

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of June, 2005

ORIGINAL APPLICATION No. 602/2003

CORAM:

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

Smt. Pista Devi w/o Late Shri Rajeshwar Dayal Goyal,
Postman Dholpur HPO aged about 43 years r/o Dholpur
C/o Lakhan Lal and Sons Book Seller Luhar Bazar, Bari,
Dholpur.

.. Applicant

(By Advocate: Mr. S.K.Jain, and Mr. R.P.Pareek)

Versus

1. Union of India through
its Secretary to the Govt. of India,
Department of Posts, Ministry of
Communication, Dak Bhawan,
New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur
3. The Supdt. Of Post Offices,
Dholpur Division,
Dholpur.

.. Respondents

(By Advocate: Mr.N.C.Goyal)

ORDER (ORAL)

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The applicant is widow of late Shri Rajeshwar Dayal who while working as Postman, Dholpur Head post Office died on 31.8.1987. The applicant applied for appointment on compassionate grounds. The application of the applicant alongwith synopsis was forwarded to the Circle Office vide Superintendent of Post Offices Dholpur Division letter dated 20.1.94. Since the application of the application was incomplete, the applicant was asked to remove the deficiencies and to annex the required documents. After receipt of the required documents, the case of the applicant was again forwarded to the Circle Office by the Superintendent of Post Offices vide letter dated 8.2.1994. Since the case of the applicant was 5 years old, it was decided by the Circle Office to forward the case to the Postal Directorate for condonation of delay. The approval of the Directorate as a special case for appointment of the applicant to Group D (TC Cadre) in relaxation of recruitment rules was received vide letter dated 23.11.1994. The approval of the Postal Directorate was intimated to the applicant vide letter dated 15.12.1995 (Ann.A1) and the name of the applicant was entered in the list of approved candidates who were waiting for appointment. Since there was a long pending waiting list and due to extension of retirement age limit from 58 to 60 years and there was no vacancy since last few years, the applicant could not be given appointment till 2000 for

want of vacancy. The Department of Personnel and Training vide OM dated 24.11.2000 discontinued the waiting list for compassionate appointments. Copy of the memorandum dated 24.11.2000 has been placed by the respondents on record as Ann.R2. Pursuant to the decision taken by the Department of Personnel and Training, the Department of Posts vide letter dated 8.2.2001 also issued instructions in the similar line to discontinue maintenance of waiting list of approved candidates for appointment on compassionate grounds immediately. The candidates whose names were already in the waiting list for appointment on compassionate grounds could not be appointed due to want of vacancy within 5 % limit and they were asked to express their willingness for consideration by other ministries. It was further mentioned in that letter that the name of the candidates willing for consideration in other ministries may be circulated to Head of Departments of other ministries for their consideration. The respondents have placed copy of this letter dated 8.2.2001 on record as Ann.R3. Pursuant to the said decision taken by the respondents, the applicant vide letter dated 26.2.2001 (Ann.A4) was requested to give her consent to work in other Department as no vacancy was available in the Department of Posts. The format for willingness was also enclosed with the letter dated 26.2.2001. The applicant who was approved for compassionate appointment in group D cadre showed her

unwillingness to work in Govt. service and requested to appoint her son Shri Ajay Kumar in the Department of Posts as and when post is available. The applicant has also placed on record letter dated 3.10.2002 (Ann.A/6) on record whereby the attention of the respondents was invited to application dated 2.3.2001 and vide this letter it was requested that action taken in the matter may be intimated at an early date. It is further alleged that the Superintendent of Post Offices, Dholpur (respondent No.3) vide letter dated 24.10.2002 (Ann.A7) has intimated that the matter is still pending. It is further alleged that thereafter the applicant made detailed representation dated 26.12.2002 and 22.1.2003 but no response was received from the respondents. This was followed by another detailed representation dated 24.3.2003 (Ann.A8) for taking action for providing employment. It is further alleged that vide letter dated 24.3.2003 the applicant was intimated that the application of the applicant is still pending with respondent No.2. The applicant has alleged that the family of the applicant consist of 5 members including two daughters and two sons who were minor at the time of death of her husband. It is further alleged that after demise of the applicant's husband the condition of the family was indigent and the family members survived under poverty line. It has further been alleged that the family pension has been reduced to 50% after 7 years as per rules and it has

now been fixed at the minimum of Rs. 1275/- . It is on the basis of these facts that the applicant has filed this OA thereby praying that respondents be directed to give appointment to the applicant on compassionate grounds on the basis of the approval given in 1994 vide Ann.A1 or in the alternative in favour of Shri Ajay Kumar who has now become major and committed to lookafter the family of the deceased employee.

