

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of order : January 27th, 2006

O.A. No. 833 of 2005

C O R A M

Hon'ble Ms Sadhna Srivastava, Member (J)

1. Akhileshwar Kumar Srivastava, S/o Late Uma Shankar Prasad, resident of village – Dhanauti, P.S. Charpokhari, Bhojpur.
2. Ramendra Prasad, S/o Late Ram Prasad, resident of Mohalla- Nand Lal Tola, P.S. Town thana Chapra, Distt- Saran.
3. Rajiv Kumar , S/o Late Prem Chandra Prasad, resident of Mohalla- North Andarkila, Vaishali.
4. Rakesh Kumar, S/o Late Rameshwar Prasad Gond, resident of Mohalla- Hanuman Nagar, P.O. - Lohia Nagar, Patna.

...Applicants

By Advocate : Shri J.K. Karn

Vs.

1. The Union of India , through the Secretary. Department of Posts, Dak Bhawan, New Delhi.
2. The Director General, Department of Posts, Dak Bhawan, New Delhi.
3. The Chief Post Master General, Bihar circle, Patna.
4. The Director of Post Offices, O/o the Chief Postmaster General, Bihar Circle , Patna.

...Respondents.

By Advocate : Shri A.K. Mishra

O R D E R

By Sadhna Srivastava, M (J) :-



The applicants (four in number) claim the same benefits which have accrued to Mukesh Kumar Karn as a result of judgment of Patna Bench in OA 483 of 2001 (Mukesh Kumar Karn vs. UOI & Ors), dated 20.8.2002, upheld by Hon'ble Patna High Court in CWJC No. 12840 of 2002 dated 10.7.2003 and against which the SLP has also been dismissed by the Hon'ble Supreme Court in limine.

2. Earlier , a batch of cases, leading case being OA No. 545 of 2001 , Nagendra Mohan Mishra vs. UOI & Ors and another batch of cases with leading case No. 27 of 2003, Rajesh Kumar vs. UOI have been decided by this Bench of the the Tribunal. In these cases, the relief prayed for was a direction to the respondents to provide them appointment to the post of Postal Assistant/Postman/Sorting Assistant by creating a supernumerary post, if necessary, in the light of the judgment of the Apex Court in the case of Sushma Gosain. Thus, the relief sought in the instant case is practically the same as in the earlier cases. The facts are

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also identical.

3. The facts are that the applicants are dependents of deceased employees who died in harness. The applicants applied for appointment on compassionate grounds. They were approved also by the Circle Relaxation Committee. They were placed in the waiting list because there was no vacancy available. But they were never offered appointment. In the mean time a direction was received from Govt. of India, Department of Personnel and Training under letter No. F. No. 14014/23/99-Estt (D) dated 3.12.99 regarding time limit for making appointment on compassionate ground taking into consideration the ceiling of maximum of 5 % vacancies falling under direct recruitment quota and marked for compassionate appointment. Again, the Department of Personnel and Training issued instruction under letter No. 42012/4/2000-Estt. (D) dated 24.11.2000 communicated under postal Directorate , New Delhi letter No. 24-1/99-SPBI dated 8.2.2001 vide which the maintenance of waiting list of approved candidates were discontinued. As per instruction,

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the candidates who names were in the waiting list but could not be appointed for want of vacancies within 5 % limit were asked to tender their willingness for consideration by other Ministries. But Department of Personnel and Training issued instructions under letter No. 14014/18/2000-Estt. (D) dated 22.6.2001 circulated vide Postal Directorate letter No. 24-1/2001-SPB dated 4/6.7.2001 reiterating therein that generally it is seen that in view of the 5 % ceiling prescribed for compassionate appointment there are not enough vacancies to accommodate even requests for compassionate appointment from family members of Govt. servant belonging to the same Ministry/Department/Office. It was, therefore, decided under the above letter that in future Committee should take into account the position regarding availability of vacancy for such appointment , and it should limit their recommendation , only in a really deserving case and only if vacancy meant for appointment on compassionate ground will be available within a year and that too within the ceiling of 5 % of vacancies falling under direct recruitment quota. Since

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waiting list of candidates approved for compassionate appointment was dispensed with, the chance of absorption of the approved candidates kept in waiting list in the Department was not possible within the limit of 5 % of vacancies of direct recruitment quota which were already filled up in the respective years. Keeping in view the hardship to the approved wait listed candidates it was decided by the Department of Posts under letter No. 37-16/2001-SPB.I dated 25.7.2001 to consider such wait listed candidates for the vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible as the vacancies in Postal Asst/ Sorting Asst., Mail Guard/ Postman and Group 'D" cadre were not available in the department and accordingly the applicants were requested to submit willingness in writing, which they have accepted.

4. The applicants No. 1, 2 and 3 had earlier filed OA No. 654 of 2001 , OA 156 of 2002 and OA 799 of 2001 respectively which were disposed of by a direction to dispose of their representation. However, it did not serve their

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purpose. The applicants allege that since there was a question of their survival, they joined the posts of GDS under protest.

5 The applicants claim that they have been hit hard. It may be so but the Apex Court in the case of LIC of India vs. A.R. Ambedkar , 1994 SCC (L&S) 737 ,has held that the court cannot direct appointment on compassionate grounds dehors the provisions of Scheme in force governed by the Rules/Regulations/Instructions. The High Courts and Administrative Tribunal cannot confer benediction impelled by sympathetic consideration. In this regard it has been observed as follows in the judgment.

