

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A./T.A No. 408/02.....

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SECTION OFFICER (Judl.)

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 408/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s): R. C. Das

- Vs. -

Respondent(s): H. O. I. Sum

Advocate for the Applicant(s): Mr. S. Sarma, Mrs. U. Das

Advocate for the Respondent(s): Case

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form but not in time Condensation Petition is filed / not filed C F. for Rs. 50/- deposited vide IPO/BD No. 74606956 Dated 13.12.02</p> <p><i>Steps taken</i></p> <p><i>Steps & Enclots Received, Notice prepared and sent to D/S for giving the respondent No 1 to 3 by Regd. A/D.</i></p> <p><i>X/No 172 & 174 dated 29/1/03</i></p> <p><i>No written statement has been filed</i></p>	<p>24.01.2003</p> <p>mb</p> <p>21.2.2003</p> <p>mb</p>	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Administrative Member.</p> <p>Heard Mr. S. Sarma, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 21.2.2003 for admission.</p> <p>Let the respondents be submitted its written statement within four weeks from today. List on 24.3.2003 for orders. Endeavour shall be made to dispose of the same at the admission stage.</p>

24.3.2003

Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S. Biswas
Administrative Member.

Heard Mr. S. Sarma, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C.


List the case again on 23.4.2003 to enable the respondents to file written statement if any.

No. written statement
has been filed


Member


Vice-Chairman

bb

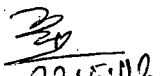

22.4.03

23.4.2003

Heard Ms. U. Das, learned counsel appearing for the applicant. No written statement forthcoming.

The application is admitted, call for the records. List the case on 23.5.2003 for order.

No. written statement
has been filed


22.5.03

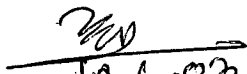

Vice-Chairman

bb

23.5.2003

The respondents are yet to file written statement. Put up again on 20.6.2003 for written statement.

Written statement
filed on behalf
of the respondents.


19.6.03


Vice-Chairman

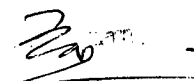
mb

20.6.2003

Written statement has been filed.

The ~~xxx~~ case may now be listed for hearing on 9.7.2003. The applicant may file rejoinder, if any, within two weeks from today.

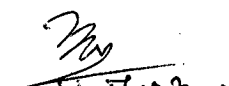
No. Rejoinder has
been filed


8.7.03


Vice-Chairman

mb

No. rejoinder has
been filed


16.7.03

9.7.03 on the prayer of ~~Mr. S. Sarma~~ Mr. S. Sarma,
learned counsel for the applicant,
the case is adjourned to 17/7/2003.
no
B

C.A 408/02

Notes of the Registry

Date

Orders of the Tribunal

16.7.03

Rejoinder filed by
the applicant.

2/7

Notes of the Registry

Date

Orders of the Tribunal

0 A 408/2012

3

Notes of the Registry

Date

Orders of the Tribunal

17.7.03

Present: Hon'ble Mr.N.D.Dayal,
Member(A).

Heard in part. Learned
counsel for the applicant prays
for time till next Friday to collect
some more informations. Prayer is
granted.

List on 25.07.03. for
hearing.

lm

Member(A)

30.7.03

Heard learned counsel for the
parties. Judgment delivered in
open Court. Kept in separate sheets.
Application is disposed of. No
costs.

Member

1.8.2013

Copy of the budget
has been sent to the
Office for issuing
the same to the applicant
as well as to the N.C.S.C.
for the Regd. In.

lm

lm

4

Notes of the Registry

Date

Orders of the Tribunal

100

100

0000

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application Nos.370, 407 & 408 of 2002.

Date of Order : This the 25th Day of July, 2003.

THE HON'BLE MR. N. D. DAYAL, ADMINISTRATIVE MEMBER.

1. Sri Nripen Tamuli
S/o Juddha Ram Tamuli
P.O: Kamakhya
Guwahati - 10. Applicant in O.A.370/2002.

2. Shri Sanjeev Kumar Das
S/o Late Chandrakanta Das
Resident of Village and post Office Kulhati
District: Kamrup. Applicant in O.A.407/2002.

3. Shri Rabin Ch.Das
S/o Late S.N.Das
Resident of Vill. & P.O: Kulhati
District: Kamrup. Applicant in O.A. 408/2002.

By Sr.Advocates/ Mr.B.K.Sharma, Mr.S.Sarma & Ms.U.Das in O.A.
370/2002 & Mr.S.Sarma & Ms.U.Das in O.A.s 407 & 408/2002.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Department of post
Ministry of Communication
New Delhi.

2. The Chief post Master General
Assam Circle, Guwahati-1.

3. The Senior Superintendent of post Offices
Guwahati Division, Meghdoot Bhawan
Guwahati - 1. Respondents in O.A.370/2002.

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Communication
Department of post
Dak Bhawan, New Delhi.

