

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 06.05.2003

OA No.215/2001

Jai Kishan Meena s/c Shri Phool Chand Meena, r/c Sakat,
Tehsil Rajgarh, Distt. Alwar.

.. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. The Superintendent of Post Offices, Jaipur Mofussil Division, Jaipur

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr.N.C.Goyal, counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the order dated February,2001 whereby his application for appointment on compassionate grounds has been rejected. In relief, he has prayed. for quashing the said order and also for appropriate directions to the respondents to consider his case for appointment under the rules, on various grounds stated therein.

2. The case of the applicant as made out, in brief,
~~are~~ ^{is} that:-

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2.1 His father Shri Phool Chand Meena, was working as Postal Assistant under the control of respondent No.3. He was missing w.e.f. 2.10.92. He made an application for appointment on compassionate grounds but he was informed vide letter dated 22.8.95 (Ann.A2) that it is not possible to consider his case before 7 years from the date of missing of the Govt. employee.

2.2 He submitted applications dated 1.3.98, 14.3.98 and 1.4.98 informing the respondents that the family is in distress which warrants immediate help by way of job to the applicant. Vide respondents' letter dated 24.4.98, he was informed that his case is receiving attention. Ultimately, the respondent No.3 collected information and vide his letter dated 12.3.99 (Ann.A4) forwarded his case to the Senior Superintendent of Post Offices, Alwar. The required documents were supplied which were duly verified by the Sub Divisional Inspector (Postal) as desired in the endorsement to the said letter. He submitted another application dated 19.1.01 (Ann.A5) praying for providing job to the applicant to tide over the crisis but nothing was done. Ultimately, vide the impugned order dated February, 2001, his case was rejected for the following reasons as contained in the impugned order:-

- "i. The wife of Ex-official is getting family pension amounting to Rs. 1330/- + DR per month.
- ii. Terminal benefits to the tune of Rs. 21960/- has been paid to you.
- iii. You are in possession of an agricultural land 22 acres and annual income worth Rs. 500 p.m.
- iv. Hence the financial condition of your family does not appear to be indigent requiring immediate relief.

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v. The family has own house.

Hence there is no indigency in the case and the committee has accordingly, rejected your case for appointment on compassionate grounds."

3. The respondents have contested this application by filing reply in January, 2002. Briefly stated, they have submitted that:-

3.1 The Circle Selection Committee (CSC) based on the DOPT instructions dated 9th October, 98 (Ann.R1) considered the case of the applicant and rejected. It was observed by the CSC that the official is reported missing since 2.10.92 after his father's involvement was noticed in a fraud case in Jaipur Mufussil Divison. His wife is getting family pension of Rs. 1380/- + DR p.m. Terminal benefit to the tune of Rs. 21,960 have also been sanctioned to her. The family owns a house and 22 acres of agricultural land and income at the rate of Rs. 500/- p.m. therefrom. She has one married son and one son and one daughter are to be married. Her financial position appears to be not indigent and, therefore, the Committee rejected the case and the applicant was informed vide the impugned order. Moreover, there were 8 candidates on the waiting list who were approved in 1996 and 1997 but they could not be given appointment due to non availability of vacancies for the purpose. ^v ~~Since~~ As per the instructions appointment has to be made within the ceiling of 5% of the vacancies falling under direct recruitment quota during the year. There will be a few vacancies during the year and 5 cases which are more indigent in comparison to this case has been short-listed upto the extent of vacancies available for the purpose by the end of the year. The case

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is, therefore, not covered under the guidelines governing compassionate appointment.

3.2 The applicant's father was missing w.e.f. 2.10.92. The applicant was informed vide letter dated 22.8.95 (Ann.A2) that his case could not be considered for compassionate appointment before 7 years from the date of missing i.e. the period of his presumed death. Hence, there was no use of submission of applications dated 1.3.98, 14.3.98 and 1.4.98. It is submitted that the agriculture land^{is} owned by the family in the village Sakat measuring 1.71 Hectares which is certified by the Tehsildar, Rajgarh, Distt. Alwar on 23.3.01. The approximate income derived has also been certified by the revenue authority to the tune of Rs. 1500 in place of Rs. 500 as mentioned by the CSC. Besides, there is house property costing about Rs. 15,000 and a buffalo owned by the family of the missing employee. All these facts have been certified by the Tehsildar, Rajgarh and submitted by the applicant himself with the OA as may be seen from Ann.A7 which confirms that besides the facts mentioned by the CSC property is owned by the family and, therefore, the circumstances of the family cannot be taken as indigent one. Loan taken for the marriage of first daughter is not the liability of the Govt.