" Para 10:- Of late, this court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice":

"The quality of mercy is not strain'd;
It dropeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that

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takes;"

These words will not apply to all situation. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that " law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

Para 11:- At this juncture we may usefully refer to Martin Burn Ltd. vs. Corporation of Calcutta. At page 535 of the Report the following observations are found.

" A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must , of course, be given effect to whether a Court likes the result or not."

"The courts should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done....."

6. The Scheme for compassionate appointment is administered by the Nodal Ministry i.e. Department of Personnel & Training (DOP&T). Instructions regarding operation of the Scheme are issued by that department from

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time to time. As per the relevant instructions of the DOP&T appointment on compassionate grounds is permissible only upto 5 % of the direct recruitment quota vide Government of India , DOP&T letter No. 14014/6/95-Estt. D dated 26.9.1995. The issue of clearing waiting list of the candidates for compassionate appointment by relaxing 5 % limit as one time measure was referred to the Nodal Ministry (i.e. DOP&T). However, it was not approved. Resultantly, wait listed candidates could not be given appointment either against departmental post as vacancy within the prescribed ceiling was not available. In the year 2001 or later years , fresh applications were examined for which there is always a long queue. The fresh cases of indigency get precedence over the past cases in accordance with the objectives of the Scheme of the appointment on compassionate ground as laid down by the Nodal Ministry.

7. A situation similar to the present case arose in the case of Himachal Road Transport Corporation vs. Dinesh Kumar (1996 SCC (L&S) 1153). In that case the Hon'ble

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Supreme Court was dealing with two cases where applications had been submitted by the dependents of the deceased employee for appointment on compassionate ground and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal, and the Tribunal directed Transport Corporation to appoint both of them. Setting aside the said decisions of the Tribunal, the Apex Court observed that in the absence of vacancy it is not open to the Corporation to appoint a person to any post.

8. In the case of Hindustan Aeronautics Ltd. vs. A Radhika Thirumalai , 1996 SCC (L & S) 1427, a Single Judge of High Court held that appointment on compassionate ground is given notwithstanding whether there is any vacancy and if need be, by creating supernumerary post. The decision of learned Single Judge was confirmed by Division Bench of the High Court. The Hon'ble Supreme Court held that reliance placed by the learned Single Judge on the case of Sushma Gosain , 1989 SCC (L & S) 662 was misplaced with an

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observation that the case of Sushma Gosain has to be read in the light of the facts of that particular case. The observations made in the case of Umesh Kumar Nagpal vs. State of Haryana , 1994 SCC (L&S) 930 to the effect " the decision of Sushma Gosain has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course" were also quoted with approval.

9 The Hon'ble Supreme Court again in the case of UOI vs. Joginder Sharma (2002) 8 SCC 65 has held that High Court/Tribunal cannot compel the department to relax the ceiling of vacancies and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules where people are waiting in the queue indefinitely. The policy laid down by the Government regarding such appointment should not be departed from by the Courts/Tribunals by issuing direction for relaxation merely on account of sympathetic consideration or hardship of the person concerned. If, in a given case,

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department of the Government concerned declines as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the ceiling fixed therein, the Court cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions.

10. In the case of Umesh Kumar Nagpal (Supra), the Hon'ble Supreme Court has observed that it must be remembered that as against the destitute family of the deceased employee , there are millions of other families which are equally , if not more destitute. If the dependents of the deceased employee finds its below his dignity to accept the post offered , he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. It was also observed that the compassionate appointment cannot be granted after a lapse of reasonable period. The consideration for such employment is not a vested right which can be exercised at any time in future. The compassionate appointment cannot be claimed



and offered whatever the lapse of time and after the crisis is over. In the instant case, the applicants lost the bread earner in between the year 1993 to 1999. It is not known if the penurious condition of the applicants continues in the same state.

11. Again, in the case of State of Manipur vs. Md. Rajaodin (2003) 7 SCC 511, the Hon'ble Supreme Court has observed that the purpose of providing compassionate appointments is to mitigate the hardship caused due to the sudden death of the bread winner in the family in the family. It is to alleviate the distress of the family that such appointments are made but these considerations cannot operate even after a long delay. In the instant case also a delay has occurred and, therefore, the question is whether compassionate appointment has relevance after long years of death of an employee. The Hon'ble Supreme Court has reiterated the same principle in the case of Punjab National Bank & Ors vs. Ashwani Kumar Taneja , 2005 (1) SLJ 30, with an observation that the compassionate appointment is

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an exception to the rule and cannot be given as a bounty.

12. Considered in the panorama of the aforesaid legal principles, the applicants are not entitled for issuance of a direction by the Tribunal for their appointment to the post of Postal Assistant/Postman or Group 'D' as claimed by them.

13. The applicants are seeking a direction from this Tribunal on the basis of decision in the case of Mukesh Kumar Karn (supra). Every case of such nature stands on its own footing, and order passed by this Tribunal or the High Courts or the Apex court generally relate to the particular circumstances as obtaining in that particular case, unless some law has been laid down specifically on a point concerned to be followed in other cases of same nature. Since the decisions would be available supporting either the applicants or the respondents, a case of this nature essentially has to be decided on the basis of the merits of the case itself. The legal position is that there is no precedent on facts. It is the legal proposition flowing from the judgment which has a binding effect.



14. In the result, I am of the opinion that it is not a fit case to be admitted, hence rejected. No order as to the costs.



[Sadhna Srivastava] M [J]

/cbs/