2. Notice of this application was given to the respondents. The respondents have filed detailed reply. The facts, as stated above, so far as it relate to approval of the name of the applicant for Group D post pursuant to letter Ann.A4 and the fact that appointment could not be given to the applicant for want of vacancy till 2000, has been admitted. It is further admitted that pursuant to Department of Post letter dated 8.2.2001 (Ann.R3) which is based on OM dated 24.11.2000 issued by the DOPT, the candidates whose names were already in the waiting list for appointment on compassionate grounds but could not be appointed due to want of vacancy were asked to express their willingness for consideration by other ministries and accordingly vide letter dated 26.2.2001 (Ann.R5) the applicant was asked to submit her willingness to work in other Departments/Ministries in a prescribed proforma which is also annexed with the said letter. It is further stated that vide her

application dated 2.3.2001 (Ann.A5) the applicant showed her unwillingness to work in Govt. service and requested to appoint her son Shri Ajay Kumar in the Department of Posts as and when posts is available. The respondents have further stated that the DOPT vide OM dated 22.6.2001 has dispensed with the requirement of sending names of persons in the waiting list to other ministries/departments/offices for compassionate appointment as no useful purpose was being served by taking the matter with other ministries and it was further stipulated in the said OM that the committee while considering the request for appointment on compassionate grounds should take into consideration availability of vacancies for such appointment and should limit its recommendations to appointment on compassionate grounds only in a really deserving case and only if vacancy for appointment on compassionate ground will be available within a year in the concerned department that too within the ceiling of 5% vacancy falling under the direct recruitment quota within a year and approved by the Screening Committee under the policy of the Govt. contained in OM dated 16.5.2001 (Ann.R6). The respondents have further stated that full opportunity was given to the applicant but she lost such opportunity and made request for her son's appointment vice her. Further it is stated that the applicant has preferred her case with an abnormal delay of more than 5 years. However,

the case of the applicant was considered by the respondents as a special case. So, in such circumstances, when her case was approved treating as a special case and she submitted unwillingness for herself, refusal on her part is her own responsibility because at this juncture it was not possible for the department to consider her request for appointment of her son.

3. To the specific averment made by the applicant in para 5(d) of the OA that 23 persons were given appointment in the year 1994 till 2001, the respondents have categorically stated that all the candidates who were given appointment were approved during the period 1990 to 1993 prior to the approval of the applicant. The case of the applicant was approved on 23.11.1994 and name of the applicant was entered at Sl.No.44 of the waiting list register and no candidate was approved or kept in the waiting list after the applicant had been given appointment on compassionate grounds. It is further stated that 23 candidates approved prior to the applicant are still waiting appointment for want of vacancy. It is further stated that waiting list so maintained was discontinued as per instructions dated 24.11.2000 (Ann.R2) and now the department is not maintaining any waiting list.

4. The case was heard in part on 19.5.2005. However, the same was again adjourned to 2.6.2005 as the applicant wanted to file rejoinder. The applicant has submitted a rejoinder today which is taken on record. The applicant has reiterated the submissions made in the OA. It is further stated that the respondents deliberately withheld the appointment of the applicant from 1994 to 2001 even when they have given appointment to 25 persons. The applicant had priority as her case was of 1987.