3.3 The CSC actually took landed property as 0.22 acres^{which was typographically mentioned as 22 Acres} and in the Ann.R7 the revenue authority has certified it to be 1.71 hectares which makes no difference but shows the picture of indigency of the family as improved one and the decision of the CSC stands confirmed. After disappearing of the employee who was his father w.e.f. 2.10.92 the family has been able to somehow managed all these years which is adequate proof that the family

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had some dependable means of subsistence. Family pension and terminal benefits have been granted as per rules. The impugned order has been passed by the non-applicant No.3 as per provisions of law on the subject. There is no rule for appointment on compassionate grounds for the dependents of the employee who is missing/absconding. The applicant has not availed the departmental channel and he has not preferred any petition or appeal to the higher authorities but he has directly approached the Hon'ble Tribunal. Therefore, this OA is premature and the application is not maintainable and deserves to be dismissed.

4. The applicant has not filed rejoinder. However, based on the direction of the Tribunal, the respondents filed an affidavit dated 3.5.02 and also additional affidavit dated 22.10.02. In these affidavits the respondents have filed documents at Ann.R3, R4 and R5. It has also been submitted that in the present case, there were 78 applicants for the calendar year 2000. Out of these applicants, 5 applicant were found to be more indigent. Their details are enclosed at Ann.R5. In the calendar year 2000, 16 vacancies were worked out and 30 vacancies were identified as backlog to be filled up from SC/ST candidates. Compassionate appointment can be made upto a maximum of 5% of vacancies falling under direct recruitment quota. As such there were 2 vacancies to be filled up from the applicants under the scheme of compassionate appointment. Out of these, 5 more indigent applicants, the two applicants namely Mrs. Gayatri Sharma and Mrs. Maya Rathore were considered and given appointment under this scheme as detailed in Ann.R4. The



comparative chart (Ann.R4) clearly shows that the position of the applicant is not so indigent as compared to other 5 indigent cases. Under the compassionate appointment scheme dated 9.10.98 containing provisions with regard to missing Govt. servants, it is stated that the benefit will not be applicable to the case of Govt. servant inter-alia who is suspected to have committed a fraud or suspected to have joined any terrorist organisation or suspected to have gone abroad and further that the compassionate appointment in the case of missing Govt. servant would not be a matter of right and decision on any such request is to be taken only at the level of Secretary of the Ministry of the department concerned. The applicant Jai Kishan Meena, who is son of Shri P.C.Meena was found to be involved in a fraud case.

5. Heard the learned counsel for the parties and perused the record.

5.1 The objection of the respondents that the applicant should have filed an appeal against the impugned order cannot be accepted for the reason that the respondent No.3 could only communicate the observations of the CSC after they are approved by the competent higher authority. Further, the respondents have not shown/annexed any rule which contains provision of statutory appeal to an authority in such cases. The applicant himself has not made any representation to the higher authorities.

5.2 The second objection of the respondents is that the benefit of compassionate appointment is not admissible to the wards of a Govt. servant who have committed fraud. The respondents have merely stated in their reply that the applicant's father was missing after his involvement was noticed in a fraud case in Jaipur Mofussil Division. No

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details on this count has been given and in case he was involved in a departmental fraud, the respondents were required to give a chargesheet to the employee, which is apparently not available. If it was a case of public fraud, no reference of any case or F.I.R. has been given. Further, there is no mention in the impugned letter with regard to this contention which is made in the reply now. The case of the applicant was considered on merits. There was no need to consider the case on merit, if the respondents had reasons to suspect any involvement in committing fraud. Therefore, this objection is also not teneable.

5.3 During the course of arguments, the learned counsel for the applicant submitted that the respondents vide the impugned order at Ann.A1, have come to the conclusion that the family is in possession of agriculture land of 22 acres and income of Rs. 500 p.m. He further submitted that the respondents have themselves conceded that it is not 22 acres of land but it is 0.22 acres of land. He also submitted that even if it is taken that the family was having annual income of Rs. 1500 as per the certificate given at Ann.A7 and relied upon by the respondents also, the monthly income will be Rs. 125/- p.m. since admittedly the family has no other source of income. Therefore, the conclusion of the respondents that the financial condition of the family does not appear to be indigent taking incorrect facts into account and without proper application of mind itself deserves to be quashed. We see some force in this contention of the learned counsel for the applicant.

