

(CBP)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 81/94.

Dt. of Decision : 11.7.94.

Smt. Nakka Saraswathamma

.. Applicant.

Vs

1. The Sub-Divisional Inspector (Postal) Cumbum Sub-Division, Cumbum - 523 333. Nandyal Division.
2. The Superintendent of Post offices, Nandyal Division, Nandyal - 518 501.
3. The Post Master General, A.P. Southern Region, Kurnool.
4. The Union of India rep. by the Director General, Department of Posts, Ministry of Communications, Dak Bhavan, New Delhi - 110 001.

.. Respondents.

Counsel for the Applicant : Mr. J.V. Laxshmana Rao

Counsel for the Respondents: Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIKASAN : MEMBER (JUDL.)
THE HON'BLE SARD A.B. GORTHI : MEMBER (ADMN.)

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DA 81/94.

Dt. of Order: 11-7-94.

(Order of the Divn. Bench passed by Hon'ble
Shri A.V.Haridasan, Member (J)).

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The applicant's husband Nakka Balagurunadham, who was working as Extra Departmental Mail Carrier/Delivery Agent, met with an accidental death while on duty on 1-5-93. The employee left behind him the widow i.e. the applicant herein and her son aged only 15 years and few months. As the family was in indigent circumstances a request was made for compassionate appointment of the applicant or her younger brother or her son in a post vacated by the employee on his death. The position was examined and it was noticed that as the applicant has studied only up to 5th standard and does not know cycling it would not be possible for her to discharge the functions of EDMC/DA as the duties involved travelling several kilometres and also delivering letters to the addressees written in English and Hindi. It was also noticed that the ~~son~~ of the applicant being aged only 15 years and few months, cannot be appointed to the post. As the post of EDMC/DA fell vacant a provisional arrangement was made, by which the applicant's younger brother was appointed on a stop gap arrangement and proceedings for recruitment of regular hand in the post was initiated by the authorities by placing a requisition before the Employment Exchange. It is in these circumstances

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finding that, if the post is filled up by a third person, the applicant would be deprived of the financial assistance being received ~~by~~ from her younger brother who works on provisional basis, the applicant filed this Original Application under section 19 of the Administrative Tribunals Act. 1985. praying that the Respondents may be directed to consider and appoint her or her younger brother A.Sreenivasa Seshanarayana, as EDMC/DA, Sitanagulavaram EDBO in Nandyal Division in relaxation of recruitment rules on compassionate grounds.

2. It has been averred in the application that in view of the provisions contained in the scheme of compassionate appointment for relaxation of Educational Qualifications and restriction of age limit, the action on the part of the Respondents not to consider the applicant for appointment to the post is unreasonable and unjustified.

3. The Respondents filed a counter in which they have contended that the public interest would suffer by appointing the applicant as EDMC/DA as she has studied only up to 5th standard and does not know cycling as these would stand in the way of her discharging the functions of EDMC/DA which involves traveling a considerable distance ~~area~~. However the Respondents have clearly offered that the applicant's son who is 15 and half years would be considered for appointment on compassionate grounds immediately on his attaining the age of 18 years and in the meanwhile the case of applicant herself

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for engaging as ED Packer if she is prepared to work out side the village, provided vacancies exist within the recruitment zone only. The applicant has filed a rejoinder in which it is stated that there is provision for relaxation of age limit in the case of a minor up to 14 years and that if the Respondents are so minded, there is no difficulty in relaxing the lower age limit in the case of her son and appoint him to the post. It has also been contended that the case of the Respondents that the applicant would not be in a position to discharge the duties of EDMC/DA on account of her lesser education qualifications and not knowing cycle/ing is not bonafide.

4. We have gone through the pleadings and documents and heard at length the learned counsel for both sides. The compassionate appointment cannot be claimed as a right. The scheme does not clothe the family of the deceased employee with an indefeasible right of appointment to any particular post for a members. The scheme was evolved with a view to provide immediate financial assistance to the family in the absence of a bread-winner. While taking a decision in this case it is necessary that this aspect of the scheme should be born in mind. However regarding the indigence of the family no dispute has been raised by the Respondents. Further, the Respondents have offered to consider the applicant's son as well as herself for appointment. The Respondents resist the prayer in this application on the following grounds :-

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(i) the brother of the applicant (brother-in-law of the deceased) has no right for compassionate appointment;

(ii) the applicant cannot be appointed to the post as she with her educational qualifications and lack of sufficient proficiency in English and Hindi and not knowing cycling cannot be offered the post.

Regarding the first contention -

cannot be any doubt that a brother-in-law of the deceased employee cannot be considered a near relative, at least after the decision of the Hon'ble Supreme Court in Auditor General of India & others vs. G. Anantha Rajeshwara Rao (1994 SCC (L&S) 500). Now coming to the next question while appointing a person either on compassionate grounds or otherwise, the main criterion is public interest. If a person appointed to the post by virtue of he or she being not fit to perform the duties attached to the post, such an appointment not serving the public interest cannot be made. The educational qualification prescribed for EDMC is only 5th standard while that of the Delivery Agent is 8th standard. The post in question is a combined one of EDDA/MC. Letters to be delivered in Branch Post Office would have addresses written in English and Hindi. It would not be possible for the Delivery Agent to deliver the letters to the proper persons without a working knowledge in English and Hindi. The applicant who has studied only up to 5th standard does not claim to be knowing English or Hindi. As the applicant does not know cycling she may not be able to perform the duties attached to the post. Therefore we are of the considered view that the contention of the Respondents that it would not be in the public interest if the applicant is appointed to the post is fully justified.

Copy to:

1. The Sub Divisional Inspector, (Postal) Cumbum Sub Division, Cumbum - 523 333. Nandyal Division.
2. The Superintendent of Post Offices, Nandyal Division, Nandyal - 518 501.
3. The Post Master General, A.P. Southern Region, Kurnool.
4. The Director General, Union of India, Ministry of Communications, Dak Bhavan, New Delhi - 110 001.
5. One copy to J.V.Lakshmana Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One spare copy.

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Regarding the relaxation in age and appointing the applicant's son, the applicant has not made any prayer in this application for a direction to the 2nd Respondent to consider the son of the applicant for appointment on this post. In these circumstances we are convinced with the stand of the Respondents that the case of the applicant's son would be considered if he attains the age of 18 years in a next arising vacancy and that the applicant's own case for engagement out side the village as packer will be considered subject to availability of vacancies is a fairly reasonable stand.

5. In the light of the above facts and circumstances as discussed above we dispose of the application with the following declarations and directions :-

- (i) the prayer of the applicant is for a direction to consider the case of her brother for appointment to the post of EDMC/DA on compassionate grounds is dis-allowed;
- (ii) the case of the applicant to that post is also disallowed;
- (iii) the respondents are directed to consider the case of the applicant's son for appointment to the post if the competent authorities decide that he can be so appointed in relaxation of the lower age limit of 18 years;
- (iv) if appointment of applicant's son relaxing the lower age limit is found not feasible, the Respondents shall, consider him for appointment to an ED post which may first fall vacant on his attainment of the age of 18 years and appoint him to that post if he is not otherwise unsuitable.

6. There is no order as to costs.

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(A. B. GORTHI)
Member (A)

(A. V. HARIDASAN)
Member (J)

Dt. 11th July, 1994.
Dictated in Open Court.

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Deputy Registrar (J)