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

5.1 From the facts stated above, it is clear that husband of the applicant died on 31.8.1987 whereas the application for compassionate appointment was made by the applicant after a lapse of 5 years. Thus, the new plea taken by the applicant in the rejoinder that the applicant had the priority as her case belongs to 1987 and as such the person who has been given appointment from the waiting list of 1993 prior to the date when the case of the applicant was approved for compassionate appointment on 23.11.1994 cannot be accepted. It was the applicant who is responsible for submitting the application for compassionate appointment after a lapse of about 5 years in the year 1994. Thus, according to me, the name of the applicant

cannot be included in the list of the year 1987 especially when the applicant has not applied for appointment on compassionate grounds prior to 1994. The fact that the applicant did not submit the application for compassionate appointment immediately after the death of the deceased in the year 1987 and that the said application was submitted after a lapse of about 7 years is indicator to the fact that the family has managed to survive during the aforesaid period and condition of the family was not so indigent which required immediate financial assistance. The Apex Court in the case of Haryana State Electricity Board vs. Naresh Tanwar, 1996 (2) SLR 11 has held that the very objective of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years. It was further observed that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased. Similarly, the Apex court in the case of Umesh Kumar Nagpal vs. State of Haryana, 1994 (2) SLR 677 has held that the only ground which can justify compassionate employment is

the penurious condition of the deceased's family. Neither the qualification of his dependent nor the post he held is relevant. If the dependent of the deceased employee finds it below his dignity to the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. It was further held that compassionate appointment cannot be granted after a reasonable period which must be specified in the rules. The consideration for such employment is not vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner, the compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. Further the Apex Court in the case of Hindustan Aeronautics Ltd. Vs. Smt. A.Radhika Thirumalai, 1996 SCC (L&S) 1427 has held that appointment on compassionate grounds can be made only if a vacancy is available and it was held that in the event of making fresh appointment the case of the respondents therein for appointment shall be given due consideration in accordance with the ranking in the waiting list.

5.2 Viewing the matter from the law laid down by the Apex Court, I am of the view that the applicant is not entitled to any relief. The husband of the applicant

died on 31.8.1987. The application for compassionate appointment was made after a lapse of about 7 years in 1994 which fact shows that the family was in a position to get over the financial crisis which it faces at the time of death of the sole bread winner. Despite this, the case of the applicant was considered by the respondents sympathetically and her case was approved for compassionate appointment on 23.11.1994 and the name of the applicant was entered at Sl.No.44 in the waiting list register. It is also evident from the material placed on record that no appointment on compassionate grounds could be granted till 2000 for want of vacancy, ~~still~~ the matter was taken by the respondents with other department/offices and for that purpose willingness of the applicant was sought. The applicant refused to work in the Govt. service vide her application dated 2.3.2001 (Ann.A5). The respondents have categorically stated that the persons who were given appointment in the year 1994 onwards were in respect of those persons whose appointment was approved during the year 1990 to 1993 prior to the approval of the case of the applicant on 23.11.1994. The respondents have categorically stated that 23 candidates who were approved prior to the applicant could not be given appointment for want of vacancy. The respondents have categorically stated that waiting list so maintained had been discontinued as per OM dated 24.11.2000 (Ann.R2) and as such no appointment

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on the basis of the approved list can be granted now. The respondents have further pleaded that as per the latest instructions dated 22.6.2001 and 16.5.2001 (Ann.R7 and R6) request for appointment on compassionate grounds has to be considered taking into account availability of vacancy for such appointment and such recommendations should be limited to only in really deserving cases and only if vacancy for compassionate appointment will be available within a year in the concerned department that too within the ceiling of 5% of vacancy falling under direct recruitment within a year. The case of the applicant cannot be considered for compassionate appointment even in future. Having regard to whatever stated hereinabove, I am of the view that the applicant cannot be granted appointment on compassionate basis on the basis of the list approved in the year 1994 (Ann.A1) especially when the Govt. has taken policy decision not to operate the waiting list vide OM dated 24.11.2000 and on the basis of the said policy decision, 23 persons whose cases were approved earlier to the applicant could not get appointment for want of vacancies. Further, the applicant is also not entitled to any relief in view of decision rendered by the Apex Court that compassionate appointment cannot be claimed after whatsoever lapse of time and after the crisis is over and also that consideration for such

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employment is not vested right which can be exercised at any time in future.

6. For the foregoing reasons, the present OA is bereft of merit and the same is accordingly dismissed with no order as to costs.

7. In view of the order passed in the OA, no order is required to be passed in MA No.337/2004, which is accordingly dismissed.



(M.L. CHAUHAN)

Member (J)