

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 11-08.2004

ORIGINAL APPLICATION No. 502/2002

Jeev Raj Singh son of Late Shri Narain Singh aged about 37 years, residing of House No. 20, Kesargarh, Near Rajasthan Patrika Office, JLN Marg, Jaipur (Rajasthan)

....Applicant.

VERSUS

1. The Union of India through the Post Master General, Near Ahinsa Circle, C-Scheme, Jaipur.
2. The Assistant Director (P), Office of the Chief Post Master General, Rajasthan Circle, Jaipur.

....Respondents.

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

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

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

(PER HON'BLE MR. M.L. CHAUHAN)

The applicant has filed this OA for quashing the impugned order 13.5.2002 and 25.9.2001 (Annexure A/2 and A/7 respectively) and has further prayed that direction be issued to the respondents to grant compassionate appointment to the applicant on the post of Clerk having regard to his qualification as the respondents are having vacancies with them.

2. In brief, the case of the applicant is that father of the applicant, Shri Narain Singh, working on the post of

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Chowkidar in the respondents department died on 30.10.2000 leaving behind the applicant, widow and three daughters. The applicant submitted an application dated 22.3.2001 to the respondent department for granting him compassionate appointment which was rejected vide letter dated 25.9.,2001 on the ground that the applicant is in possession of a residential house at Jaipur and his family condition is sound and children are grown up and widow is receiving family pension and has received terminal benefits on account of death of the deceased. Against this rejection order, the applicant had filed OA in this Tribunal, which was registered as OA No.644/2001. The said OA was disposed of by the Tribunal vide judgement dated 13.3.2002 whereby quashing the letter dated 25.9.2001 (Annexure A/1) and directed the respondents to reconsider the candidature of the applicant for appointment on compassionate grounds within a period of three months from the date of receipt of a copy of this order. It was further observed that if there is a waiting list, the name of the applicant may also be included and consider his case as & when his turn comes. A copy of this order has been placed on record as Annexure A/2. As can be gathered from Para No. 8 of the judgement, the aforesaid direction was given by the Tribunal on the basis that aggrieved widow has to maintain her family and her unmarried daughters who are pursuing their studies. It was further observed that the liability of marriage of the daughters and expenses on education of two daughters cannot be overlooked while considering the case of the applicant. Moreover, there is no breadearner after the death of the deceased. Therefore in the facts & circumstances of this case and settled legal position, the Tribunal observed that merely because widow was paid terminal benefits and she is getting family pension is no ground to deny the appointment on compassionate ground. Pursuant to the direction given by this Tribunal in earlier OA, the respondents again consider the case of the applicant for appointment on compassionate grounds but the same was again rejected vide impugned order dated 13.5.2002 (Annexure A/1). It is in-fact this order which is under challenge in this OA, although the applicant has also prayed for quashing of the order dated 25.09.2001 (Annexure A/7) which order has already been quashed by the decision rendered by this Tribunal in earlier OA.

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3. Notice of this application was given to the respondents. The respondents have filed detailed reply. Alongwith the reply, the respondents have also annexed relevant instructions as well as judgements rendered by this Tribunal in different cases whereby the question of grant of compassionate appointment was considered and it was held that compassionate appointment is an exception to general rule by following the prescribed procedure and no direction can be given to consider the case for compassionate appointment when there is no post available. The respondents have also annexed a copy of the judgement rendered by Jodhpur Bench of the Tribunal in OA No. 109/2003 decided on 18.7.2003, Om Prakash vs. Union of India & Others whereby the Tribunal has held that since the applicant has completed more than 25 years of age at the time of death of his father, the applicant cannot be considered to be a dependent family member for the purpose of grant of compassionate appointment and, therefore, he is not entitled for the relief he has claimed for. On the basis of this as well as other judgements and instructions, the respondents have justified the impugned order Annexure A/1 whereby the case of the applicant for compassionate appointment was rejected.

4. The applicant has also filed rejoinder thereby reiterating the stand taken in the OA. IN the rejoinder, the applicant has also taken additional plea that vacancies are still available with the department and one Shri Ghanshyam Meena, a Class IV employee, who too was in the same office as that of the applicant's father died and his wife has been given appointment on compassionate grounds. Similarly, the Department has also issued notification in Rajasthan Patrika dated 1.1.2004 wherein it has been declared 65 vacancies. Therefore, the contention of the respondents that there are no vacancies is wholly baseless and false.

