

IN THE CENTRAL ADMINISTRATIVE TRIEUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 6.06.2003

OA No.74/02

Hem Raj Sharma s/o late Shri Babu Lal Sharma r/o C-58,  
Goverdhanpuri, Galta Gate, Jaipur. Aspirant for  
appointment on compassionate grounds.

.. Applicant

Versus

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

.. Respondents

Mr. C.B.Sharma - counsel for the applicant

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

CORAM:

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

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant is son of late Shri Babu Lal Sharma who was substantive employees of the Postal Department and at the relevant time was working on the post of Sorting Postman, Jaipur City Post Office, Jaipur. The father of the applicant expired on 20.9.95.

The case of the applicant is that the mother of the applicant vide letter dated 16.6.97 requested the respondent No.2 to provide appointment to the applicant.

Thereafter she was asked to submit an application in the prescribed proforma in which complete information regarding status of the family was required to be supplied. According to the applicant, such information was supplied but the claim of the applicant was ultimately rejected vide impugned letter dated 8.3.01 (Ann.A1). The applicant submitted that his case for compassionate appointment was rejected solely on the ground that the family of the Government servant has received retiral benefits which according to him is contrary to Para 16(c) of the OM dated 9.10.98. On these facts the applicant has filed the present OA thereby praying that the respondents may be directed to consider the case of the applicant by quashing the letter dated 8.3.01 (Ann.A1).

2. The grounds taken in the OA for quashing the impugned order Ann.A1 are that- (a) the family is in indigent condition as the terminal benefits has already been spent, (b) the condition of the family will be more indigent in future when the family pension is reduced by 50% and will be minimum family pension of Rs. 1275/- in the year 2002 and (c) the case of the applicant has not been duly considered by the respondents taking into consideration that no earning member is available in the family and the applicant is unmarried as also the family has other liability of matrimonial function of the family and thus the action of the respondents is against the provisions of Article 14, 16 and 21 of the Constitution of India.

3. Notice of this application was issued to the respondents. The respondents have filed reply. In the

reply, it has been stated that the case of the applicant was submitted by the Senior Superintendent of Post Offices, Jaipur City Division, Jaipur vide letter dated 20.6.2000. The ex-employee expired on 20.9.95 after rendering service of approximately 30½ years in the Department and he was due to superannuate on 30.9.2000. He has left behind his wife and two sons. The family has been paid terminal benefits to the tune of Rs. 1,31,859 and getting family pension of Rs. 1800 + DR per month. It is further submitted that the elder son is an earning member and cannot disown the social liability to lookafter the mother and younger brother. Therefore, the financial condition of the family does not appear to be indigent. The Circle Selection Committee considered the case of the applicant in the light of the OM dated 9.10.98 (Ann.R1) and OM dated 3.12.99 (Ann.E2). The Committee did not find the case as an indigent one and rejected it on merit. The decision of the Committee was communicated to the applicant vide the impugned order dated 8.3.2001 (Ann.A1). It is further stated that according to the aforesaid Government instructions, the Committee while considering the request for compassionate appointment should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate ground only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year that too within the ceiling of 5%. There were already 13 candidates approved for appointment on compassionate ground during the years 1993 to 1999 who could not be given appointment for want of vacancy. As such there is no hope to accommodate the applicant within a year as stipulated in

the instructions dated 3.12.99 (Ann.E2).

4. The applicant was given opportunity to file rejoinder. The learned counsel for the applicant submitted that he does not want to file rejoinder and the matter may be heard. Thus, the averments made by the respondents in their reply remained uncontroverted.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 It is well settled that compassionate appointment is an exception to the normal rules of appointment. It is a special provision to tide over the unforeseen event and to mitigate the hardship of the family of the deceased employee. The compassionate appointment is not a matter of right. If there is a scheme providing compassionate appointment and if employer is acting contrary to its own rules or there is flagrant violation of its own rules then only the court may intervene in a given <sup>case</sup> ~~way~~. What is important to be noticed here is that an appointment on compassionate ground is an exception to the rules of equality which enjoins to follow the prescribed norms and the procedure and not in an arbitrary manner and also it enjoins an employer to provide equal opportunity of employment to all the citizens. Nobody has fundamental right or statutory right to claim appointment on compassionate ground. Viewing the matter from this angle, it cannot be said that the respondents have acted contrary to their own scheme or there is flagrant violation of their own scheme. In fact the Committee has considered the case of the applicant for compassionate appointment according to the scheme for compassionate appointment as *bd*

issued vide OM dated October, 9, 1998 and in the light of another OM dated December 3, 1999 which stipulates that the Committee while recommending request for appointment on compassionate ground should take into account position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate ground only in really deserving cases and only if vacancy meant for appointment is available within a year that too within the ceiling of 5% of the direct recruitment.

5.2 Even the case of the applicant is founded on the scheme dated October 9, 1998 and according to the applicant his case should not have been rejected on the ground that the family of the Government servant has received terminal benefits under various welfare schemes as per para 16(c). In para 16(c) it has been stated that while considering request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liability including the benefits received under the various welfare schemes mentioned above and all other relevant factors such as presence of earning member, size of the family, ages of the children and essential needs of the family etc. The Committee keeping in view the aforesaid criteria vide the impugned order Ann. Al has specifically held that there is earning member in the family, widow is getting family pension amounting to Rs. 1800 + DR per month, terminal benefits to the tune of Rs. 1,31,859 has been paid, elder son Shri Damodar is working in private firm and earning Rs. 800 p.m. and it was only thereafter that the case of the applicant was rejected thereby holding that the financial condition of the family does not appear to be

indigent requiring immediate relief.

5.3 From the material placed on record, it is evident that the applicant is major, the widow has received terminal benefits and is getting family pension which is sufficient for her subsistence. There is no other liability such as minor children, unmarried daughter etc. or other social liability. According to the policy of the Government, appointment on compassionate ground is to be given only when there is precarious condition of the family and such appointment is to be given only in really deserving cases only within the vacancies available for compassionate appointment within a year that too within the ceiling of 5%. The respondents have categorically stated that there are already 13 candidates who have been approved for appointment on compassionate ground during the year 1993 to 1999 who could not be given appointment for want of vacancy. Keeping this fact in view, if the Committee has not recommended the case of the applicant for giving him appointment on compassionate grounds, no violation can be found in such decision and such a decision cannot be said to be arbitrary. It may also be added here that the father of the applicant died on 20.9.95 whereas the application for appointment on compassionate ground was moved by the widow for the first time on 16.6.97 after a period of almost 2 years. The contention of the learned counsel for the applicant that the family pension will be reduced by 50% in future is not relevant in determining appointment on compassionate ground and the matter has to be decided on the basis of the circumstances which were prevalent at the time of the death of the deceased employee so as to come to the conclusion as to whether the family was in such indigent

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circumstances which require immediate financial assistance by giving appointment on compassionate grounds. The contention of the learned counsel for the applicant that the case of the applicant was rejected solely on the ground of terminal benefits is also not correct.

6. For the reasons stated above, I am of the view that the applicant has not made out any case for setting aside the impugned order Ann.Al. Accordingly, this OA is devoid of merit and therefore, dismissed with no order as to costs.

  
(M.L.CHAUHAN)

Member (J)