2. Bharat Sanchar Nigam Ltd
Sanchar Bhawan, New Delhi.

2. The Chief post Master General
Assam Circle, Guwahati-1.

3. The Sr.Superintendent of post Offices
Guwahati Division, Meghdoot Bhawan
Guwahati-1. Respondents in O.A.s 407 & 408 of 2002.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C. in O.A.407/2002 &
Mr.A.Deb Roy, Sr.C.G.S.C. in O.A.s 370 & 408 of 2002.

Contd./2

O R D E R.

DAYAL, N.D., MEMBER (ADMN):

Heard Mr.S.Sarma, learned counsel for the applicants in all the above three cases, Mr.A.K.Choudhuri, learned Addl.C.G.S.C. for the respondents in O.A. 407/2002 and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents in O.A.Nos.370 & 408/2002. The applicants in all the O.A.s have sought common reliefs on similar grounds. They are primarily seeking appointment in the cadre of postal Assistant on compassionate grounds taking into consideration the approval conveyed by the competent authority of the Department of posts. The background of the cases is briefly stated below:

1. The applicants in all three O.A.s applied for compassionate appointment under relaxation of normal rules of recruitment in the Department of posts. The Circle Selection Committee had approved the applicants and placed them on the Waiting List for consideration on availability of vacancy to absorb them in the post of postal Assistant. While the applicant in O.A.370/2002 was approved on 3.10.97, the applicants in O.A.s 407 & 408 of 2002 were approved on 11.11.99. The Department also sought willingness of the applicants in O.A.s 370 & 407 of 2002 for enrolment in the Army Postal Service vide letter dated 18.6.99 making reference to their applications for compassionate appointment wherein it was clarified that the enrolment would be subject to clearance of physical/medical examination to be conducted by the Army Postal Service. If found eligible and selected for enrolment in the Army Postal Service, they would be required to give an undertaking that they would

contd/-2

not claim repatriation from Army Postal Service to Civil Division till their turn came up and vacancy arose against compassionate appointment under relaxation of normal rules. It was also made clear therein that in case the applicants accepted these terms and conditions they could apply in the enclosed form with the further undertaking that if they were found medically unfit by the recruitment office (Army Postal Service) they would not claim appointment in the Department. The learned counsel for the applicants, Mr.S.Sarma stated that both the applicants in O.A.s 370 & 408/2002 placed their willingness with the Department for the Army Postal Service.

2. Again all the three applicants were asked by the Department by letter dated 13.3.2001, drawing attention to their approval for compassionate appointment, whether they would like to exercise their willingness to join in other departments within or outside Assam and on receipt of their willingness, other departments would be consulted to consider their case. The learned counsel for the applicants confirmed that all the three applicants submitted their willingness in this regard.

3. All along the Department had been more than once informing the applicants that they were on the Waiting List for compassionate appointment as Postal Assistant and their case would be considered when vacancy became available for the purpose. As observed from letter of 25.7.20001 of Department of posts, New Delhi annexed with the O.A.s the Waiting List of candidates approved for compassionate appointment had been discontinued by letter No.24-1/99-SPB-1 dated 8.2.2001 of the Department of posts and would no longer be operated in view of the clarifications by the

contd/-3

Department of Personnel & Training in its memo dated 24.11.2000 and further in terms of subsequent instructions mentioned in this letter. The practice of circulating names of the deserving candidates to other Ministries/Depts had also been discontinued. In the light of these instructions a further offer was made to the candidates approved for compassionate appointment, and kept on the Waiting List that they may apply for appointment for Gramin Dak Sewak post subject to their fulfilling all required conditions of recruitment and giving an undertaking forfeiting their claims for appointment against regular departmental vacancies except as per their turn in accordance with the policy for absorption of Gramin Dak Sewaks in regular posts. This offer was valid for one year and to be reviewed thereafter. Instructions to implement these orders were issued by the office of the Chief Post Master General, Assam Circle making it clear that the Waiting List was discontinued and dispensed with and extending the offer of Gramin Dak Sewak post in terms of the Govt. orders received. The learned counsel for the applicants contended that the applicants did not wish to apply for the Gramin Dak Sewak posts and had not done so.

4. It has been strenuously argued by the learned counsel for the applicants that the Waiting List is only discontinued and can still be operated. However, Mr. A. Deb Roy, learned Sr. C.G.S.C. emphatically stated that the Waiting List stands discontinued and dispensed with and no longer exists. It was also contended on behalf of the applicants that the Juniors to the applicants have been given compassionate appointment overlooking their claim.

contd/-4

On scrutiny of the relevant pleadings it was found that the appointments were not those of any of the persons on the Waiting List of approved candidates for compassionate appointment, but these were fresh cases in terms of the instructions on the subject. This matter was not pressed further. From the perusal of the Government orders and instructions in this matter on records as well as the action of the Government to make alternative offers to the applicants, it cannot be said that the Waiting List of candidates approved for appointment on compassionate grounds is still valid. The learned counsel for the applicants expressed the despair and anxiety of the applicants in not receiving any response from the Department to the willingness given by them for adjustment in other Ministries/Depts as well as in the Army Postal Service. Mr. S. Sarma learned counsel finally stated that in the facts and circumstances of the case the applicants would be satisfied if their request for enrolment in the Army Postal Service could be revived by the Department of posts. He further requested that the Tribunal may be pleased to issue directions to the Deptt. of posts to consider their cases for appointment in the Army postal Service and all three applicants would make fresh individual representations in this regard to the Chief Post Master General Assam Circle, Guwahati-1 for further action.

