

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 25.04.2003

OA No.105/02

Bablu Ram Sharma s/o Shri Ram Niwas Sharma aged about 20 years, r/o village Ghatri, Tehsil Weir, District, Bharatpur.

.. Applicant

VERSUS

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

.. Respondents

Mr. P.N.Jatti, counsel for the applicant

Mr. B.N.Sandu, 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 23.2.01 (Ann. Al) whereby his request for appointment on compassionate grounds has been rejected. In relief, he has prayed for quashing the said order and for appropriate directions to the respondents to appoint him on compassionate grounds on any post, on various grounds stated this application.

2. The case of the applicant as made out, in brief,



is that :-

2.1 The father of the applicant late Shri Ram Niwas Sharma while working as Cash Overseer at Bayana Post Office expired on 10.10.97 while in service. At the time of the death, Shri Ram Narain had left behind the following dependent members of the family:-

- i) Mrs. Kameri, wife : 40 years
- ii) Mr. Bablu, son : 18 years
- iii) Miss Pinki, daughter : 16 years
- iv) Miss Priyanka, daughter : 10 years
- v) Mr. Dinker, son : 6 years

2.2 The family received a sum of Rs. 2,13,939/- as retiral benefits. The family is getting a family pension of Rs. 2152 + Dearness Relief as per rules and possess a small house of mud in village Ghatri and a piece of 1½ Bigha land. There is no income from the land being Barani land.

2.3 He submitted an application to the respondents stating therein that there is no earning member in the family and that the family cannot meet the responsibility of education of children and also marriage of grown up daughters with meagre income of retiral benefits. It is also very difficult to manage two times of meals within the amcunt of pension and, therefore, the family is in indigent circumstances requiring immediate relief, but his prayer was rejected vide the ~~impugned~~ order.

3. The respondents have contested this application. Briefly stated, they have submitted that:-

3.1 The deceased employee was due to retire on 31.7.2000 and he expired on 10.10.97. He has completed almost 40½ years' service. He left his family consisted of

12

: 3 :

his wife, two sons and two daughters. His family has been paid an amount to the tune of Rs. 2,13,939/-and is getting regular family pension of Rs. 2152 + Dearness Relief. The family possess own house valued Rs. 25,000 and two Bighas of landed property valued Rs. 50,000/-.

3.2 There is a liability of education and marriage of two sons including applicant and two daughters. As per qualification, the applicant is eligible for the post of Postman/Male Guard.

3.3 The case of the applicant was submitted to the Circle Selection Committee on 18.2.2001. The Committee considered the case as per the instructions dated 9.10.98 and Office Memorandums dated 9.10.98 and 3.12.99 and after carrying out objective assessment and financial condition, the Committee did not find the case indigent one and rejected it on merits. The decision of the Committee was communicated vide the impugned order dated 23.2.2001. The relevant letters in this regard are annexed at Ann.R1 to R5.

3.4 As per the revised consolidated instructions issued vide memorandum dated 9.10.98 (Ann.R3), appointment on compassionate grounds is intended to render immediate assistance to the family of the Govt. servant who dies in harness or retires on invalidation on medical grounds leaving his family in financial crisis. Such appointment can be provided only upto 5% of the vacancies that arises for direct recruitment. The memorandums dated 3.12.99 and 22.6.2001 (Ann.R4 and R5) clearly brings out that the Committee, considering the request for appointment on compassionate grounds, should take into account the position regarding availability of vacancy for such appointment and it should recommend only real deserving

B

cases based on relative merit and only if vacancy meant for appointment on compassionate grounds will be available within a year that too within the ceiling of 5% vacancy falling under direct recruitment quota in Group-C and D post within own department.

3.5 The Hon'ble Apex Court in the case of Himachal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) SC 319] has held that appointment can be made only if a vacancy is available for that purpose. The DOPT did not relax the 5% ceiling citing the Hon'ble Apex Court judgment in U.K. Nagpal vs. State of Haryana [1994 (3) SC 535] vide their OM dated 24.12.2001. The Hon'ble Apex Court in the above referred judgment has also laid down that compassionate appointment cannot be granted after a lapse of reasonable period and does not vest any right which can be exercised at any time in future.