5.4. The second contention of the learned counsel for the applicant is that determination of only 2 vacancies

for compassionate appointment is totally incorrect. During the course of arguments, the learned counsel for the respondents after checking with the officer incharge, present in the court, submitted that the compassionate appointment vacancies are calculated for Rajasthan Circle as a whole. The total sanctioned strength of Group-C posts is 9180 and that of Group-D is 1794. The contention of the learned counsel for the applicant is that even assuming that 50% of such posts are meant for direct recruitment quota, notwithstanding the fact that this figure will be more since even promotion posts ultimately in chain are to be filled through direct recruitment and taking 3% normal wastage, over 160 vacancies will arise every year against direct recruitment quota and since only 5% of the vacancies are meant for compassionate appointment, at least 8 vacancies arise every year in Group-C and Group-D categories in the Rajasthan Circle for filling through compassionate appointments. Therefore, the submission made by the respondents that only 2 vacancies were available in the year 2000 is prima-facie incorrect. The learned counsel for the respondents submitted that as per the instructions contained in DOPT OM dated 11 May, 2001, filling up of vacancies under direct recruitment quota is required to be limited to 1/3rd direct recruitment vacancies occurring in each year with a further ceiling that it should not exceed 1% of the total sanction strength of the department. He submitted that based on these instructions, since number of vacancies to be filled under direct recruitment quota were restricted, accordingly vacancies calculated for compassionate appointment were also correspondingly restricted. He further submitted that the vacancy for compassionate

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appointment are calculated based on actual filling up vacancies under direct recruitment quota. We have considered the submissions of both the learned counsel and also perused the OM dated 11th May, 2001. We find that the said OM does not anywhere stipulates that the restriction also apply for filling up vacancies on compassionate grounds. We also find from para 6 of the DOPT OM dated 9.10.98, containing consolidated instructions with regard to the scheme for compassionate appointment, that the appointment on compassionate grounds are exempted from the ban order issued by the Ministry of Finance (Department of Expenditure). Accordingly, the action of the respondents for limiting the vacancies for compassionate appointment, is not in order. Further, the contention of the respondents that compassionate appointment has to be linked with actual filling of vacancies under direct recruitment quota cannot be agreed to for the reason that the scheme for compassionate appointment provides for filling up 5% of the vacancies that arise under direct recruitment quota in a year and also for the ^areason that if appointment under compassionate grounds is to be postponed or linked with actual filling up of the vacancies through direct recruitment, the benefit under the scheme for providing immediate relief to the indigent families is likely to be defeated.

5.5 The third contention of the learned counsel for the applicant is that the case of the applicant was rejected vide the impugned order without taking into account the liability of the family. He further submitted that ~~since~~^b the respondents have come to the conclusion that the financial condition of the family does not require immediate relief solely on the ground that the

wife of the missing employee is getting family pension of Rs. 1330/- p.m. and also got terminal benefits of Rs. 21960/- and also that there is income of Rs. 500 p.m. from the agriculture land, is not in order. Even if a meagre income of Rs. 500 p.m. from agriculture land is added to the family pension, the income will be Rs. 1830/- p.m. which would be the family pension of a deceased Clerk. In support of his contention he quoted the judgment of the Hon'ble Supreme Court in Umesh Nagpal vs. State of Haryana [1994 (4) SCC 138] and also the Hon'ble Apex Court judgment in Balbir Kaur and Anr. vs. Steel Authority of India and Others., 2000 SCC (L&S) 767 wherein it has been held that the family benefits scheme is not substitute for compassionate appointment and that the purpose of compassionate appointment is to provide immediate relief to the family which falls in distress because of the death of the bread earner of the family. He further submitted that even if it is assumed that the family is getting agriculture income of Rs. 500 p.m. and that a small house in the village, the respondents should have considered the case of the applicant keeping in view the large family left behind by the Govt. employee. The applicant was only of 20 years of age at the time his father was reported to be missing and in addition to the wife of the missing Govt. employees, there were two unmarried daughters and one minor son. In fact the respondents have not taken this aspect at all and rejected his case. The respondents within the available vacancies should have considered the comparative merit of the applicant alongwith similar other candidates and then decided the case. Based on a query from the Tribunal, the respondents have filed an affidavit with enclosures giving a comparative chart of the

