

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

ORIGINAL APPLICATION No. 228/2003

Jaipur, the 25th day of January, 2005

CORAM:

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

Tejpal Meghwanshi s/o
late Shri Ram Chandra Balai,
aged about 25 years
r/o 18, Shiv Colony,
Near Dadabari, Sanganer Jaipur,
aspirant of appointment on
compassionate grounds on the
post of Postman/Postal Assistant.

.. Applicant

By Advocate : Shri C.B.Sharma

Versus

1. Union of India
through its Secretary to Govt. of India
Department of Posts,
Ministry of Communication,
Dak Bhawan, New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Senior Superintendent of Post Offices,
Jaipur City, Postal Division,
Jaipur.
North West Railway,
Ajmer.

.. Respondents

By Advocate: Shri Tej Prakash Sharma

ORDER

Per M.L.Chauhan, Member (J)

The present application is made against the letter dated 3-5-3.2003 whereby the case of the applicant for appointment on compassionate grounds has been rejected by

the respondent No.2 taking into consideration financial condition of the family and also the vacancy position. In the present Original Application, the applicant has prayed that the impugned order dated 3-5.3.2003 (Ann.A1) be quashed and the respondents be directed to consider the case of the applicant and to give appointment to the applicant on any suitable post on compassionate grounds.

2. Briefly stated, the father of the applicant, late Shri Ram Chandra Balai, who was a substantive employee of the Postal Department expired on 18.1.1995. At the time of death of the father of the applicant, the family consists of following members:-

1. Smt. Surja Devi - widow
2. Kamla Daughter married in 1994
3. Tej Pal Meghwansi - son/applicant aged about 17 years at the time of death and at present 25 years - unmarried.
4. Madhu - daughter aged about 7 years at the time of death and at present about 15 years - unmarried.
5. Ashok - son aged about 5 years at the time of death and at present of 13 years - unmarried.
6. Veena - daughter aged about 2 years at the time of death and at present about 10 year - unmarried.

After the death of the father of the applicant, mother of the applicant Smt. Surja Devi applied for appointment on compassionate grounds on 22.12.95. She was requested to fill up synopsis forms required for the purpose vide letter dated 22.12.1995 and the same were received back on 21.11.96. The synopsis forms were sent to the Public Relation Inspector (Postal) Gandhinagar Post Office, Jaipur for verification on

21.11.96. The mother of the applicant was asked to supply the certificate of educational qualification of the applicant on 19.12.1996 and the same was submitted on 3.1.97. The complete case of the applicant was forwarded to the competent authority i.e. The Chief Post Master General, Rajasthan Circle, Jaipur (respondent No.2) for consideration vide letter dated 3.1.97 and 27.1.97 but due to non-availability of vacancy since last three years for the purpose, the case of the applicant was not considered. However, on the availability of the vacancy, the case was considered by the Circle Relaxation Committee (in short, CRC) on 28/29.1.2002 in the light of the instructions issued by the Department of Personnel and Training OM dated 9.10.98 followed by clarification vide OM dated 3.12.99, 20.12.99, 28.12.99 and 24.11.2000 but the Committee after objective assessment of the financial condition of the family did not find the case as indigent one and hence the same was rejected. It is further averred that the applicant has also acquired qualification of 10+2 standard and intimation to this effect was given to respondents vide application dated 25.4.2000. It is further case of the applicant that he consistently pursuing the matter with the respondents and it is only after 7 years that the case of the applicant was considered for the post of Postman instead ^{of} _h Postal Assistant and was rejected. It is further stated that there are vacancies available with the department and the family is now receiving 50% of the pension, as such it is a case where compassionate appointment should have been granted to the applicant.

3. The respondents have filed reply. The facts as stated above, have not been disputed except that after the death of the father of the applicant, case of the applicant

could not be considered due to non-availability of vacancies since last 3 years. However, on the availability of vacancies, the case of the applicant was considered by the CRC on 28.9.2002 in the light of instructions issued by the DOPT dated 9.10.98 followed by further clarifications. It is stated that the Committee after objective assessment of financial condition of the family did not find the case as indigent one and hence was rejected. It is further stated that the Government of India, Ministry of Personnel, Public Grievances and Pension (nodal Ministry) has formed policy for appointment on compassionate grounds keeping in view all the principles, directions, laid down by the Hon'ble Supreme Court of India in various judgments in the matter. Para 17 of the OM dated 9.10.98 is self explanatory. It is further stated that as per educational qualification, the applicant was eligible for Postman cadre. His case was considered along with the cases of candidates who were eligible for Postman/Mail Guard cadre. It is further stated that the case of the applicant was not rejected solely on the ground of terminal benefits, but the CRC has considered the case in the light of the scheme on compassionate appointment with the relevant documents for taking into consideration liabilities of the family, financial condition as well as availability of vacancy for the purpose. The Committee did not find the case as indigent, hence the case of the applicant was rejected.