5. It is seen that the letter from the Department seeking willingness for enrolment in the Army Postal Service mentioned that repatriation back to Civil Division would not be permitted

contd/-5

except on turn and when vacancy arose for compassionate appointment and again it said that a further undertaking is necessary to give the commitment that if found medically unfit by the Army Postal Service appointment in the said Department would not be claimed. It is thus noted that the offer did not require appointment on compassionate grounds as a precondition. The Department in fact picked up those approved for compassionate appointment but not appointed and sought to take suitable undertaking from them so that if found eligible and selected for enrolment in the Army Postal Service, they would continue and be retained there in absence of appointment in the Department on compassionate ground and would not claim appointment if medically unfit. In the circumstances discussed in this order and to meet the ends of justice there should be no bar to the applicants seeking revival of their case for enrolment in the Army Postal Service subject to fulfilment of the conditions mentioned in the offer.

6. It is frankly informed by the learned counsel for the applicants that the applicant in O.A. 408/2002 had not received the offer for Army postal Service, but that his situation was similar to those of other two applicants in so far as approval of compassionate appointment as well as the offer of absorption in other Departments and the offer of Gramin Dak Sewak posts are concerned and as such in equity his case may also be similarly considered. Admittedly, to their credit there was no objection to this suggestion on behalf of respondents by the learned Sr.C.G.S.C. Accordingly, it is ordered that all the three applicants in these O.A.s may submit fresh representations individually

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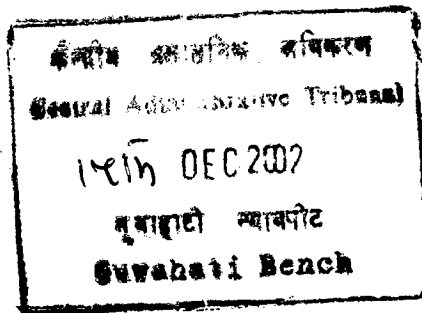
to the Chief Post Master General, Assam Circle, Guwahati seeking consideration of their willingness for enrolment in the Army Postal Service by giving necessary undertakings. If such representations are received, the Chief post Master General, Assam Circle is directed to take up the matter with the concerned Army Postal Service authority, through proper channel, for enrolment of the applicants as per relevant terms and conditions within one month from the date of receipt of the representations. The Army Postal Service authority will in turn consider their cases on merit subject to fulfillment of terms and conditions applicable. The decision of the Army Postal Service authority shall be conveyed by speaking order to the applicants within three months thereafter.

All the three O.A.s are disposed of subject to the observations made above. No costs.

Sd/MEMBER (Adm)

bb

C.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

O.A. No. 408 of 2002

BETWEEN

Shri Rabin Ch. Das Applicant.

-Versus-

Union of India & ors..... Respondents.

I N D E X

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4.	Annexure-2	11

Filed by : Usha Das

Regn.No.:

File :C:\W57\RABIN

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

O.A.No. of 2002

BETWEEN

Shri Rabin Ch. Das.
s/o Late S.N. Das
Resident of Village and Post Office Kulhati
Dist.:Kamrup,

..... Applicant.

VERSUS

1. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of communication,Department of Post.
Dak Bhawan, New Delhi.

Bharat Sanchar Nigam Ltd,
Sanchar Bhawan, New Delhi,

2. The Chief Post Master General
Assam Circle, Guwahati-1

3. The Sr. Superintendent of Post Offices
Guwahati Division, Meghdut Bhawan,
Guwahati-1

..... Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is directed against the action of the Respondents in not considering the case of the applicant for appointment under compassionate Ground even after the due approval from the competent authority for such appointment. This application is also directed against the action of the Respondents in discriminating the applicant in the matter of

14
Filed by
the applicant through
Advocate
17/12/02

17/12/02

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compassionate appointment, whereas persons junior to him in the list prepared in order of priority have been given appointment, ignoring his case.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the father of the applicant was working as a Postal Assistant under the Respondents and on 14.12.97 he expired while on duty. Immediately after the death of his father, the applicant applied for compassionate appointment under the Respondents. Pursuant to his such application the applicant was called for interview before a selection committee and the applicant was declared selected in the said interview and his case for appointment in the cadre of Postal Assistant was approved by the competent authority.