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

6. The main thrust of the applicant against impugned order as can be seen from the ground, of challenge, as mentioned in Para No. 5 of the OA, is that the case of the applicant has not been considered in the right perspective in the light of direction given by this Tribunal in earlier

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OA. It was incumbent upon the respondents to give appointment to the applicant and it was not legally permissible to make objective assessment of indigenous circumstances of the family again in the light of direction given by this Tribunal. The applicant has also pleaded that his case has been <sup>wrongly</sup> rejected as there were clear cut vacancies available with the Department.

7. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that applicant has not made out any case for our interference for the reasons stated hereinbelow.

8, In regard to the appointment on compassionate ground, the legal position is well settled by the authoritative pronouncements of the Apex Court. A compassionate appointment would depend upon the existence of vacancies available at the relevant time. It is also well settled that appointment is made only by way of exception to the constitutional mandate contained in Article 16(2) of the Constitution of India and it cannot be claimed as a matter of right. No individual has a right to claim that he be appointed to a particular post. In Umesh Kumar Nagpal vs. State of Haryana, 1994 (4) SCC 138, it was held that:

The question relates to the consideration which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. On such exceptions is in favour of the dependants of any employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision, is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family

to tide over the sudden crises. The object not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependants of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitution family of the deceased there are millions of other family which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly unturned.

.... the compassionate employment cannot be granted after a lapse of a reasonable period must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crises which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered wherever the lapse of time and after the crises is over,

9. Yet again in Pushpinder Kumar v. Dte. of Education, 1998(5)SCC192, the Apex Court held:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on

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the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee.

10. The question has also been dealt with in LIC v. Asha Ram Chandra Ambedkar, AIR 1994 SC 2148. In state of Haryana v. Hawa Singh, 1995 Supp(2) SCC 258 = 1996(1) SLJ 22(SC) the Apex Court while considering the entitlement of a son of incapacitated father who retired from service on being found medically unfit for driving heavy vehicles, for compassionate appointment, set aside the direction of the High Court for providing suitable job to one of his son in a post commensurate with the educational qualification possessed by the applicant. In Hindustan Aeronautics Ltd. vs. A. Radhika Thirumala, AIR 1997 SC 123 = SLJ 105 (SC), the Apex Court held that where no vacancies are available, candidate could not insist that he should be appointed on compassionate ground.

11. Yet in another case, Union of India vs. Joginder Sharma 2002(2) SC SLJ 359, the Apex Court has held that appointment could be given against the 5% of the vacancies arising and the Tribunal or the High Court has no right in compelling the Department to relax the ceiling and appoint respondent even mere recommendation or expression of view by an authority at lower level that if relaxation is accorded there is scope for appointment does not compel the competent authority to grant relaxation. Accordingly, the Hon'ble Supreme Court quashed the order of the Tribunal, as affirmed by the High Court. The Apex Court has held that compassionate appointment is intended to enable the family of the deceased to tide over the sudden crisis resulting due

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to the death of the breadwinner, who died leaving the family in penury and without sufficient means of livelihood. It was further held if under the Scheme in force, any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 percent, which is ceiling it is claimed came to be imposed in view of certain observations emanating from the Apex Court in an earlier decision.

12. It will also be useful to quote the decision of the Apex Court in the case of Regional Manager, A.P.S.R.T.C. and Another vs. M. Sampooramma, 1999 SCC (L&S) 1162 where the Apex Court has gone further and held that even if there have been vacancies and once it is found that the decision of the employer is not to make fresh appointment is bonafide, it would not be proper for the Court to question the same and in spite of the decision to that effect, direct the authority to consider appointing the person on compassionate grounds.

13, Having regard to the well settled law, pronounced by the Apex Court, the some of which has been quoted above, now let us examine the matter whether the respondents were justified in rejecting the case of the applicant for compassionate appointment pursuant to the direction issued by this Tribunal in earlier OA <sup>according to applicant's</sup> as case of the applicant was not considered in right perspective. As can be seen from the impugned order, after quoting the direction given by this Tribunal in earlier OA, the Circle Selection Committee deal the matter in the following manner:-

"....Accordingly, the case of the applicant has been considered by the Circle Selection Committee (CSC). The Committee observed that the ex-employee expired on 30.10.2000 after rendering service of 28 years in the department. As per synopsis Part-II, the ex-employee had left wife, one major son (applicant) and three major daughters. The son (Applicant) is married and all the three daughters are unmarried. As per educational qualification, the applicant is eligible for the post of Postman/Mail Guard. The committee also carried out an objective assessment of the financial condition of the family and which revealed that the family has been paid terminal benefits to the tune of Rs.1,89,584/- and the family is getting regular family pension Rs.1720/- + DR P.m. There is no assets or immovable property with the family.