4. The applicant has also filed rejoinder. In the rejoinder, it has been specifically stated that one Smt. Gayatri Devi w/o late Shri Ramavtar Sharma, who expired in 1996, has been extended appointment in the year 2002 in

spite of the fact that her family is not so indigent in comparison to the applicant. In order to satisfy whether the case of the applicant was properly considered by the CRC and as to whether the appointment has been extended to person who was less indigent as compared to the applicant, the respondents were directed to file further affidavit. The respondents have filed additional reply to the rejoinder. In the additional reply, it has been stated that as per the educational qualification, the applicant was eligible for Postman cadre. His case was considered along with the cases of candidates who were eligible for the post of Postman/Motor Guard cadre, where ^{as} Smt. Gayatri Devi as per her educational qualification, was eligible for Postal Assistant/Sorting Assistant. Hence, the applicant was not considered with the case of Smt. Gayatri Devi. The respondents have also annexed a comparative chart of the candidates who were approved for the cadre of Postman/Mail Guard, which has been annexed with the additional reply as Ann.R8.

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

5.1 The learned counsel for the applicant has raised two fold arguments namely, that the appointment cannot be denied appointment on compassionate ground on account of policy framed subsequently and also that his case should have been considered against the post of Postal Assistant.

5.2 I have given thoughtful consideration to the submissions made by the learned counsel for the applicant and is not inclined to accept the same. It is admitted fact that after the death of father of the applicant on

18.1.1995, application was submitted in complete respect on 3.1.97 which was forwarded to respondent No.2 vide letters dated 3.1.97 and 27.1.97. At that time the applicant was not admittedly eligible for the post of Postal Assistant as he was only matriculate. He attained 10+2 qualification in the year 2000. Thus, the contention of the learned counsel for the applicant that his case should have been considered against the post of Postal Assistant cannot be accepted for more than one reason. Firstly, right for compassionate appointment in favour of the family of the deceased accrued in the year 1995 after the death of the father of the applicant and application in complete respect in that behalf was made in the year 1997. As such, the matter for appointment on compassionate grounds has to be considered on the basis of position existing in the year 1997 when such application was made. Thus, it cannot be accepted that since the applicant has attained higher education for the post of Postal Assistant in the year 2000 and his case was pending for consideration, his case for compassionate appointment ought to have been considered for the post of Postal Assistant simply because he has given intimation to that effect to the authorities. As can be gathered from the facts as stated above, the only application which was pending for consideration before the authorities was for the post of Postman and not for the post of Postal Assistant. In case the applicant was desirous of his consideration for the post of Postal Assistant, in that eventuality, it was open to him to withdraw his earlier application and to re-submit the particulars in the prescribed proforma again thereby intimating the financial status of the family. Having not done so, simply because

he has intimated regarding his higher qualification to the authorities will not, ipso facto entitle the applicant for his consideration to the post of Postal Assistant. Further, it is judicially settled that it is not for the applicant to emphasize on the authorities that he should be given appointment against a particular post and the discretion completely lies with the authorities to consider the case of the applicant against appropriate post. Once the case of the applicant has been considered against the post of Postman and he could not be given appointment against the said post as the appointment has been given to a person who is more indigent than the applicant, he cannot be permitted to argue that his case should have been considered against the post of Postal Assistant. So far as the second contention of the applicant is concerned that appointment cannot be denied on account of policy framed subsequently is of no significance. As can be seen from the material placed on record, the case of the applicant was not initially considered due to non-availability of vacancy. However, on availability of vacancy, the case of the applicant was considered by the CRC on 28/29.2.2002. Since there was one vacancy of Postman, Shri Rajendra Khorwal was given appointment on compassionate grounds. The applicant has placed on record comparative chart of the candidates considered for compassionate appointment for the post of Postal Assistant/Motor Guard against the vacancy of 2000 as Ann.R1. From perusal of this document, it is quite evident that the case of Shri Rejendra Khorwal who was approved for appointment for the post of Postman/Motor Guard was more indigent as compared to the applicant. In the case of Rajendra Khorwal, the ex-employee died on

