

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 11.07.2003

OA No.243/2002

1. Jitendra Kumar Meena s/o late Shri Mulchand Meena r/o village and post Gurara via Khandela, Tehsil Srimadhopur, Distt. Sikar, Rajasthan.
2. Smt. Shakuntala w/o late Shri Mulchand Meena r/o village and post Gurara via Khandela, Tehsil Srimadhopur, Distt. Sikar.

.. Applicants

Versus

1. Union of India through the Director General Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Posts, Sikar Division, Sikar.

.. Respondents

Mr. P.N.Jatti, - counsel for the applicants.

Mr. B.N.Sandu - counsel for the respondents

CORAM:

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

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

Applicants, two in number have filed the present OA against the order dated 7.3.2001 (Ann. Al) whereby an application preferred by applicant No.1 for grant of compassionate appointment on account of death of his father, has been rejected and also against the order dated 13.3.02 whereby the family pension already granted in favour of the applicant No.2 has been revised and reduced to Rs. 2218/- from Rs. 4340/-. However, vide order dated 24.5.02, the learned counsel for the applicant stated that the present application may be confined only with regard *of*

to the prayer for considering applicant No.1 for compassionate appointment and he will be filing a separate OA for challenging the order of recovery dated 13.3.03 and does not press this relief at this stage. Consequently, this Tribunal issued notices to the respondents and directed them to file reply. Thus, the present OA is now only confined to applicant No.1 who is son of late Shri Mulchand Meena for grant of compassionate appointment. In relief, the applicant has prayed for quashing the impugned order dated 7.3.2001 (Ann. Al) and for appropriate directions to the respondents to consider his case for grant of compassionate appointment on the post of Postal Assistant as per his qualification under the provisions of rule of compassionate appointment.

2. The case as made out by the applicant in this OA is that the father of the applicant was working in the Postal Department on the post of 'Up Dakpal' (Sub Postmaster). He was permanent employee and expired on 15.10.94. At the time of death of the deceased employee, the family consisted of 7 members, which includes widow, 4 minor sons and two minor daughters. It is further pleaded that after the death of the deceased employee, the family of the deceased employee faced great starvation for livelihood, therefore, the applicant being the eldest son and minor at that time submitted an application dated 29.10.94 to the effect that he is eldest son of the deceased employee and presently he is minor and thus on attaining the age of majority, he may be granted compassionate appointment. Further the case of the applicant is that on attaining the age of majority i.e. in the year 2000, he again submitted an application to the

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respondent on 11.3.2000 to grant him compassionate appointment on the post of Postal Assistant. Alongwith the application, the applicant has submitted necessary documents. He further submitted an application on 4.4.2001 thereby indicating that he had passed out B.A. degree, therefore, he may be granted appointment on the said post. The application for grant of compassionate appointment has been rejected by the respondents vide order dated 7.3.2001 (Ann. Al) for the following reasons as contained in the impugned order:-

- "1. The widow is getting family pension amounting to Rs. 2613.00 + DR per month.
2. Technical benefits to the tune of Rs. 1,68,827.00 has been paid to you.
3. You are possession of residential house and agriculture land/annual income woth Rs. 1000 P.A.
4. Hence the financial condition of your family does not appear to be indigent requiring immedite relief."

2.1 The applicant has further averred that against the impugned order, he has also filed an appeal to respondent No.1 on 16.4.01 which is pending decision. Feeling aggrieved from the aforesaid order, the applicant has filed the present OA for the reliefs as mentioned above on the ground that the family is in indigent circumstances.

3. The grounds taken by the applicant in support of his contention is that the applicant is not having any earning from the land in as much as the total holding of the family is 10 Bighas out of which 2 bighas land is

barren and is not irrigated/cultivable and as such there is no earning from the said land as certified by the Patwari and Sarpanch concerned. ^{Moreover} ~~However~~, the share of the applicant in total holding of the land comes to 1/5th. The applicant has further averred that the application of the applicant has been rejected on the ground that the widow is getting Rs. 2613 + DR per month as family pension whereas on the other hand the respondents have reduced the family pension to Rs. 2218 + DR per month without any justified reason, as such correct facts were not placed before the competent authority. Further, another ground taken by the respondents while passing the impugned order is that the family has been granted terminal benefit of Rs. 1,68,827 which cannot be taken into consideration as such amount has been utilised in the marriage of one of the daughters of the deceased employee who had attained majority in the meanwhile and the fact that the family has received ~~only~~ ^{terminal} benefits cannot be taken into consideration for denying appointment on compassionate grounds and this aspect of the matter has been ignored by the respondents. The applicant is having only 2 bighas of land; in all 6 members are in the family and out of which 5 members are yet to be married and thus the family is in indigent circumstances to maintain themselves out of the meagre amount of pension, which too is reduced without any justification. Thus, according to the applicant the matter has not been considered by the Committee objectively and the impugned order has been passed without any justifiable ground, which deserves to be quashed and set-aside.