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In view of the orders issued vide DOP&T No. 14014/23/99/Estt(D) dated 3.12.1999 read with Om No. 14014/18/2000-Estt(D) dated 22.6.2001, it has been directed that the committee for considering a request for appointment on compassionate grounds should also take into account the position regarding availability of vacancy for such appointment for a really deserving case and only if vacancy meant for appointment on compassionate grounds is available within a year in the department that too within the ceiling of 5% vacancy falling under direct recruitment quota in the cadre. It is pertinent to mention here that in the context of implementation of programme of down sizing of Central Govt. establishment, the Govt. issued orders to fill up vacancies upto 25% of operational posts by direct recruitment only where the vacancies are less than one year for the recruitment year 2000 and are within the approved norms. For 2001, the Govt. has issued orders that only 1/3rd vacancies should be filled in subject to a further ceiling that this does not exceed 1% of the total sanctioned staff strength of the cadre. As such there has been literally no vacancy since last three years in direct recruitment in Postman/Mail Guard cadre. As 10 candidates approved in the year 1996 and 1997 for appointment in Postman/Mail Guard on compassionate grounds could not be absorbed upto the end of 2001 due to non availability of vacancy. Taking cognizance of the fact that no useful purpose has been served by taking up the case with other departments as they are not able to accommodate dependents of their own employees, DOP&T have now advised that case will not be referred to other departments and their earlier instructions on this issue may be deemed amended to the extent. The concerned authority should recommend the case strictly to the number of vacancies available under 5% quota for this purpose in their own department only.

In pursuance of DOP&T OM No. 42012/4/2000-Estt.(D) dated 24.11.2000, the Department of Posts vide its No. 24-1/99/SPB.I dated 8.2.2001 has discontinued maintenance of waiting list of approved candidates for compassionate appointment immediately.

The Committee has gone through the ruling/instructions/policy governing the scheme of compassionate appointment issued by the DOP&T (the Nodal Ministry) and keeping in view the Supreme Court's ruling, there is no provision for approving cases in the absence of vacancies for compassionate appointment. The only ground which can justify the compassionate appointment is the penurious condition of the family and it should be offered as a relief against destitution. The committee observed in the instant case that all the dependent children have grown up and can contribute to the income of the family by earning their own bread. Moreover, the ex-employee was getting superannuated on 30.6.2002, he had thus reached to the maximum level of all benefits to be received from the department.

Keeping in view the objective assessment of the

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financial condition of the family referred to above and vacancy position, there is no chance to accommodate the candidate within a year, hence the case of the applicant is not recommended for appointment on compassionate grounds by the committee."

14. Thus from the portion as quoted above, it is clear that earlier the case of the applicant was considered by the Circle Committee on 25.9.2001, which letter was quashed by this Tribunal in earlier judgement and the respondents were directed to reconsider the case of the applicant within three months and if there is a waiting list, the name of the applicant may also be included and consider his name as & when his turn comes. When the case of the applicant was considered on 13.5.2002, the case of the applicant was considered in the light of DOP&T instructions dated 3.12.1999 read with dated 22.6.2001 and also DOP&T OM dated 24.11.2002 and Department of Posts letter dated 8.2.2001, as can be seen from the portion quoted above. Admittedly, these instructions were prevalent when the case of the applicant for appointment on compassionate ground was considered for the first time on 25.9.2001. This we are stating because the attempt was made by the learned counsel for the applicant during the course of arguments that his case was considered in the light of subsequent instructions which were issued after the death of father of the applicant who expired on 30.10.2000. According to the learned counsel for the applicant, the applicant got the right of consideration on 30.10.2000 when the father of the applicant died. According to us, the submission made by the learned counsel for the applicant though outside the pleadings made in OA, yet deserves out right rejection. No doubt, the father of the applicant died on 30.10.2000 but the applicant submitted his application for appointment on compassionate grounds on 22.3.2001 (Annexure A/4) which was not on proper format. It appears that subsequently, the applicant was asked to file affidavit thereby giving additional information. Accordingly, the case of the applicant was forwarded immediately to the Circle Selection Committee on 16.4.2001 and ultimately the case of the applicant for compassionate appointment was rejected by the Circle Selection Committee and the applicant was informed vide letter dated 25.09.2001 (Annexure A/1). Thus the relevant date for the purpose of applicability of instruction will be the date when the case