4.12.92. Family pension of Rs. 375/- + DR and terminal benefits of Rs. 26,888/- were received by the family and there were 5 dependents in the family, one son and all three daughters were unmarried and minor. As compared to this, in the case of the applicant, his father expired on 18.1.96 and the family is getting family pension of Rs. 500 + DR and received terminal benefits of Rs. 66,169/- and out of 5 dependents there were only one minor son and 2 daughters. Thus, from this comparative statement, it is clear that the case of the applicant was less indigent than the selected candidate Shri Rajendra Khorwal. Thus, I see no infirmity in the impugned order dated 3/5.3.2003 (Ann.A1) whereby the case of the applicant was rejected on account of vacancy position and after objective assessment of financial condition of the family. Thus, reference made by the respondents to instructions dated 9.10.98 and further clarifications issued vide OM dated 3.12.99, 20.12.99, 28.12.99, 24.11.2000 and 2.6.2001 is of no consequence even if the same were relied by the respondents while considering the case for compassionate grounds. The fact remains that in the year 2000 there was one vacancy in the cadre of Postman and the person appointed against that post is more indigent to the applicant. The learned counsel for the applicant also relied upon the decision of this Bench rendered in OA No.505/2001, Suresh Kumar Meena vs. Union of India decided on 29.10.2002 and subsequent decision in OA No.535/2003, Ashok Kumar Meena vs. Union of India decided on 20.7.2004 in which reliance was also made to the earlier judgment. According to me, these judgments are of no assistance to the applicant. One of the issue which was under consideration before the Bench was that appointment on

compassionate grounds can be given within one year stated in the memorandum dated 3rd December, 99. The Bench held that if the vacancy is not available within a year, the dependents of the deceased employee would be debarred from employment. It was further ~~observed~~ that the scheme of providing compassionate appointment is wrongly interpreted and it will defeat the purpose for which it was formulated. That is not the case in this OA. The case of the applicant has not been rejected on that count. Rather it appears that subsequently the Government of India have themselves issued OM dated 5.5.2003 which stipulates that if there is no vacancy within the first year of the death of the deceased employee, the case should be reviewed up to 3 years. Further, the applicant has not made out a case in the light of the conditions stipulated in OM dated 5.5.2003 as the Committee has not found the case of the applicant to be deserving. On the other hand, the respondents have relied upon the judgment of this Tribunal in the case of OA No.195/2003, Smt. Kavita Parnami vs. Union of India decided on 8.1.2004 where the facts were almost identical and in that case also the family consist of 5 members including four minor children and husband of the applicant in that OA also died in the year 1996 and this Tribunal declined to interfere in the matter.

5.3 At this stage, it will be useful to quote para 10 and 11 of the judgment rendered by the Apex Court in the case of State of Manipur vs. Md. Rajadin, 2004 (1) ATJ 687 whereby legal principles as laid down by the Apex Court have been notices and thus reads:-

"11. In Sushma Vosain vs. Union of India (1989) 4 SCC 468 it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of

providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specially otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati vs. Union of India*, 1991 Supp (2) SCC 689 and *Union of India vs. Bhagwan Singh* (1995) 6 SCC 476. In *Director of Education (Secondary) vs. Pushpendra Kumar* (1998) 5 SCC 192, it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely 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, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that 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 those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

12. In *State of U.P. vs. Paras Nath* (1998) 2 SCC 412 it was held that the purpose of providing employment to the dependent of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was of 17 years."

When the case of the applicant was considered in the panorama of the aforesaid legal principle, the inevitable conclusion is that he is not entitled to appointment and in the matter of compassionate appointment he cannot insist for a particular post as laid down in the case of *Director Education (Secondary)*. The fact remains that the family has been able to survive for these years itself shows that the family is not in such a indigent condition.

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6. For the reasons stated above, the Original Application is dismissed with no order as to costs.



(M.L. CHAPMAN)

Member (Judicial)