

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 05.05.2003

OA No.421/2002

Asha Kunwar w/o late Shri Gajraj Singh r/o House No. 2119-  
2120, Near Mistri Khana, Gangouri Bazar, Jaipur

.. 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. Senior Superintendent of Post Offices, Jaipur City Division, Station Road, Jaipur

.. Respondents

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

Mr. T.P.Sharma, 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 8.3.2001 (Ann.1), whereby her request for appointment on compassionate grounds, has been rejected. In relief, she has prayed for quashing the said order and for appropriate directions to the respondents to consider her for a suitable job, on various grounds stated therein.

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

is that:-

2.1 Her husband while working in the Department of

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Posts in the Railway Station Post Office, Jaipur expired on 28.10.91. The deceased left behind two minor daughters and one minor son alongwith the applicant constituting the family. She submitted an application for compassionate appointment. The respondents kept the application in the cold storage for long time and vide the impugned order dated 8.3.01 rejected her case for appointment on compassionate grounds.

2.2 She made a representation dated 2.5.02 (Ann.A2) to the Chief Postmaster General against this arbitrary order but no attention was paid.

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

3.1 An application for seeking appointment on compassionate grounds was submitted on 9.4.97 which was incomplete. The applicant submitted a certificate of movable/immovable property issued by the Tehsildar, Jodhpur in November, 2000 and thereafter the case was submitted to the Circle Office. The applicant was asked to submit reasons for late submission of synopsis forms several times but she failed to intimate the same till submission of the applicant's application to the Circle office. Therefore, the allegation of the applicant in this matter that the respondents kept her application in the cold storage upto a long time is quite baseless. The certificate of movable/immovable property to be issued by the competent authority as called for vide office letter dated 13.11.97 was sent by the applicant only in November, 2000. Thus it is clear that the case remained pending on the part of the applicant for which respondents cannot be held responsible. The applicant has not submitted his

application in time and, therefore, it is barred by limitation.

3.2 The concept of compassionate appointment is mainly related to the need for immediate assistance to the family of the Govt. servant in order to relieve it from economic stress. In the instant case, the applicant applied for job after 9 years. Therefore, the purpose of providing compassionate appointment for rendering immediate relief does not get served. The family is getting family pension of Rs. 1938/- p.m.

3.3 It is the responsibility of the applicant to supply all the information required by the respondents but in the instant case, the applicant did not submit the reasons for late submission. The applicant also submitted a certificate of movable/immovable property issued by the Tehsildar, Jodhpur only in the month of November, 2000. The case of the applicant was considered by the Committee as per the DOPT OM dated 9.10.98 read with OM dated 3.12.99. There was no possibility of appointment of the applicant within a year as stipulated in DOPT OM dated 3.12.99.

3.4 It is pertinent to mention that the applicant applied for appointment after 9 years of the death of her husband which is against the departmental rules contained in the DOPT OM dated 9.10.98. The fresh cases of indigency are required to get precedence over the past cases. There was only one vacancy in the year 2000 for compassionate appointment. The remaining cases including the applicant's case, was rejected after taking into account all the factors.

3.5 Sobha Singh, the daughter of the applicant, is married hence she is the liability of her husband and not the applicant. It is the responsibility of the applicant

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to manage her social work within her source of income.

2.7 With regard to her two applications sent after the receipt of the impugned order, it is submitted that the applicant did not bring out any new facts in the applications. The committee had already considered the case and rejected the same. The respondents have passed the order as per rules.

3.7 It is not admitted that the applicant had submitted all the required certificates in time as per their letter dated 7.11.96. The certificate for movable/immovable property was submitted only in November, 2000.

4. In rejoinder, briefly stated, the applicant has further submitted that:-

4.1 She applied for appointment within 5 years of the death of her husband vide her application dated 24.10.96 - her husband having expired on 28.10.91. The family of the deceased is in distress and facing great difficulties and there is no source of income with the family. The family is not in a position to manage two times of bread. Therefore, the objection of the respondents are baseless.

4.2 Queries were raised by the Department vide their letter dated 13.11.97 (Ann.A4) and the same were replied vide letter dated 9.1.98. In her letter, it was clearly mentioned that there is no property at all with the humble applicant.

4.3 After receipt of the impugned order, the applicant submitted a representation to the respondents in this regard and since no reply was received, this OA was filed on 5.9.02. Therefore, the application is not barred by limitation. However, the applicant has also filed an MA

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for seeking condonation of delay, if any.

4.4 The family is getting a pension of Rs. 1275/- p.m. which is the minimum family pension and at the time of the death of the Govt. servant, the family pension was fixed at Rs. 635/-.

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

5.1 After the case of the applicant was rejected vide impugned order dated 8.3.2001 (Ann.A1), the applicant made representation dated 2.5.2002 (Ann.A2) to the Chief Postmaster General. After waiting for reply, she filed this OA on 6.9.2002. There is also an application for condonation of delay. As per Section 21 of the Administrative Tribunals Act, OA is required to be filed within one year of the final order. The impugned order was issued by the Senior Superintendent of Post Offices and the applicant thereafter made a representation/appeal to the Chief Post Master General. There is an application of condonation of delay. It is admitted by the respondents that the applicant made representation against the order of the Senior Superintendent of Post Offices and that it was not replied. Keeping in view the submissions of the learned counsel for the applicant and the material on record, the delay in filing this OA, is condoned.