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of the applicant was considered pursuant to submission of his application for compassionate appointment and it cannot be antedated to the period when the Govt. servant has died especially <sup>on that date he was</sup> when such request for compassionate appointment was ever made by the legal heirs of deceased. Thus according to us, the impugned order dated 25.9.2001 (Annexure A/1) cannot be said to be vitiated solely on the ground that the committee has also taken into consideration OM dated 22.6.2001 and 24.11.2000, which OM deals with other aspects as well be clear from observations made hereinafter. Even if for argument sake, it is to be admitted that Memo dated 22.6.2001 and OM 24.11.2000 were not applicable in the case of the applicant and crucial date when the right of consideration has accrued is 30.10.2000 when the death of the father of the applicant took place, it will not materially change the position of this case as vide OM dated 22.6.2001 provisions of para 7(f) of the OM dated 9.10.1998 was amended to the extent that the case will not be referred to other department in case the vacancies are not available in the Department in which the deceased was working. Similarly ~~DOPT~~ DOPT OM dated 24.11.2000 pursuant to which Department of Posts letter dated 8.2.2001 was issued ~~DOPT~~ relates to discontinuance of waiting list of approved candidates for compassionate appointment. These two OMs does not changed the eligibility criteria and factors, which were required to be considered while examining the case of the applicant for compassionate appointment. The facts remains that the case of the applicant was considered for compassionate appointment keeping in view the objective assessment of financial condition of the family and also the fact that there was <sup>no</sup> vacancy available within a year on the basis of prevalent instructions and the case of the applicant was not recommended by the Committee. As such, we see no infirmity in the order dated 13.5.2002 (Annexure A/1), whereby the case of the applicant was rejected. At this stage, we hasten to add that as already held by the Apex Court, that appointment on compassionate grounds cannot be claimed as a matter of right and such appointment is violative of Article 16(2) of the Constitution of India and it is only in exceptional cases that appointment on compassionate grounds can be made where the family is facing financial destitution so as to help the financial crisis. Thus in real sense, there may not be any right for

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appointment on compassionate grounds solely on the ground of death of the employee. At the most, such right, if any, will accrue only after the application for compassionate appointment is made and the matter is considered by the Committee and it is only at that stage that matter is required to be considered in the light of instructions prevalent at that time. Thus according to us, the instructions which were taken note of by the Committee as notified in the impugned order were prevalent and are prior to the date of consideration of the case of the applicant i.e. 25.9.2001. Conversely can it be said that a person who has died in the year 2000 and if no application for compassionate appointment is made, say for two year and the case is subsequently considered by the Committee in the year 2002/2003 against the vacancy available for the year 2002/2003, can it be said that the case for compassionate appointment should be considered on the basis of instructions which were prevalent in the year 2000 especially when no such post was vacant at that time? According to us, it will be absurd to hold that it will be the instructions which were in force in the year 2000 which will be applicable in the case of a person even though there was no such application pending and application for appointment for compassionate ground was for the first time made in the year 2002/2003, as contended by the learned counsel for the applicant in the present case. Be that <sup>as it</sup> may, since we have already held that the case of the applicant for compassionate appointment was considered in the light of DOPT instructions dated 3.12.1999 and subsequent DOPT instructions dated 22.6.2001 and 24.11.2000 and Department of Posts letter dated 8.2.2001, does not deal with the criteria to be followed while making compassionate appointment and the said instructions only deal with the aspect that in case the vacancies are not there in the Department, there is no need to refer the case to other department and also deal with discontinuance of waiting list, which practice was prevalent prior to 24.11.2000, no assistance can be derived from these instructions. In fact, reference to DOPT instructions dated 24.11.2000 and Department of Posts letter dated 8.2.1001 appears to have been made in the impugned order pursuant to the direction given by this Tribunal in earlier OA whereby it was stated that if there is any waiting list, the name of