4.3. That after such approval the applicant was waiting for his appointment as Postal Assistant on compassionate ground but the matter was delayed by the Respondents without any valid reason. The applicant kept on pursuing the matter before the

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Respondents but nothing came out in positive. The applicant submitted representations before the concerned authority for early settlement of the matter but same yielded no result in positive. Thereafter the Respondents issued an order dated 13.3.2001 indicating the fact that the name of the applicant is in waiting list and through this letter the said authority also asked the applicant to place his willingness as to whether he is agreeable to work in any other department or outside Assam. The applicant accordingly placed his willingness to work in other Department.

A Copy of the letter dated 13.3.2001 is annexed herewith and marked as Annexure-1.

4.4. That the Respondents in the mean time appointed persons on compassionate ground who are junior to the present applicant so far it relates to the waiting list is concerned. The Respondents in pick and choose basis appointed persons from the said waiting list and in fact the so called waiting list was never made public. Even the Respondents have given appointment to the persons whose cases were never approved by the higher authority:

4.5. That the applicant on receipt of Annexure-1 letter from the Respondents placed his willingness for his absorption in other departments but till date nothing has been materialised. It is stated that all over Assam there are almost 60 vacancies in the Cadre of Postal Assistant including RMS Division and the Respondents can very well accommodate the applicant against any such post. However the Respondents without there being any valid reason kept on lingering the matter only to frustrate the claim of the applicant.

The applicant craves leave of this Hon'ble Tribunal for a direction towards the Respondents for production of records in

respect of vacancy position in the cadre of Postal Assistant at the time of hearing of this case.

4.6. That the applicant states that his case was approved by the competent authority pursuant to a selection and after such approval, however the Respondents have not done anything till dated. On the other hand the Respondents are keeping the hope of appointment of the applicant alive by issuing various orders seeking his willingness and on the other hand they are assuring him that appointment would be made on availability of vacancies. But in reality persons approved and wait listed below the applicant have been given the appointment ignoring the claim of the applicant and as such the Respondents have violated the settled principles of law.

4.7. That in the midst of aforementioned activities the Respondents once again issued an order bearing no.B/A-Relaxation/Rlg/77-78 dated 18.12.2001 by which willingness from the applicant was sought for from the applicant for appointment in the post of Gramin Dak Sevak(GDS). However the applicant has not placed his option for the said GDS post as the said post is not a permanent post. Since the case of the applicant has already been approved in the cadre of Postal Assistants and there are almost 60 vacancies available in Assam Circle, the Respondents ought not to have seek his willingness for appointment/acceptance in GDS post by issuing the aforementioned order date.18.12.2001.

A copy of the said order dated 18.12.2001 is annexed herewith and marked as Annexure-2.

4.8. That the applicant begs to state that immediately after the death of his father, he applied for consideration of his case

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for compassionate appointment and accordingly the screening committee approved his case for appointment in the cadre of Postal Assistant. Later on the Respondents for the reason best known to them kept the applicant waiting for such appointment without any valid reason. On the other hand the Respondents are kept on appointing persons from said waiting list in pick and choose basis ignoring the claim of the present applicant. The aforementioned action on the part of the Respondents clearly indicates the vindictive attitude of the Respondents in discriminating the applicant from his legitimate claim of compassionate appointment. The Respondents being a model employer ought to have maintain a list in considering the case on compassionate ground. Although the Respondents in their communication dated 13.3.2001 mentioned that the case of the applicant was in the waiting list but till date no such list was published nor same has been communicated to the applicant.

The applicant craves leave of the Hon'ble Tribunal for a direction towards the Respondents to produce the list as mentioned in the order dated 13.3.2001 at the time of hearing of this case.

4.9. That the applicant begs to state that presently the entire family of the applicant is waiting for his employment so that the hard days come to an end. The father of the applicant was the only earning member in his family and after his death entire family is now facing tremendous financial hardship. In these circumstances the applicant through application prays before this Hon'ble Tribunal for an appropriate direction towards the Respondents to issue necessary order of appointment of the applicant in the post of Postal Assistant under relaxation of normal recruitment Rules taking in to consideration the approval made by the competent authority.

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4.10. That this application has been made bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the Respondents have acted illegally in not considering the case of the applicant for his appointment in the Cadre of Postal Assistant under relaxation of normal Recruitment Rules on Compassionate ground.

5.2. For that the Respondents have acted contrary to the provision contained in the scheme provided for compassionate appointment and hence their impugned action ignoring his case are liable to be set aside and quashed.

5.3. For that the Respondents have acted illegally in discriminating the case of the applicant in the matter of compassionate appointment whereas persons whose cases were approved in the year 2002 have been provided with suitable posts ignoring the case of the present applicant.

5.4. For that the Respondents have acted illegally in not considering the case of the Applicant for grant of temporary status under the scheme and as such appropriate direction need be issued to the Respondents to extend the benefit of the scheme to the present Applicant and to regularise his service thereafter.

