by the learned counsel for parties as well as on the basis of observation made by the Hon'ble Apex court, I do



not find any reasons to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

U.R. Agarwal
(NAVNEET KUMAR)
MEMBER (J)

HLS/-