

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of Decision: 18/5/04

Original Application No.285/2003.

Hitesh Kumar Balam S/o Late Shri Ramesh Kumar Balam R/o 676,  
A/25, Paharganj, Ajmer.

... Applicant.

v e r s u s

1. Union of India through Secretary, Department of Posts,  
Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Supdt. of Post Offices, Bhilwara Postal Division, Bhilwara.

... Respondents.

CORAM :

HON'BLE MR. A.K. BHANDARI, MEMBER (A)

For the Applicant  
For the Respondents

... Mr. C. B. Sharma  
... Mr. D. P. Singh, proxy counsel  
for Mr. N. C. Goyal

ORDER

PER HON'BLE MR. A. K. BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 is directed against the impugned order dated 13.3.2003, by which compassionate appointment to the applicant has been denied even though his financial condition is stated to be indigent.

2. Brief facts of the case, as mentioned in the OA, are that father of the applicant expired at the age of 50 years on 27.8.2001 leaving behind widow and three unmarried children, two of whom are daughters aged 21 and 19 years respectively and age of the applicant at the time of death being 23 years. The general financial status of the family was poor. The widow received terminal benefits consisting of DCRG, GPF, Insurance

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Fund and Leave Encashment amount to the tune of Rs.560151/- and is getting family pension of Rs.2676/- including allowance which would get reduced after seven years of death. Substantial amount of terminal benefits has been spent on payment of loans taken by the deceased government servant before his death. The application for compassionate appointment alongwith supporting documents were submitted to the respondents, but the same has been rejected by the impugned order on the basis of terminal benefits received by the widow and non-availability of vacancy. It is further stated that the financial condition of the family is bad as one below poverty line, the father of the applicant had taken many loans and pensionary benefits got exhausted in repayment, educational and matrimonial needs etc. It is stated that the respondents did not consider the application in year 2001 and kept it pending without any reason even though applicant reminded them a number of times, and then only it was considered in year 2003. It is also stated that this case is fit for reconsideration as currently the family is living in miserable condition and would fully justify government employment for the eligible son i.e. the applicant. Besides the marriage of all the children is due, they have no moveable or immoveable property and the condition has sharply as none in the family is gainfully employed. In the application, the para -16 of OM dated 9.10.98 of the DOPT has been quoted to emphasize that compassionate appointment should not have been rejected merely on the ground that family of the government servant has received benefits under various welfare schemes namely pensionary benefits. That a balance and objective assessment of the financial condition of the family is to be done and the same has not been done in the instant case. The assets and liabilities of the family have not been assessed objectively. The applicant is fully qualified having passed 10+2 Examination. The contention of the respondents that there is paucity of vacancies has been challenged on the basis of letter dated 10.11.2000 (Ann.A/3) in which reference of 350 vacant posts of Postal Assistant in year 2000 has been made.

3. In the grounds, the impugned action has been branded erroneous and unjustified, therefore, arbitrary because correct assessment of the financial condition of the family has not been objectively made and the same is going to version when family

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pension is reduced by 50% after seven years of death of the deceased government servant. Respondents' action is illegal because it is contrary to the instructions and the spirit of the scheme of compassionate appointment. It is violative of provisions of the Constitution for the same reason. Hence this OA.

4. Respondents have given a detailed reply. It is stated that the applicant was eligible for the post of Postal Assistant and was considered for compassionate appointment by the Circle Relaxation Committee (CRC) in its meeting held on 21.1.2003. The Committee considered the case alongwith other cases as per existing rulings and instructions contained in various circulars which have been annexed as Annexures R/1 to R/8. It is stated that the object of the scheme is to provide immediate assistance to the family of the deceased government servant who due to sudden death of bread winner face financial crisis. However, The Scheme is not to ensure that in each and every case compassionate appointment is given. The Committee is required to take into consideration the number of vacancies available for such appointment and is required to limit the recommendations within them. As per rules, compassionate appointment can be given limited to 5% of direct recruitment vacancies within a year and within the optimisation policy of the Government of India contained in circular dated 16.5.2001 (Ann.R/6). According to this, remaining vacancies meant for direct recruitment which are not clear by the Screening Committee cannot be filled up by promotion or otherwise and those posts stand abolished. Briefly, the scope of recommendation is, therefore, very limited. Therefore, recommendations can be made only in very hard and deserving cases.

5. Regarding consideration of this case, it is stated that the Screening Committee had approved 34 posts for direct recruitment quota for the year 2001, 5% of this i.e. two posts were earmarked for compassionate appointment as Postal Assistant and after objective assessment of 44 cases, including that of the applicant, two most deserving cases were shortlisted and the rest had to be rejected due to non-availability of the CRC held on 21.1.2003 is annexed as Ann.R/9. The decision of the CRC was communicated to the applicant through Superintendent of Post