5.5. For that in any view of the matter the entire action of the respondents are liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has no other alternative and efficacious remedy except by way of filling this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

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The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filled before any court, Authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought hearing parties on perusal of records, be pleased grant the following reliefs:

8.1. To direct the Respondents to issue appropriate order of appointment to the Applicant in the cadre of Postal Assistant on compassionate ground taking into consideration the approval made by the competent authority.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to.

9. INTERIM ORDER PRAYED FOR:

During the pendency of the original application the Applicant prays for an interim order directing the Respondents to accommodate the Applicant in any post commensurating to his educational qualification as well as experience.

10.

.....
The application is filled through advocate.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 76 606956
2. Date : 13/12/02
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

Verification.....

Das

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VERIFICATION

I, Shri Rabin Ch. Das, son of Late Surendra Nath Das, resident of Village and Post Office Kulhati District Kamrup, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4.1, 4.2, 4.4 to 4.6, 4.8-4.10, 5 to 12 are true to my knowledge and those made in paragraphs 4.3 & 4.7..... are true to my information deprived from records and the rests are my humble submission before the Hon'ble Tribunal.

And I sign on this the Verification on this the 16th day of December of 2002.

Sri Rabin Ch. Das.

Deponent.

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL :: ASSAM CIRCLE
GUWAHATI -781001.

No. Staff/16-Rlg/88/Part

Dated Guwahati the 13-3-2001To
Shri/Smt.

Recd
Rabin Ch. Das
S/O Late S.N. Das, Ex-PA
Vill- Kulhati
Via- Hajo, Dist. Kamrup

Sub:- Appointment on compassionate ground under relaxation of
normal rules- case of Sri/Smt. R.C. Das

Ref:- Your application dated 13-8-99

You were approved on 11-11-99 for appointment on compassionate
ground under relaxation of normal recruitment rules as PA
and you are in the waiting list since then. You could not be appointed
so far due to non-availability of vacancy in this circle.

Therefore, you are asked to express your willingness whether
you are agreeable to join in any other department within or outside Assam.
On receipt of your willingness, other department will be consulted to
consider your case.



(S. Shyam)
APMG(Staff)

For Chief Postmaster General,
Assam Circle, Guwahati-1.

Copy to concerned file.

Staff/16-S/99

Attested

W.D. on
Advocate



24/12/01

4

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SR.SUPERINTENDENT OF POST OFFICES, GUWAHATI DIVN.
MEGHDOOT BHAWAN 3RD FLOOR, GUWAHATI -781001

No. B/A-Relaxation/Rlg/77-78.

Dated at Guwahati the 18.12.2001.

Recd.

To

Sri Rabin Ch Das

S/o Late Surendra Nath Das - IV

Vill: P.O. Kulketi Kamrup

Sub: Compassionate appointment proposal of candidates approved and wait listed -
willingness for GDS Post.

A copy of C.O., Guwahati letter No. Staff/16-Rlg/88/Part, dated 14.8.2001 in c/w
the above mentioned subject enclosed h/w for submission of your willingness/acceptance
of GDS post to the office of the undersign on or before 31.12.2001.

No application will be accepted after 31.12.2001 at this end.

Encl.

As. Above.

Sr. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001

Emstetd
Wan
Advocate.

12-



Filed by

4/6/03

(A. DEBROY)
Sr. C. G. C.
G. A. T., Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 408 OF 2002 -

Shri Rabin Ch. Das

- Vs - Applicant.

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statements submitted by
the respondents.

The respondents beg to submit a brief
history of the case which may be treated
as a part of the written statement.

(BRIEF HISTORY OF THE CASE)

Sri Rabin Ch Das, Son of Late Surendra Nath Das,
Ex-PA Guwahati GPO and resident of Kulhati Vill & PO under
P.S. Hajo- applied for appointment on compassionate ground in
Postal Assistant (PA) cadre to the Sr. Supdt. of Post Offices,
Guwahati after expiry of his father.

The case was placed before the CSC for consideration
and recommendation. The CSC recommended the case of the appli-
cant and in pursuance thereof the competent authority approved
the applicant for appointment in PA cadre under compassionate

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ground.

Though the applicant was approved for appointment in PA cadre on compassionate ground, he could not be absorbed due to non-availability of vacancy. He was kept as a wait listed approved candidate along with other approved candidates. Meanwhile the Department of Posts issued a guidelines/instruction vide no. 37-16/2001-SPG-1 dated 25-7-2001 in pursuance of the clarification order no. 42012/D/2000-Estt(D) dated 24.11.2000 issued by the Ministry of Personnel and Training. Govt. of India to the effect that the provision of maintaining waiting list of the approved candidate for appointment on compassionate ground has been dispensed with and decision has been taken to consider such wait listed candidates for the vacant posts of Gramin Dak Sewaks (GDS) subject to willingness and suitability of the ~~guk~~ candidates for such posts.

In pursuance of these orders the office of the CPMG, Assam Circle instructed this office to take steps to discontinue the system of maintaining the Waiting List of the approved candidates immediately vide CO's letter no. Staff/16/Rlg/88/Part dated 14.8.2001 with the instruction to offer the vacant post of GDS to non absorbed approved candidates whose waiting list was dispensed with. The applicant was also one of the unabsorbed candidate and no longer in the waiting list.