4. The respondents have contested this application by filing reply. It has been stated in the reply that the

matter was placed before the Circle Selection Committee (CSC). The applicant was informed through the impugned order that the case of the applicant for appointment on compassionate grounds to the post of Postal Assistant compassionate is not covered. The scheme is not intended to ensure that member of the family is employed in each and every case. The compassionate appointment can be provided only to fill the vacancy upto 5% that arise for direct recruitment. Keeping in view the ban imposed on the direct recruitment and extension of age limit of retirement, there was literally no vacancy since last 3 years. Consequently, it became essential to ensure that only the most deserving cases are approved as per the proposed stipulated for the scheme under the compassionate appointments as per DOPT OM dated 9.10.98. The candidates on the waiting list are already waiting for compassionate appointment since 1996 and the bare proposal to provide immediate financial assistance is defeated if immediate appointment is not given as per order of DOPT dated 3.12.1999 within a period of one year. It is further stated that in the case of the applicant, the widow is getting family pension of Rs. 2613 + DR per month. The widow has also received terminal benefits to the tune of Rs. 1,68,827. The family is in possession of residential house and agriculture land/annual income worth Rs. 1000 per annum. In such circumstances, the case of the applicant was not found fit for compassionate appointment by the CSC. Ann.Al is self explanatory. It is further submitted that all the relevant factors were considered by the CSC such as financial condition as well as availability of vacancy. It is further stated that the appeal preferred by the applicant dated 16.4.01 is pending with the Postal

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Directorate, New Delhi. As regards reduction of the family pension, the same is regulated by the Pension Rules. The respondents have also annexed copy of the scheme governing compassionate appointment as Ann.R1 with the reply.

5. The applicant has filed rejoinder controverting the submissions made by the respondents in their reply. It is further reiterated that the family consists of 7 members including widow. There is no source of income and there is no earning member in the family. There is no income from the residential house. Though a piece of land is there but it is not a source of income. Heavy liability are there before the family of education and marriage and thus the family is running in indigent circumstances.

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

6.1 The only point which has been pressed by the learned counsel for the applicant is that the case of the applicant was rejected on the ground that the condition of the family did not appear to be indigent requiring immediate relief for the sole reason that the widow is getting family pension of Rs. 2613/- + DR per month, the family has got terminal benefits to the tune of Rs. 1,68,827/- and also that the family is in possession of a residential house and income from the agriculture land is Rs. 1000/- per annum. He further submitted that as per the established law, the respondents cannot come to the conclusion that the condition of the family is not indigent only for the reason that the family received some terminal benefits and getting monthly pension. He quoted the judgment of the Hon'ble Apex Court in the case of

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Balbir Kaur vs. Steel Authority of India, 2000 SCC (L&S) 757 in support of his contention. He also submitted that the family received terminal benefits to the tune of Rs. 1,68,827/- and this amount has been spent on the marriage of one of the daughters of the deceased who has attained majority in the meanwhile whereas one daughter is still to be married and there are other 4 sons ^{including}. The applicant who was minor at the time of the death of the deceased employee. The house is a kachcha house and it cannot be termed as house or a house generating income. The applicant is having only 2 bighas of land in 1/5th share of the total holding of 10 bighas land of the family and the 2 bighas of land is barren and is not irrigated and cultivable. There is no earning from the said land as certified by the Patwari and Sarpanch concerned. Even if it is assumed that the land is generating income of Rs. 1,000/- per annum and this amount is also included in the pensionary benefits being received by the widow, it will not materially alter the financial condition of the family. As such the terminal benefits and monthly pension granted to the widow of the deceased is not sufficient to meet the expenses of the family and the family is in indigent condition and, therefore the case of the applicant for compassionate appointment could not have been rejected by the CSC.