4. The applicant has filed rejoinder. Briefly stated, it has been submitted that:-

4.1 The decision of the Circle Selection Committee is arbitrary because the factual position was before the Committee that all the four children of the deceased are minor, there is a great liability before the family for education and their marriage. The family has no source of income except the pension of Rs. 2152/- p.m.

4.2 The respondents are considering retiral benefits which is not permissible as per Hon'ble CAT, Jaipur Bench judgment in Nirmala Devi vs. Union of India and ors. holding that when request for appointment on compassionate grounds has been applied, the retiral benefits received by the family can not be taken into account. He has also relied on the judgment of the Principal Bench, CAT in Smt. Anarkali and Anr. vs. Union of India and Ors. [2001 (2)



: 5 :

ATJ) 387] decided on 21.5.01 wherein it is held that the order rejecting prayer of the applicant for appointment on compassionate grounds cannot be sustained as the respondents have taken into consideration the terminal benefits given to the family of the deceased employee. In Balbir Kaur and Anr. vs. Steel Authority of India [2000 SCC (L&S) 767], the Hon'ble Apex Court had held that while considering the case of appointment on compassionate grounds, the retiral benefits received by the family shall not be taken into account.

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

5.1 The admitted facts of the case are that the deceased employee left behind his wife, two minor daughters and two minor sons including the applicant. The applicant was 16½ years of age at the time of death of his father, his date of birth being 1.7.81 (Ann.R2). It is also an admitted fact that the family has received retiral benefits to the tune of Rs. 2,13,939/- and the family is getting a pension of Rs. 2152 + Dearness Relief. There is minor difference in facts with regard to house and landed property. The applicant has contended that the family has a house made of mud in village Ghatri and possess a land of 1½ Bigha and that there is no income from the land being Barani land. The respondents have stated that the applicant has a house valued Rs. 25,000 and possess 2 bighas landed property valued Rs. 50,000.

5.2 As seen from the impugned order, the respondents have rejected the case of the applicant for appointment on compassionate grounds for the reason that the family is getting pension amounting to Rs. 2152/- + Dearness Relief



and also got terminal benefits to the tune of Rs. 2,13,939/-and that the family is in possession of a residential house and agricultural land of 2 bighas, and hence the financial condition of the family does not appear to be indigent requiring immediate relief. It has been held by this Tribunal as well as by the Hon'ble Apex Court that the respondents cannot reject a case of compassionate appointment on the ground that the family has received retiral benefits and getting monthly family pension. The land of 2 bighas, possessed by the family, is a Barani land does not give any income to the family. This contention has not been denied by the respondents.

5.3 Keeping in view the fact that there is no other earning member in the family, the deceased Govt. servant left behind two minor sons and two minor unmarried daughters apart from the widow, that the family is getting only monthly pension of Rs. 2152 + Dearness Relief per month and that there is no other source of income, we hold that the family was facing financial crisis and continued to face. The contention of the respondents as per the impugned order that the financial condition of the family does not appear to be indigent stands rejected.

5.4 The respondents have also submitted that the appointment can be given only within 5% of the vacancies. While there is no dispute by the learned counsel for the applicant with regard to the fact that compassionate appointment can only be provided within 5% of the vacancies meant for direct recruitment, his contention is that large number of vacancies arise against direct recruitment in the Rajasthan Circle, the vacancies are not properly calculated, these are linked with actual recruitment through direct recruitment and all are not filled. In the absence of material on record, we leave

*B*

: 7 :

this aspect for consideration of the respondents. Further, the respondents have nowhere stated that the case of the applicant is placed lower in the comparative merit and he cannot be covered within 5% vacancies arose. This contention of the learned counsel for the applicant is a matter of record.

6. In view of above discussions, the impugned order dated 23.2.01 is quashed. The respondent No.2 is directed to reconsider the case of the applicant for appointment on compassionate grounds against any Group-C or D vacancy for which he is found fit after determination of vacancies keeping in view the contention of the learned counsel for the applicant and with objective analysis of comparative merit and if found more meritorious within available vacancies meant for compassionate appointment, he should be so appointed within a period of two months from today. In case the applicant is not found sufficiently meritorious as per the available vacancies, he should be so informed by a reasoned order within the said period. No order as to costs.



(M.L.CHAUHAN)

Member (J)



(H.O.GUPTA)

Member (A)