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Offices, Bhilwara, vide letter dated 13.3.2003 (Ann.A/1). In the parawise reply specific contentions of the applicant have been replied like the family pension of the widow is not Rs.2676/- all inclusive but Rs.2676/- + DA Rs.1418 = Rs.4094/-, which is more than the initial pay of a Group-D employee in government service. This alongwith the terminal benefits amounting to Rs.560151/- compared better than the two cases which were approved by the CRC. Regarding loans, it is stated that the same were not projected to the respondent department in the documents attached with the application. In the application the position of loan liability has been shown as 'nil', as proved by Ann.R/10. Contention about 350 vacancies is denied on two grounds; firstly, Ann.A/3 is a part of general correspondence between two functionaries and is not conclusive on the fact of number of vacancies, Secondly; this correspondence is also about vacancies in year 2000, whereas the year of consideration of instant case was year 2003. The allegation of delayed action on his application is denied on the basis of applicant's mother's letter dated 2.5.2002 (Ann.R/11), by which she had replied to the Superintendent of Post Offices, Bhilwara, that she would make the application for compassionate appointment a month later because her son, the applicant, has just appeared for Class-XIith Examination and the results were expected within a week's time. By this it is clear that she herself was not keen for consideration of the applicant earlier to this date. Finally, the application with proof of applicant having passed 10+2 Examination was received on 27.11.2002 and the case was submitted for consideration by CRC in its meeting held on 21.1.2003. Grounds of illegality are denied because the whole deliberation has been done in meticulous compliance of rules and guidelines on the subject and there has been no arbitrariness in it because objective comparison of the available cases was done and more indigent candidates were considered for compassionate appointment. Regarding deterioration of financial condition due to re-payment of loans, a decision of Jodhpur Bench of this Tribunal in OA 180/2000, Mohsin Ali vs. Union of India & Ors., decided on 6.6.2003, has been cited as Ann.R/12, in which it is held that loan taken by applicant, may be for construction of house or purchase of some other item and the same was made to capitalise property, in no way it can be constructed as a liability.

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6. During arguments, learned counsel for the applicant repeated his pleadings but emphasised that the determination of vacancies by the respondents is inaccurate as also interpretation of the rule regarding 5% of the vacancies being available for compassionate appointment. Regarding deliberation of the CRC, it was stated that Ann.R/9 is only a list of cases considered and not proof of fact that applicant was less deserving than the cases recommended by the Committee. Learned counsel read through the experts of various circulars to reassert his claim that pensionary benefits should not weight heavy while considering the cases and actual objective assessment of assets and liability be done to decide the matter. He also cited two earlier cases, one each of Jaipur Bench of this Tribunal in OA 505/2001, Suresh Kumar Meena vs. Union of India & Ors., decided on 29.10.2002, and Rajasthan High Court dated 31.1.2003, passed in D. B. Civil Writ Petition NO. 2147/2002, Suresh Kumar Sharma vs. Union of India & Ors., to emphasize that similar cases have been decided favourable by Courts and in view of this the OA may be allowed.

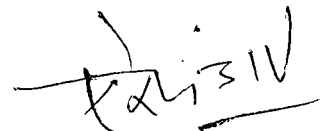
7. Learned counsel for the respondents, on the other hand, re-emphasised his pleadings on record and stated that the consideration of the case was indeed objective, strictly as per rules and regulations, was based not on consideration of pensionary benefits alone but also after taking into consideration very limited number of vacancies available for compassionate appointment and the stipulation that recommendation has to be confined within that number. He also asserted that the family pension in this case is more than the initial pay of a Group-D employee. IN view of these, the OA deserves to be dismissed.

8. I have given careful consideration to all the facts of the case and the pleadings. Although comparative chart of the cases considered by CRC has not been put up, It is clear from the pleadings that the family of the deceased government servant received pensionary benefits to the tune of Rs.560151/- and the widow is receiving family pension of Rs.4094/- including DA per month. I have no reason to dis-believe the statement of the respondents on oath that they have granted appointment for two vacancies of Postal Assistant available to them to more indigent

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cases then the applicant. In order to clarify counsel for the applicant's doubt regarding method and calculation for determination of vacancies for compassionate appointment I have gone through the rules again and find that if total number of direct recruitment vacancies of Postal Assistant in the year were 34 which respondents have stated under oath in affidavit, only two posts and not more were available for compassionate appointment, as such, the challenge that respondents have calculated the vacancies erroneously is not sustainable. The alleged delay on part of the respondents in dealing with the application has been disproved because widow was keen that her son's case should be considered only after applicant had passed 12th Class Examination which is amply proved on record. Having considered these basic premises, I find that in terms of Rules and guidelines, the application of compassionate appointment has been rejected by the respondents justifiably. Regarding case law cited by the learned counsel for the applicant, the facts of them are very easily distinguishable from the facts of this case and, therefore, not considered relevant here. Therefore, this case is not considered fit for any interference by the Tribunal. However, at the time of death of the deceased government servant, age of the applicant was 23 years and at the time of decision of this OA he is nearly 25 years of age. As per earlier decision of Jodhpur Bench of CAT in OA No. 109/2003 decided on 18.07.2003 Om Prakash vs. Union of India & Ors., he would be disqualified for compassionate appointment on the ground that after 25 years of age he is to be considered grown up enough and capable for managing his own affairs and not depending on the widow mother for his upkeep. The date of death of the deceased government servant is 27.08.2001 and it is evident that family has managed their affairs within the available resources and the applicant having completed his schooling, as such they have got over the initial shock due to the absence of bread winner.

9. Therefore, in view of the reasons quoted above, the OA is dismissed with no order as to costs.



(A. K. BHANDARI)

MEMBER (A)