The applicant was asked to offer his willingness to be absorbed in GDS post vide SSPOs, Guwahati letter no. B/A-Relaxation/Rlg/77-78 dated 18.12.2001 with a direction to furnish willingness on or before 31.12.2001.

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Sr. Superintendent of Post Offices
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But no reply has been received from the candidate as such assumed that he was not willing to work as GDS. Since the Waiting List of the approved candidates for compassionate appointment has since been discontinued under the Govts. Order and the applicant being silent (not willing) to be absorbed in the GDS post the applicant cannot claim now for appointment in PA cadre as approved earlier.

The applicant has filed the present OA to seek direction from the Hon'ble Tribunal for absorbing him in PA cadre on compassionate ground.

PARAWISE COMMENTS :

1. That with regard to the statement made in para 1, 2, 3, 4 and 4.1 of the application the respondents beg to offer no comments.
2. That with regard to the statement made in para 4.2, of the application the respondents beg to state that the applicant was approved for the appointment in PA Cadre on Compassionate ground vide Circle Office (CPMG's office) Guwahati memo no. Staff/16-Misc/97 dated 11.11.99 on recommendation of the Circle Selection Committee. It was not correct that the applicant was called for interview. In such cases, no applicant was called for interview as selection has been made on the basis of relevant facts and records so collected prior to C.S.C meeting.

San Kaveri
Sr. Superintendent of Post Offices
Guwahati Division, Guwahati - 781 001

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3. That with regard to the statement made in para 4.3, of the application the respondents beg to state that the applicant could not immediately be appointed/absorbed after having been approved due to non availability of required vacancy, therefore, his name was kept in the waiting list along with other approved candidates for absorption in turn on arising of vacancy.

The respondents intimated the position to the applicant. His willingness was also called for as to whether he was agreeable to work in any other department/station in order to absorb him but could not.

4. That with regard to the statement made in para 4.4, of the application the respondents beg to state that it is not the fact that the person who are junior to the applicant have been appointed from the waiting list. The fact is that the respondent took steps for absorption of the approved candidates in Gramin Dak Sevak (GDS) posts vide letter no. B/A-Relaxation/Rlg/77-78 dated 18.12.2001 in pursuance of Circle Office letter no. Staff/16-Rlg/88/Part dated 14.8.2001 after dispensing and discontinuing of the Waiting List of the approved candidates in pursuance of the instruction/guidelines issued by the Ministry of Personnel & Training Govt. of India in its ^{O.M.} no. 42012/4/2000 - Estt(D) dated 24.11.2000 circulated vide Postal Directorate, New Delhi no. 37-16/2001-SPB-1 dated 25.7.2001. The appointment of unapproved applicants/candidates under compassionate ground does not arise in the Deptt. of Posts, India.

Copy of O.M. dated 24.11.2000 is annexed as ANNEXURE - A.

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5. That with regard to the statement made in para 4.5, of the application the respondents beg to state that the approved applicants cannot be absorbed against any vacancy as per Rules. There are certain formalities to make appointment of such approved candidates. Therefore, the applicant could not be absorbed though efforts were made. The waiting list of the approved candidates did not required to be made public for any reason.

6. That with regard to the statement made in para 4.6, of the application the respondents beg to state that the respondents made efforts to absorbed the applicant as per rules. The allegation of the applicant was not correct.

7. That with regard to the statement made in para 4.7, of the application the respondents beg to state that the fact of calling for such willingness was mentioned against para 4.4 above.

8. That with regard to the statement made in para 4.8, of the application the respondents beg to state that as per the norms of the department the application from the applicant was obtained for and approved observing formalities but could not be absorbed him due to non availability of vacancy as per the rules till dispensing/discontinuing of the waiting list of the approved candidates with effect from 14.8.2001. The averment of the applicant to the fact that the respondents were vindictive to him is totally denied. The respondents are bound to ~~fix~~ follow the rules/guidelines framed by the Govt. of India/Department and acted bonafied accordingly. It is not true that the candidates approved and placed below the name of the applicant were appointed

Son Kumar
Sr. Superintendent of Post Offices
Guwahati Division, Guwahati - 781 004

in the PA cadre by passing the case of the applicant.

9. That with regard to para 4.9 & 4.10 of the application the respondents beg to offer no comments.

10. That with regard to the statement made in para 5.1, of the application the respondents beg to state that since the waiting list of the approved applicants has been dispensed with/ discontinued w.e.f. 14.8.2001, the respondents are now not in a position to appoint the applicant under the compassionate ground.

11. That with regard to the statement made in para 5.2, of the application the respondents beg to state that there is no contrary action in part of the respondent. The respondents have been acted as per the rules and guidelines of the Govt./Deptt.

