

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH:JAIPUR

Original Application No. 163/2003

Date of decision : this the **13th April, 2004**

Hon'ble Mr. J.K.Kaushik, Judicial Member

Hon'ble Mr. M.K.Misra, Administrative Member

Ram Bharos Upadhayay aged 27 years
S/o Late Shri Gujarmal Sharma, R/o Village
And Post Barodia, Via Shahpura, District Jaipur.

[By Shri B.M.Gurjar, Advocate for applicant]

.....Applicant.

Versus

1. Union of India through Secretary,
Department of Posts,
C.G.O. Complex, New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur.
3. Secretary, Public Grievances,
Cabinet Secretariate, Public Grievances,
Government of India, 2nd Floor,
Sardar Patel Bhawan, New Delhi.

[By Shri B.N.Sandu, Advocate for the respondents 1 and 2]
[None present for the respondent No. 3]

Order

[By M.K.Misra, Administrative Member]

The applicant Shri Ram Bharos Upadhayay, has filed O.A. No. 163/2003 assailing the impugned order dated 8.2.2002 by which the applicant was denied to be appointed as Gramin Dak Sevak (GDS) (Earlier EDDAs) on compassionate ground as the applicant had shown his unwillingness on 12.9.2001 towards appointment as GDS.

(M.K.Misra)

2. With the consent of both the counsel for the parties, the case was heard at the admission stage for final disposal.

3. Briefly, the facts of the case are that the father of the applicant Late Shri Gurjar Mal Sharma, worked as Postman at Kotputli District Jaipur who expired on 18.12.1992 while he was working in the Post Office. The mother of the applicant Smt. Shanti Devi widow of late Shri Gurjar Mal Sharma, applied for getting appointment on compassionate ground of her son Shri Ram Bharos. The compassionate appointment of the applicant was approved by the respondent No. 2 vide letter dated 20.8.1996 (Annex.A/2). By the above letter, applicant was asked to work as a Postman. Later on, as per Annexure A/3, letter dated 9.9.1998, applicant was informed that as per the Instructions of the Department of Personnel and Training vide letter dated 14.6.1995, his appointment as a Postman has been deferred to for the time being and his name has been put under waiting list and he would be given appointment as and when his turn comes. Vide letter dated 4.8.1999 (Annex.A/4), the applicant was appointed as a Postman at Jaipur City. The formal communication was made to him vide letter dated 18.8.1999 (Annex.A/5) regarding his appointment as Postman at Jaipur City. The main grievance of the applicant is that despite the fact that appointment has been made on compassionate ground as mentioned above, the applicant was informed vide letter dated 12.6.2000 that due to non availability of vacancies his appointment is not possible. Later on, the applicant was offered

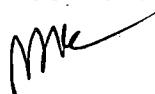


appointment on the post of G.D.S. but, applicant had shown his un-willingness to join the post of GDS. The mother of the applicant made a representation to the Secretary in the Cabinet Secretariat Public Grievances Office, New Delhi, making a request for appointment of her son on compassionate grounds. A reply was sent by the Cabinet Secretariat to the mother of the applicant the relevant part of which reads as under :-

"..... . As such the waiting list discontinued. However to accommodate these candidates, their willingness for appointment to GDS (Gramin Dak Sewaks) (Earlier EDDAs) were called for but shri Ram Bharos has sent his unwillingness on 12.9.2001 for appointment as GDS. Thus the appointment of the complainant's son is not possible now.

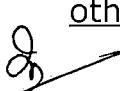
We have examined the above reply in view of the facts and circumstances of the case. We regret that the grievance could not be redressed as requested by you. We are now closing the reference in DPG."

4. The learned counsel submitted that denial of appointment on compassionate ground to the applicant by the Cabinet Secretariat is contrary to law and against the spirit of the compassionate appointment. The appointment on compassionate ground is given on the indigent conditions of the deceased's family and in this case, the appointment was already approved and the applicant was intimated about it and thereafter intimation was sent to the applicant about his name being entered in the waiting list due to non-availability of the vacancies immediately. Hence, it was prayed that the impugned order dated 8.2.2002 should be quashed and the respondent No. 2 be



directed to give him appointment on the post of Post Man or to some other suitable post.

5. In reply to the O.A. the respondents submitted that as per the educational qualifications of the applicant, it was found that the applicant was eligible for being appointed as a Postman and his name was kept in the waiting list of approved candidates at Sl. No. 20 and he was also allotted Jaipur City, but in the meantime, the Department of Expenditure, Ministry of Finance, vide letter dated 5.8.1999 imposed a ban on filling up the vacant posts till a review of all the posts is carried out. In the review, 21 posts in Postman cadre were found to be surplus in Jaipur City, therefore, due to non availability of vacancies in the Postman cadre, the applicant was not given appointment and was again kept in the waiting list. A ceiling of 5% of the direct recruit vacancies was put for appointment on compassionate grounds. It was also instructed that no waiting list should be maintained for the purpose of compassionate appointments, therefore, the system of maintenance of waiting list of approved candidates for compassionate appointments was immediately discontinued. However, the applicant was offered appointment to the post of GDS but he showed his un-willingness vide letter-dated 12.9.2001, hence, no appointment was given to the applicant. The learned counsel for the respondents further submitted that the right to claim appointment on compassionate ground is not available to the applicant as held by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and others reported in JT 1994 (3) SC 525. It was also contended



vehemently by the learned counsel for the respondents that Hon'ble the Supreme Court in the case of Union of India Vs. Jogendra Pal Sharma reported in 2002 (1) SCC 65 has held that the Court cannot direct the respondents to provide appointment on compassionate grounds to create vacancies beyond the ceiling of 5%.

6. We have considered anxiously the various averments made by the learned counsel for both the parties and also perused carefully the records/pleadings. As per the executive instructions the compassionate appointment is to be made out of 5% of the vacancies meant for direct recruitment. As per the instructions presently at vogue, no waiting list is to be maintained on this account and the appointment is to be made purely on indigent circumstances leading to financial crisis. It is also a fact that nobody has a right to claim appointment on compassionate grounds and as per the verdict of the Apex Court, the Tribunals/Courts has no power to direct the Government to create vacancies beyond the ceiling as prescribed by the Government. It is also observed that the case of the applicant was duly considered and respondents tried to accommodate him in a best possible manner but due to instructions issued by the Government of India from time to time, the applicant could not be accommodated as per his choice. However, he was offered appointment on the post of GDS but, due to his unwillingness communicated to the respondents, he could not get appointment on compassionate grounds in the postal department. All these

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facts go to suggest that there is no arbitrariness on the part of the respondents and the respondents were at full sympathy towards the applicant. The compassionate appointment is an exception to the general rule that the appointment to public service should be made on merits and through open invitation. In such cases, the appointment is given to a member of the family of the deceased employee by accommodating him in a suitable vacancy. The object is to give relief to the family, which has been suddenly plunged into penury due to untimely death of its sole breadwinner. There is no such principle as endless compassion and the claim would stand extinguished once one of the posts applied for is offered.

7. In the premises, we are of the considered view that the claim of the applicant is not justified; hence, the O.A. stands dismissed with no costs to the parties.



[M.K. Misra]
Administrative Member



[J.K. Kaushik]
Judicial Member

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