5.2 The first contention of the learned counsel for the applicant is that the case of the applicant was rejected as the financial conditon of the family did not appear to be indigent requiring immediate relief for the sole reason that she is getting family pension amounting to Rs. 635/- + DR p.m. and also got terminal benefits of Rs. 61,644/-. He submitted that as per the established

8

law, the respondents cannot come to the conclusion that the condition of the family is not indigent only for the reason that she received some terminal benefits and is getting monthly family pension. He quoted the judgment of the Hon'ble Apex Court in Balbir Kaur and Anr. vs. Steel Authority of India Ltd. and Ors.; [2000 SCC (L&S) 767] in support of his contention. He further submitted that the applicant is now getting Rs. 1275/- p.m. as family pension which is the minimum family pension payable to any deceased's family. He also submitted that she received the terminal benefits to the tune of Rs. 61,644/-. This amount was spent in the marriage of her daughter which took place immediately before he got the impugned order. The family had to take a loan of Rs. 40,000/- in this regard. He further submitted that the rejection of her case on this ground is total non-application of mind of the respondents. We 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 account that the family had received terminal benefits and is getting monthly family pension.

5.3 The second contention of the learned counsel of the applicant is that after having come to the conclusion that the family is not in indigent circumstance, another reason given in the impugned order that since the husband of the applicant expired 9 years back, the purpose of providing immediate assistance does not exist, is also without application of mind. He submitted that it is on record that the applicant applied within 5 years of the death of the deceased employee. The applicant did not apply earlier for the simple reason that she could not

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engage herself in the Govt. job since she was required to attend to her 3 small children who were of the age of 5,6 and 12 years at the time of the death of her husband. It is impossible for a lady to be away from home for about 10 hours and simultaneously look after small children. He further submitted that by doing part time household job for one or two hours, she somehow managed the family. Within 5 years and when the children, although still minor, sufficiently grown, she applied for the job. He further submitted that as per para 8 of the DOPT OM dated 9.10.98 on record, in such cases, there is no restriction for the respondents to consider the case of the applicant for compassionate appointment. He further submitted that in fact the respondents have themselves delayed the case. It is highly improper for the respondents to ask a widow to obtain a certificate from the Tehsildar with regard to possession of movable or immovable property. She had already informed that she does not possess any movable/immovable property. In fact in their earlier communication dated 6.11.96 (Ann.A3) seeking detailed information/documents, they never sought any such certificate. It is only vide their letter dated 13.11.97 (Ann.A4) they sought such a certificate. In any case, it was the responsibility of the respondents to make enquiry through their Welfare Officer or through any officer but she was made to run pillar to post to get that certificate and now the delay is attributed to her. In fact the respondents have themselves delayed the case. We find force in this contention of the learned counsel for the applicant.

5.4 The third contention of the learned counsel for the applicant that another reason viz. 'major period of

children's upbringing over survived for 9 years' itself indicates the total non-application of mind of the respondents. Such a reason, to us, does not appear to be relevant to the case.

5.5 The fourth contention of the learned counsel for the applicant is that the submissions of the respondents that there was only one vacancy for the year 2000 is factually incorrect. He submitted that as per his information, there are about 35,000 posts in Group-C and D cadres including those for Extra Departmental employees. Therefore, under no stretch of imagination even assuming that 2-3% employee retire every year, and that only 50% of the vacancies are meant for direct recruitment and that only 5 % of the direct recruitment vacancies are to be filled under compassionate appointment, only one vacancy cannot arise in the year 2000. He further submitted that as per extant instructions of the DG, P&T, 5% of the vacancies of the Extra Departmental Agents etc. can also be filled through compassionate appointment. The contention of the learned counsel for the respondents is that as per OM dated 11.5.01 issued by the DOPT, only about 3% of staff retire every year. Further, the direct recruitment is required to be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength and, therefore, they cannot fill up all the vacancies that arise during the year. We have perused the said order. We are unable to agree with the learned counsel for the respondents for the reason - (a) that the said order was issued on 11.5.01 whereas the impugned is dated 8.3.2001, (b) this order nowhere states that the restriction is also applicable for appointment on

compassionate grounds, (c) as per DOPT OM dated 9.10.98 containing consolidated instructions on compassionate appointment, it has been specifically mentioned that compassionate appointments are exempted from the ban order for filling up the posts issued by the Ministry of Finance. Unless the posts are abolished, such restrictions cannot apply for appointment on compassionate grounds. The learned counsel for the respondents further submitted that one vacancy was worked out based on vacancies actually filled under direct recruitment quota. We are unable to agree with the contention of the learned counsel for the respondents that the compassionate appointment has to be linked with the actually filling up of the vacancies under direct recruitment quota. Filling up of 5% vacancies through appointment on compassionate grounds is to be based on vacancies arising during a year under direct recruitment quota and not on the basis of actual vacancies filled through direct recruitment.

5.6 The last contention of the learned counsel for the applicant is that the respondents are required to determine the comparative merit of the eligible candidates considered during a year and based on the merit so prepared, the respondents should accord compassionate appointment limiting it to 5% vacancies under direct recruitment quota. While the submission of the learned counsel for the applicant is based on the Govt. instructions, in the absence of specific pleadings and date, it is not possible to comment on the comparative merit of the applicant vis-a-vis the candidate selected.

6. In view of above discussions, we are of the view that the case of the applicant has been rejected without

12

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valid reasons. Accordingly, the impugned order dated 8.3.2001 (Ann. Al) is quashed. The respondents are directed to consider the case of the applicant afresh, after working out the vacancies properly and after determining the comparative merit of the candidates considered and keeping in view our observations, within 3 months from today. No order as to costs.



(M.L.CHAUHAN)

Member (J)



(H.O.GUPTA)

Member (A)