12. That with regard to the statement made in para 5.3, of the application the respondents beg to state that the waiting list of the approved candidates prior to 14.8.2001 has been discontinued. The appointments made thereafter based on the approval afresh as per the guidelines narrated in foregoing paras.

13. That with regard to para 5.4, 5.5, 6 & 7 of the application the respondents beg to offer no comments.

14. That with regard to the statement made in para 8 & 9, of the application the respondents beg to state that for the ground stated in foregoing paras, the applicant is not entitled to have any relief sought for and hence, the application is liable to be rejected.

Verification.....

Sun Kumar
Sr. Superintendent of Post Offices
Guwahati Division, Guwahati - 781 001

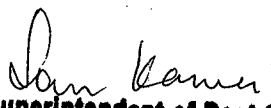
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V E R I F I C A T I O N

I, Shree Som Kamei, presently working as Sr. Supt. of Post Offices, Guwahati, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 3 and 5 to 14 are true to my knowledge and belief and those made in para 4 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 14 th day of May, 2003, at Guwahati.

Deponent.


Sr. Superintendent of Post Offices
Guwahati Division, Guwahati - 781 001

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ANNEXURE-A (16-1) 32

No.42012/4/2000-Estt.(D)
Government of India
Ministry of Personnel, PG & Pensions,
Department of Personnel and Training
New Delhi

Dated the November, 2000

OFFICE MEMORANDUM

Subject: -Compassionate appointment proposal of Department of Posts for
Relaxation of 5% limit

The undersigned is directed to refer to Department of Posts U.O. No.24-1/99-SPB-I dt. 24.10.2000 on the above subject and to say that in U.K.Nagpal's case, the Supreme Court has held that as a rule appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say one or two per cent or maximum of five per cent and if it exceeds that it will no longer be an exception. Further any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it is also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

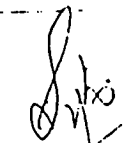
2. The scheme of compassionate appointment already provides for objective assessment of the financial conditions of the family. There is / was no provision for approving cases in the absence of vacancies for compassionate appointment and keeping them in the Waiting List. The Waiting List for compassionate appointment referred to in our OM dated 9.10.98 does not refer to cases already approved for such appointment but those waiting for consideration and accommodation for such appointment by the competent authority. The question of consideration and accommodation would arise only if there is vacancy for that purpose. In any case, it is the competent authority in the office where there is a vacancy to accommodate the applicant has to decide on the merits of the case. Hence, in the absence of vacancy, no useful purpose would be served by consideration and

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approving and keeping the applicant's case in the Waiting List. Hence, the applicant has to be considered only when there is a vacancy to accommodate and that too by the competent authority in that office. It was, therefore, not correct on the part of the Department of Posts to have prepared a Waiting List of approved cases for appointment on compassionate grounds when there were not sufficient vacancies to accommodate them.

3. Any relaxation of 5% limit, even as a temporary measure, for making appointment on compassionate grounds will have repercussions in other Ministries/ Departments as it will lead to similar demands from them also and thus it will lead to bulk appointments on compassionate grounds in the Government of India at the cost of meritorious candidates who may also be equally deserving ones which will not be in the public interest.

4. Having regard to the above position, even on reconsideration, there is no scope for relaxing the ceiling of 5% even as a temporary measure for making appointments on compassionate grounds. It is, therefore, regretted that the proposal of Department of Posts for the same cannot be agreed to.



(K.K. Jha)

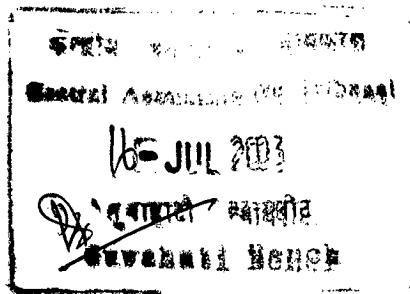
Director

Tel. 301 1479

To

Deptt. of Posts
Shri A.K. Dash, Director (Staff)
New Delhi

J
M. (11-11-92)
in file
S (S/ST)



Filed by
the applicant through
Abha Das,
Advocate
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16/7/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

D.A.No. 488/2002

Rabin Ch. Das

..... Applicant

-VS-

Union of India & ors.

..... Respondents.

REJOINDER FILED BY THE APPLICANT AGAINST THE WRITTEN STATEMENT
FILED BY THE RESPONDENTS.

1. That the applicant has received a copy of Written Statement and has gone through the same. Save and except the statement which are specifically admitted hereinbelow, rests may be treated as total denial. The statements which are not borne on record ^{are also denied and} the respondents are put to the strictest proof thereof. can

2. That with regard to the statement made in para 1 of the Written Statement the applicant offers no comment on it.

3. That with regard to the statement made in para 2 and "Brief history of the case" of the Written Statement applicant begs to state that the respondents themselves have admitted the fact that the selection of the applicant for appointment in P.A. cadre was approved by the competent authority. It is stated that the name of the applicant was kept in waiting list and persons below him have been offered appointment in P.A. cadre vide order dated 25.2.2003 ignoring his claim. The contention of the

respondents regarding non-availability in P.A. cadre is a false statement.