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the applicant may also be included and consider his case as & when his case comes. It was in that context that finding has been referred in the impugned order dated 13.5.2002 (Annexure A/1) that maintenance of waiting list of approved candidates for compassionate appointment has been discontinued in pursuance of the DOPT instructions dated 24.11.2000 and Department of Posts letter dated 8.2.2001 which letter was issued pursuant to DOPT instructions dated 24.11.2000. Since there was no vacancy, finding recorded by the Department vide Annexure A/1 that the case of the applicant cannot be recommended for appointment on compassionate grounds cannot be faulted, in view of law laid down by the Apex Court, as reproduced in earlier part of the judgement. The finding recorded by the Committee that the family is not facing indigenous condition and the fact that in the instant case, all the dependants have grown up and can contribute income of the family by earning their own bread and also that Ex-employee who was getting superannuated on 30.6.2002 had already reach to the maximum level of all benefits to be received from the department and the fact the family has received terminal benefits to the tune of Rs.1,89,584/- and the family is getting regular pension of Rs.1720/- plus D.R. per month cannot be said to be wholly arbitrary. Even according to own showing of the applicant and as per averment made in Para 5(e) of the OA, it has been stated that as against a sum of Rs.8000 - Rs.9000/- per month, which the deceased was drawing, the present family is receiving only Rs.4000/- for maintenance of the family. It may be stated that deceased was not entitled to receive Rs.8000 to Rs.9000 per month for all time to come. At the most he would have received this amount for less than two years as in any case the date of retirement of the deceased was 30.6.2002. After that the income of family would have been what the family was receiving after the death of Government Servant. Thus it cannot be said that the financial condition of the family is such that it is difficult to tide over the sudden crisis. In the case of Umesh Kumar Nagpal vs. State of Haryana (supra), the Hon'ble Supreme Court has observed that "it must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally if not more destitute." Further, it has also been held that nobody has the fundamental or statutory

right to get employment on compassionate grounds and appointment on compassionate grounds is granted when the employee dies in harness and leaving his family in penury and without any means of livelihood. In this case, the applicant was of 36 years at the time of death of the deceased and he cannot be considered to be dependant of the family for the purpose of grant of appointment on compassionate. The Jodhpur Bench of the Tribunal in the case of Om Prakash vs. Union of India & Others in OA NO. 109/2003 decided on 18.7.2003 has specifically held that the person who has admittedly completed 25 years of age at the time of death of his father cannot be said to be dependant member of the family for the purpose of grant of compassionate grounds and he is not entitled for the compassionate appointment.

15. The learned counsel for the respondents argued that as can be seen from Para No. 3 of the earlier judgement dated 13.3.2002 the fact that the case of the applicant for grant of compassionate appointment was also rejected on the ground of non availability of posts, as such, it was not legally permissible for the Tribunal to give direction to reconsider the case of the applicant for compassionate appointment even if the relevant factors was not taken into consideration while rejecting the case of the applicant for compassionate appointment. The learned counsel for the respondents further argued that despite this fact, the case of the applicant was reconsider by the Committee and the same was rejected vide impugned order dated 13.5.2002 (Annexure A.1) on merits as well as keeping in view the financial condition as well as vacancy position.

16. We have perused the earlier impugned order dated 25.9.2001 (Annexure A/7) which has been quashed by this Tribunal in earlier OA. In that order, the fact that case of the applicant was also rejected on the ground of non availability of vacancy, has not been mentioned. Although in the reply, the respondents have specifically stated that the case of the applicant was rejected on merit as well as on the basis of non availability of vacancy. It may be on that basis that this Tribunal in earlier OA had given direction to the respondents to consider the case of the applicant for compassionate appointment and simultaneously directed that if

there is a waiting list, the name of the applicant may be included and consider against future vacancies. Obviously, the last para of the direction given by the Tribunal was probably on the basis of the stand taken by the respondents that there are no vacancies available. Since maintenance of waiting list was already discontinued by the department and this fact was not probably brought to the notice of the Tribunal in earlier judgement, as such, the direction regarding maintenance of waiting list was issued by the Tribunal at that time. The facts remains that at the relevant time, there was no vacancy available against which, the applicant could have been recommended for appointment on compassionate grounds. The contention putforth by the learned counsel for the applicant in the rejoinder that in the year 2004, 65 vacancies were notified cannot invalidate the impugned order as the position of vacancies has to be seen when the case of the applicant was considered by the Committee. In any case it has come on record that as many as ten candidates, who were approved in the year 1996-97 for appointment for the post of Postman/ Mail Guard could not be absorbed upto the end of 2001 due to non availability of vacancies. This fact conclusively proves that till 2001 there was no vacancy available with the Department for making appontment on compassionate grounds. Further contention of the learned counsel for the applicant that in view of earlier judgement of this Tribunal, it was not permissible for the Committee to make objective assessment in indeginent circumstances of family and respondents should have given appointment to the applicant irrespective of vacancy cannot be accepted, <sup>non-availability</sup>

17. For the reasons stated above and in view of law laid down by the Apex Court, there is no force in the OA and the same is dismissed. No costs.

  
(A.K. BHANDARI)

MEMBER (A)

  
(M.L. CHAUHAN)

MEMBER (J)

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