

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 36 of 2006

Date of order : 3.3.10

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [J]

Amresh Kumar Abhay @ Amresh Abhay, S/o Late Ram Kumar Singh, village + P.O Rukundipur tolla, Dharauta, District – Siwan.

....Applicant

By Advocate : Shri K.K. Singh

Vs.

1. The Union of India through the Chief P.M.G, N.E. Circle, Shilong.
2. The Director of Postal Services, Nagaland, Kohima
3. The Dy. Superintendent of Post Office [Hq], Nagaland, Kohima.

....Respondents

By Advocate : Shri R.K. Choubey.

ORDER

Justice Rekha Kumari, M [J] :- The applicant in this OA has prayed to direct the respondents to consider his appointment on compassionate ground on the post of Postal Assistant in view of recommendations of the Director, Postal Services, Nagaland, Kohima in this regard as contained in his letter dated 25.02.04 [Annexure A/1] and to quash the letter dated 19.05.05 of the Director of Postal Services [Annexure A/2] whereunder he was considered for appointment as GDSMD, Tobu S.O on compassionate ground.

2. The applicant is the son of Late Ram Kumar Singh ex-Sub-Post Master Tuensang MDG under Nagaland Division. His father died on 21.05.02 while in service. The applicant, then, applied for compassionate appointment to

the post of Postal Assistant and sent his application dated 21.08.02 to the Director of Postal Services [DPS in short], Nagaland Division. The DPS forwarded the application of the applicant to the Chief Post Master General Chief PMG in short] , Shilong recommending his case , saying that there was one vacancy under the relevant quota. The Chief PMG approved the appointment of the applicant on compassionate ground, along with several other candidates to the post of GDS citing lack of vacancy in the Postal Assistant [PA] cadre under the stipulated 5 % quota of direct recruits [vide Annexure A/2], and an intimation letter dated 29.06.05 was sent to the applicant [vide Annexure A/4] regarding his selection for appointment as GDSMD on compassionate ground in relaxation of normal rules, as there was no vacancy under the PA cadre under the stipulation of five per cent direct recruitment outsider vacancies , with an direction to join the post.

3. The applicant then filed a representation on 11.06.05 [Annexure A/3] stating his unwillingness to accept the post on the ground that his father was ex -SPM, and he had applied for the post of Postal Assistant and vacancy existed and his case was recommended for the same; the post of GDS is also not a Central Government post: the post carries meager income insufficient to meet the financial hardship of the family. The applicant in that representation further requested the DPS to reconsider his case for the post of PA instead of GDS. The DPS , Nagaland , in response to that representation, intimated vide letter dated 19.07.05 [Annexure A/5] that his request could not be acceded to in

view of the reasons given in the above letters [Annexure A/2 and A/4]. The case of the applicant is that his father was a regular employee of the postal service and as such when the vacancies are available in the PA cadre, the applicant should not have been mechanically offered the post of GDS, instead of Postal Assistant.

4. The respondents have filed their written statement. Their case is that recommendation of the DPS did not confer any right on the applicant. The Chief PMG is the competent authority to take action regarding the appointment on compassionate ground, and the matter relating to all appointments are processed and dealt with at the circle Office under the departmental rules, including the availability of vacancy for such appointment. The applicant could not be offered the post of PA as under the rule of 5 % only of the post of direct recruits vacancies are made available as quota for compassionate appointment, and there was no vacancy in that quota. The applicant was offered the post of GDS MD, after taking into consideration the humanitarian grounds as well as the departmental rules since there was no vacancy in the PA cadre.

5. It is also the case of the respondents that this Tribunal has no territorial jurisdiction to decide this OA.

6. It appears that after filing of the above written statement the applicant filed rejoinder and in reply to the said rejoinder, the respondents filed vacancies in the PA cadres of the years 2002, 2003 and 2004 in the N.E. Circle, Shillong to show that so far as Nagaland Division is concerned, there is no

vacancy in the PA cadre under the 5 % quota for compassionate appointment. The applicant again filed a supplementary rejoinder to that reply stating that the vacancies of the entire circle and not of any division are considered while calculating the vacancies of 5 % quota for compassionate appointment. The respondents filed reply to that rejoinder also, admitting that the vacancies of the entire circle are taken into account to calculate the number of vacancies for compassionate appointment, and in the year 2002, there were 31 posts in PA cadre out of which two posts were earmarked for compassionate appointment, and the appointments for the two posts were considered in the meeting of the Circle Relaxation Committee dated 05.02.04. In the year 2003, there were altogether 14 posts, and as such no vacancy was earmarked for compassionate appointment. In 2004, there were 11 vacancies and so, no post was earmarked for compassionate appointment. As regards 2005, one vacancy was earmarked out of total vacancies i.e. 28 in the circle, and appointment against this vacancy was decided on 11.04.07.

7. The learned counsel for both the sides were heard.

8. The learned counsel for the applicant submitted that it would appear from the letter of DPS [Annexure A/1] that there was vacancy for compassionate appointment, and the case of the applicant was recommended , but he was not appointed without any valid reason. The post of GDS is also not central government post. Therefore, the respondents should be directed to consider the case of the applicant.

9. He further contended that the applicant is living in Bihar, and as such he is entitled to file application before this Tribunal.

