

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 312 of 2011

This the 2nd August, 2013

Hon'ble Dr. K.B. Suresh, Member (J)

Satish Kumar Mishra, aged about 41 years, S/o late Sri Sita Ram Mishra, Ex.Postman Kheri, R/o Mohalla Munnuganj, Galagokaran Nath, District Kheri, U.P.

.....Applicant

By Advocate : Sri R.S. Gupta .

Versus.

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, U.P. Circle, Lucknow.
3. Superintendent of Posts, Kheri Division, Kheri.

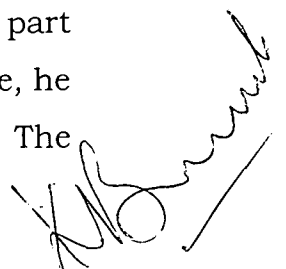
.....Respondents.

By Advocate : Sri Ganga Singh

O R D E R (Dictated in open Court)

Heard. The matter relates to compassionate appointment following death of his father, which happened in the year 2001. Since the matter was engaging attention in the Court and the authorities at different levels, some delay has been crept in and the respondents would now contend that the applicant is 42 years old and is now married and therefore, ineligible . Vide Annexure R-1 annexed with the Rejoinder Reply, it is seen that there was 93 vacancies available and Circle Relaxation Committee (CRC) considered his case and had selected the applicant at sl. No.93 in the said list. Since the matter was over five years old, it was sent to higher officers for their approval. The respondents would now say that this approval was not granted because of this delay even though was only due to the respondents.

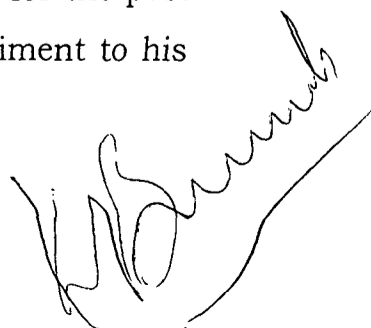
2. The applicant claims that the delay was not on his part as within seven days from the death of deceased employee, he had applied for appointment on compassionate ground. The



delay was solely due to internal issue of the respondents. He says that he cannot be held responsible for this. Therefore, the question of delay cannot be attached at any time on the part of the applicant and burden to obtain approval of the higher officers in this regard is no-doubt, is not applicable in that case. There is no constitutional mandate that in every case of delay unless approval of higher officer is obtained, the right of the citizen would be extinguished. Thus, no such power is available to the Government or any other authorities. Having been responsible for the delay, they cannot attach this prejudice for such delay on the applicant.

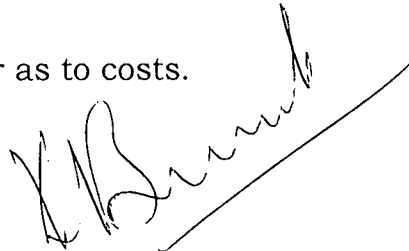
3. The point raised by the respondents is that the compassionate appointment cannot be treated as part of fundamental right. In this connection, learned counsel for the applicant would contend that if employment is to be considered as his livelihood, that would mean the life for the citizen with adequate means. Therefore, it is of fundamental importance that denial of rightful employment would constitute denial of fundamental right.

4. At this point of time, learned counsel for the respondents raised the point of availability of vacancy. He points out that vide Annexure R-1 the number of vacancies are 45 in the cadre of Postal Assistants and the applicant was considered as Postal Assistant. Since only 45 vacancies are available in the cadre of Postal Assistant and the name of the applicant figured at sl. No. 93 in the list and as such he could not be offered appointment on compassionate ground. Annexure R-1 is very clear on this. The column no. 5 is meant for the post for which the candidates have been approved and found only 45 vacancies for appointment by the CRC for the appointment to the cadre of Postal Assistant and, therefore, he could not be appointed. But it is seen from Annexure R-1 that the applicant is 45th claimant for the post of Postal Assistant and hence there is no impediment to his appointment.



5. The Hon'ble Supreme Court has categorically held that where the delay is not attributed to the applicant, he should not be punished in getting the appointment. But the respondents point out that the Apex Court has held that no direct order for appointment need be made, but should only direct for consideration. But that is a different situation. Admittedly, twelve years have already lapsed and as such further delay is not called for especially in the circumstances where the selection had already taken place and attained finality. Therefore, direction is issued to the respondents to offer the appointment in favour of the applicant to the post of Postal Assistant within two months from today.

6. The O.A. is accordingly allowed. No order as to costs.



(Dr. K.B. Suresh)
Member (J)

Girish/-