7. I have considered the contention raised by the applicant which cannot be outrightly rejected. Indeed it is not the case of the respondents as can be seen from the impugned order (Ann.A1) that based on comparative merit of the eligible candidates considered during the year and based on the merit so prepared and keeping in view the

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limited vacancies of 5%, the applicant could not be selected. Had the case being rejected on this ground, it may not be possible for this Tribunal to interfere with the impugned order. But as already stated above, the case of the applicant was rejected solely on the ground that financial condition of the family is not indigent for the reason that the family has received terminal benefits and the widow is getting family pension and also the family possessed residential house and agriculture land, annual income of which is worth Rs. 1000/- per annum. As already submitted above, the case of the applicant could not have been rejected on these grounds and the decision ~~was~~ taken by the respondents is contrary to the scheme for compassionate appointment as circulated vide DOPT OM dated 9.10.98 which has been relied by the respondents and annexed with their reply as Ann.R1. At this stage, it will be useful to quote para 16 (c) of the said scheme which will have bearing on this case and thus reads as under:-

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(c) An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a 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 liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size

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of the family, ages of the children and the essential needs of the family etc."

Thus from the para quoted above, it is quite evident that the application for compassionate appointment should, however, not be rejected on the ground that the family of the deceased Govt. servant has received benefits under the various welfare schemes and while considering the request for compassionate appointment a balanced and objective assessment of financial condition of the family has to be made taking into account its assets and liabilities and all other factors such as presence of earning members, size of the family, ages of the children and essential needs of the family etc. From the facts and material placed on record in this OA and while perusing the impugned order Ann. Al, it is quite evident that the matter has not been considered by the CSC objectively and the relevant factors such as ~~as~~^{if} there were no earning member in the family at the time of death of the deceased Govt. servant, ~~the~~^{if} the family consisted of 7 members including 2 minor unmarried daughter and 4 minor sons, ~~the~~^{if} the terminal benefits of Rs. 1,68,827/- has been spent on the marriage of one of the daughters who has attained majority in the meanwhile ~~by~~^{Even if} the said amount of terminal benefits is also taken into consideration and deposited in any Bank then also the income from the said amount by way of interest cannot be more than Rs. 1500/- per month and if the interest as well as the family pension of Rs. 2218 + DR is also taken into account, it cannot be said that the same are sufficient for the ~~maintebaance~~ of the family of 6 members when the family is incurring liability of education and marriage of not only two minor daughters but also the education and marriages of 4 sons who at the time

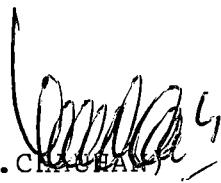
of the death of the deceased employee were minor. It may also be added here that the contention of the applicant that terminal benefits to the tune of Rs. 1,68,827/- has been spent on the marriage of one of the daughters and also that the agriculture land is not generating income, has not been controverted by the respondents in their reply affidavit. Further, the fact that the family pension has also been reduced, has also not been controverted. Thus, I agree with the contention of the learned counsel for the applicant and hold that the respondents cannot come to the conclusion that the financial condition of the family is not indigent solely on the ground that the family received terminal benefits and is getting monthly family pension, as this could not be taken without taking into account other relevant factors as stipulated in the scheme relevant para of which has been reproduced hereinabove. Thus, the rejection of the case of the applicant solely on the ground that the family is receiving family pension and received terminal benefits and owns a house to live in and the family is in possession of agriculture land generating income of Rs. 1000/- per annum, is not in order. Resultantly, the impugned order Ann. Al is quashed.

8. Now the question arises as to what relief the applicant is entitled to. From the material placed on record and more particularly from the reply filed by the respondents, it is clear that the applicant filed an appeal dated 16.4.01 to the Director General, Department of Posts, New Delhi which is pending for decision in the Postal Department. In view of the averments made in the reply and the fact that the appeal of the applicant is still pending, it will be in the interest of justice if a

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direction is given to respondent No.1 to decide the appeal of the applicant keeping in view the observations made above. In case the appeal of the applicant has been decided by the respondent No.1, in that eventuality, the respondents are directed to consider the case of the applicant afresh in the light of the policy for compassionate appointment and such exercise shall be completed within a period of 3 months from today.

9. With these observations, the present OA is allowed with no order as to costs.



(M.L.CHAPMAN)

Member (Judicial)