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shortlisted cases. From the chart itself, it is apparent that they have not taken into account one unmarried daughter, who got married much after the Govt. employee disappeared and that for her marriage, the family had to take a loan. He further submitted that the reply of the respondents in this regard that the loan taken for the marriage of the first daughter is not the liability of the Govt., itself speaks that they were bent upon to rejecting the case of the applicant. He further submitted that one Smt. Maya Rathore who was granted compassionate appointment had only 3 dependents whereas according to the respondents themselves there are 4 dependents although infact there were 5 dependents at the time of missing of the Govt. official. Also the family pension drawn by Smt. Maya Rathore is Rs. 2200 p.m. compared to Rs. 1330 p.m. received by the mother of the applicant. Further, the terminal benefits which Smt. Maya Rathore received were Rs. 2,95,721 as against Rs. 21,680 received by the applicant. Even if Rs. 500 p.m. as income from agriculture land and a small house is taken, the applicant's case shall be more indigent as compared to Smt. Maya Rathore, moreso, when the number of dependents in his case are more. This case was required to be considered based on the actual vacancies available through comparative merit of the candidates and that the respondents have certainly not done so. We agree with the learned counsel for the applicant that rejection of the case of the applicant on the ground that financial condition of the family is not indigent, is not proper.

5.6 The fourth contention of the learned counsel for the applicant is that in working out the comparative merit, the respondents have no norms and that such working

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out ~~are~~ being done arbitrarily. He further submitted that the M/o Defence has laid down specific norms for working out the comparative merit vide their ID dated 9th March, 2001. These norms were first time issued vide M/o Defence ID dated 2nd November, 1993 and the norms now published are infact revised norms based on the new pay scale which came into force after the recommendations of the 5th Central Pay Commission. He also submitted that in the said ID of the M/o Defence, specific slab wise points have been yearmarked on a 100 point scale for family pension, terminal benefits, monthly income of earning members, income from property, movable/immovable property, No. of dependents, No. of unmarried daughters, No. of Minor children and left over service. He further submitted that since this procedure is based on same order of the DOPT, which the respondents are relying in this case, there can be no valid reason for not adopting these norms/procedure. In fact the methodology adopted by the respondents in determining the comparative merit is highly subjective which also leads to large scale of litigation. We see force in the contention of the learned counsel for the applicant.

5.7 The fifth contention of the learned counsel for the learned counsel for the applicant is that if there was no vacancy available in the Rajasthan Circle, the respondents should have considered the case of the applicant against the vacancies arising in other Circles of the Department as also against the vacancies of other Ministries of the Govt. of India as per the DOPT instructions contained in their OM dated 9.10.98. The learned counsel for the respondents submitted that the said instructions have been amended vide DOPT OM dated

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22.3.01, wherein it has been mentioned that appointment on compassionate grounds will be considered against vacancies in the concerned Department/Ministry/Office. The learned counsel for the applicant further submitted that these instructions are vague inasmuch as if the vacancy of an office are only considered then in offices where the number of posts are limited, there will be a situation when no vacancy arise for compassionate appointment although there may be a case where the family faces acute financial crisis. On the other side, it may happen that a vacancy has arisen for compassionate appointment but that vacancy is not filled as there is no claimant. In the present case, the whole Rajasthan circle is considered as a unit, where a large number of posts exist and, therefore it is not necessary to comment on this contention of the learned counsel for the applicant.

5.8 The learned counsel for the applicant finally submitted that the impugned order is required to be quashed and the applicant's case should be reconsidered in view of the submissions including the fact that the vacancies have not been properly worked out and there is not objectivity in determining the comparative merit of indigent cases within 5% vacancies arising under direct recruitment quota of Group-C and Group-D posts.


6. Having considered the submissions of the parties and material on record, we are of the view that rejection of the case of the applicant by the respondents for the reason that financial condition of the family is not indigent, is not proper. The case of the applicant ~~is~~ required reconsideration after properly determining the vacancies against direct recruitment quota that arise in a

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year without linking it with the actually filling and after laying down norms in order to have objective assessment in determining the comparative merit and till such time it is done, the respondent Department should follow the procedure/norms laid down by the M/o Defence in this regard in their ID dated 9.3.2001.

6.1 Accordingly, the impugned order dated February, 2001 (Ann.A1) is quashed. The respondents are directed to reconsider the case of the applicant for appointment on compassionate grounds against any Group-C or Group-D posts for which the applicant may be found suitable keeping in view the instructions in this regard and also our observations in the preceeding Paras within a period of two months from today. No order as to costs.


(M.L. CHAUHAN)

Member (J)


(H.O. GUPTA)

Member (A)