10. The learned counsel for the respondents submitted that as there was no vacancy in the PA cadre, and so, the applicant was offered the post of GDS, and that the recommendation of the DPS does not confer any right on the applicant, and that the vacancies are calculated in the circle, and on the basis of recommendation of the DPS, it cannot be said that actually any vacancy existed for compassionate appointment.

11. He, then, submitted that the entire selection process was to be made at Shillong, and the post applied for was for Nagaland. Therefore, this Tribunal has no territorial jurisdiction to decide the matter. The applicant should have approached the Gauhati Bench of this Tribunal. Rule 6 [ii] of the CAT [Procedure] rules , of course, provides that a person has an option to file an application before the Tribunal within whose jurisdiction he ordinarily resides, but such person must be a person who has ceased to be in service by reason of retirement, dismissal and termination of service, and that the applicant does not belong to any of these categories.

12. As regards the territorial jurisdiction of this Tribunal, the father of the applicant was in service at Nagaland. The applicant had also applied for compassionate appointment there. The selection process was also to be held at Shillong, the Circle Office. The orders appointing him in GDS post and refusing to appoint him against the post of PA were also decided there which were

conveyed through the DPS, Nagaland. So, no part of cause of action arose within the territorial jurisdiction of this Tribunal under Rule 6 [ii] of CAT [Procedure] rules indeed. " A person who had ceased to be in service by reason of retirement, dismissal or termination of service may, at his option, file application with the Registrar of the bench within whose jurisdiction such person is ordinarily residing at the time of filing of application." But the applicant does not belong to any of the categories. Therefore, only because he is resident of the District of Siwan, Bihar, within the territorial jurisdiction of this Tribunal, this Tribunal cannot have territorial jurisdiction to decide the OA as no part of cause of action arose within the territorial jurisdiction of this Tribunal.

13. But though this Tribunal has no territorial jurisdiction to decide the OA, it appears that the respondents had contested the OA vehemently before this Tribunal by filing written statement and replies to different rejoinders filed by the applicant and thereby have submitted themselves to the jurisdiction of this Tribunal. Hence, the question of territorial jurisdiction is only of academic importance and would not prevent the Tribunal in giving findings on the OA.

14. Now coming to the merit of the OA, according to the scheme for compassionate appointment, the appointment on compassionate ground has to be made only on regular basis, and if regular vacancy meant for that purpose is available. Such appointment can be made upto maximum of 5 % of vacancies available under direct quota in any Group 'C' or Group 'D' posts.

15. In this case, the applicant had applied for appointment to the post

of PA on compassionate ground, and the letter dated 25.02.04 [Annexure A/1] shows that the DPS, Nagaland had forwarded his application to the Chief PMG, Shillong with his recommendation and also saying that there was a vacancy in that quota. The letter, however, does not show as to pertaining which year the vacancy existed, whereas the case of the respondents , as already stated, is that there existed two posts in this quota, which were decided on 05.02.04 i.e, prior to the dispatch of the letter under Annexure A/1. Under such circumstances, particularly when the Chief PMG is the competent authority to make such appointment, and in his office the vacancies are calculated only on the basis of Annexure A/1, it cannot be said that actually there existed any vacancy when the application of the applicant was received by the Chief PMG, and that the case of the respondents in the written statement is false.

16. Then, the list dated 18.4.05 [Annexure A/2] shows that as there was no vacancy in the PA cadre under 5 % quota. 7 persons, the sons of ex-SPM and ex-post Man etc, some having bachelor degree, including the applicant having 10 + 2 qualification were recommended for GDS posts. But admittedly, the applicant did not join the post.

17. The object of compassionate appointment to the dependent of the family member of a government servant dying in harness, leaving the family in penury and without any means of livelihood, is to relieve the family of the government servant concerned from the financial destitution and help it to get over the emergency.

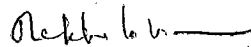
18. The Hon'ble Supreme Court in the case of Umesh Kumar Nagpal vs. State of Haryana and others JT 1994 [3] SC 525 has held that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family from financial destitution and to help it to get over the emergency. It has further been held therein that "offering compassionate appointment, as a matter of course, irrespective of financial condition of the family of the deceased or medically retired government servant is legally impermissible". " Neither the qualification of the applicant [dependent family member] nor the post held by the deceased or medically retired government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free to do so. The post is not offered to cater to his status but to see the family through the economic calamity." "The compassionate appointment cannot be granted after a lapse of reasonable period, and it is not a vested right, which can be exercised at any time in future."

19. In this case, as there was no vacancy in the PA cadre , the applicant was offered the post of GDS to tide over the financial crisis. Though it was not a Group 'C' or Group 'D' post of central government, it could definitely render some assistance to the family of the applicant to tide over the sudden financial crisis. The applicant, thereafter, could make effort to secure better job. But the applicant did not accept the offer. His representation [Annexure A/3] also suggests that he was interested more in securing the post of PA through back door method on compassionate ground than getting over the financial

crisis, if any, of the family.

20. The father of the applicant also died on 21.05.02 i.e. About 7 and ½ years ago, and the family has sustained. This also indicates that the family has other means of livelihood. Once a job has been offered, as per the scheme, the case of the applicant cannot also be considered any more.

21. Under the above circumstances, in view of the above discussions, and the above decisions of the Supreme Court and the scheme of compassionate appointment, the reliefs sought for cannot be granted. Accordingly, this OA is dismissed. No order as to the costs.


[Rekha Kumari] M [J]

/cbs/