That the contention regarding issuance of guidelines/instructions for GDS Posts does not debar the applicant for considering his case in P.A. cadre as the previous procedure of maintaining waiting list has not been canceled but now same has been discontinued only. Again, taking into consideration the order 25.2.2003, it is quite clear that compasonate appointment is still being made from the said waiting list, but same has been done in pick and choose basis.

The applicant was asked for his willingness for appointment in GDS Post but he did not place his willingness for the said post on the count that his case has already been approved for appointment in PA cadre.

A copy of the said order dated 25.2.2003 is annexed herewith and marked as Annexure-RJ-1.

4. That with regard to the statement made in para 3 to 14 of the Written Statement the applicant begs to state that as contended by the respondents the waiting list maintained by them has been canceled as the new guideline/instruction dated 25.7.2001 has been issued. However, from the wordings from the OM dated 25.7.2001 and its subsequent clarification issued from time to time it is very clear that the list (wait list) has been discontinued but not canceled and as such till availability of posts in PA cadre willing wait list candidates may place their option for absorption against GDS posts. Since GDS posts are temporary and no promotional avenues are available, the applicant

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did not place his option for the said post. On the other hand the respondents with some malafide intention appointed 6 juniors on compassionate ground ignoring the claim of the applicant.

5. That in view of the above the applicant prays before this Hon'ble Tribunal for a direction towards the respondents to appoint him in the post under PA cadre with retrospective effect that is, w.e.f. 25.2.2003 with all consequential service benefits including seniority etc.

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VERIFICATION

I, Shri Rabin Ch. Das, son of Late Surendra Nath Das, resident of Village and Post Office Kulhati District Kamrup, do hereby solemnly affirm and verify that the statements made in paragraphs1,2,4,5..... are true to my knowledge and those made in paragraphs3..... are true to my information deprived from records and the rests are my humble submission before the Hon'ble Tribunal.

And I sign on this the Verification on this the 14th day of ~~December~~ ^{July} of 2003.

Sri Rabin Ch. Das

Deponent.

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- 6 -
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Annexure - RJ - 1
38-1

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL: ASSAM CIRCLE:
GUWAHATI-781001.

No.Staff/16-CSC/2002

Dated at Guwahati the 25.2.03

Consequent upon the recommendations of the Circle Selection Committee, the CPMG, Assam Circle, Guwahati is pleased to approve absorption of the following applicants under relaxation of normal recruitment rules in PA/SA cadre, Postman cadre and Group 'D' cadre against the vacancies of Direct Recruitment quota for 2001 available in the Division shown against each.

The appointment will however, be subject to verification of the eligibility which will be verified personally by the appointing authorities from the original records vis-a vis the eligibility criteria. The appointing authority/divisional heads to whom the approved candidates are allotted, will collect the required documents of the candidates from the concerned divisions.

Cadre	Sl. No	Name of candidates	Name of deceased/Invalid official and relationship with the candidates	Division allotted
(1)	(2)	(3)	(4)	(5)
PA/SA cadre	1 ✓	Smt. Hiramoni Halol	D/O Late Hara kanta Halol, Ex. Postman Guwahati GPO 2-10-78	Guwahati (P) Dn.
	2	Sri Babul Boro	S/O Late Rabindra Boro, Ex.SA (BCR) SRO, Rangia under 'GH' RMS Dn.	Goalpara Dn.
	3 ✓	Miss Lalita Boro	D/O Late Ajit ch. Boro, Ex. SA (BCR) SRO Rangia under 'GH' RMS Dn.	Guwahati (P) Dn.
Postman Cadre	1	Sri Rituparna Rajkhowa	S/O Late Hiteswar Rajkhowa, PA, Tinsukia	Tinsukia Dn.
Group 'D' Cadre	1	Sri Sukanta Roy	S/O Late Suklal Namasudra, Postman, Cachar Dn.	Darrang Dn.
	2	Smt. Ila Harijan	W/O Late Rampiyari Harijan, Gr.D Tinsukia H.O.	Tinsukia

Attested
W. Sen
Advocate

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The divisional heads should inform the date of their joining to this office.

The cases of above mentioned candidates were considered by the CSC alongwith those mentioned in the enclosed list and selection was made on the basis of merit of the cases subject to availability of vacancies. The names mentioned in the enclosed list could not be considered as there is no other vacancy in any cadre.

(S. SIYAM)
A.P.M.G. (Staff)
For Chief Postmaster General,
Assam Circle, Guwahati-781001.

Copy for information and necessary action to :-

- 1 The PMG, Dibrugarh
- All SSPOS/SRM/SPOS/SSRM/MMS in Assam Circle & Dibrugarh Region.
- 3 Concerned file.

For Chief Postmaster General,
Assam Circle, Guwahati-781001.

Attested
W. S. A.
Advocate.