

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

CP-23/2006 ordersheet 1 to 5

Judgment/Order dtd.- 27/02/2007

page-1 to 3 Dismissed.

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O.A./T.A No. 85/2005

R.A/C.P No. 23/2006

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ORDER SHEET

Original Application No. 85/05

Misc. Petition NO. a

Contempt petition No. x

Review Application No. a

Applicants. Dr. M. Pankajam Ila

Respondents. W. G. Ram

Advocates for the Applicant. Mrs. M. Jainam, Mrs. B. Jainam, Ms. J. Jainam

Advocates of the Respondents. CSL

Notes of the Registry

Dated

Order of the Tribunal

This application is in form
is filed/C. F. for Rs. 50/-
deposited vide IPO/BD
No. 1601/62
Dated 28.3.05 Dr. M. Pankajam Ila

30.3.05
Dy. Registrar

Steps taken

by 30/3/05

Notice & order
Sent to D/section
for issuing to
resp. Nos. 1 to 4
by regd. A/D post.

5/4/05

Notice duly served
on resp No - 1.

19/4

5-5-05
5/12- Ganga Prasad

31.3.2005

Present : The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.

Heard Mr. B. Pathak, learned
counsel for the applicant and Ms. U. Das,
learned Addl. C.G.S.C. for the respondents

Issue notice to show ~~xxx~~ cause as
to why this application shall not be
admitted.

Post on 3.5.2005.

G. Sivarajan
Vice-Chairman

mb

6.5.2005

On the prayer made by Ms. U. Das, lear-
ned Addl. C.G.S.C. four weeks time is
allowed to the respondents to file reply.
List on 3.6.2005.

Dr. B. Pathak
Member

bb

3.6.2005

Four weeks time is given to the
respondents to file written statement.
Post on 1.7.2005.

Dr. B. Pathak
Member (A)

mb

O.A. 85/05

2-6-05

No reply has been
filed.

By

No written statement
has been filed.

30

30.6.05

13.7.05

W/s filed by the
respondents

By

① W/s has been
filed.

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2.8.05

No Rejoinder has
been filed.

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19.8.05

13.9.05

Copy of the budget
has been sent to the office
for issuing income tax applying
it will be to the Addl. C.S.C.
Received
Alshah Das
Addl. C.S.C.
14/9/05

1.7.05

Miss U.Das, learned Addl. C.G.S.C.
seeks for further time to file written
statement. Learned counsel for the
applicant submits that she needs some
more time.

post on 3.8.05 for hearing.

By
Vice-Chairman

pg

3.8.2005

Written statement has already been
filed. Mr. B. Pathak, learned counsel
for the applicant seeks for time to file
rejoinder. Post on 22.8.2005.

By
Member

Vice-Chairman

22.8.2005

Heard Mr. B. Pathak, learned
counsel for the applicant and Ms. U. Das
learned Addl. C.G.S.C. for the respond-
ents.

Hearing concluded. Orders reserved.

By
Vice-Chairman

mb

05.09.2005

Judgment delivered in open Court,
kept in separate sheets. The application
is ~~disposed~~ allowed in
terms of the order.

By
Vice-Chairman

mb

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application Nos.234 of 2004 & 85 of 2005

Date of Order: This, the 5th Day of September 2005.

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

Shri Dhanjit Bayan
Son of Late Upendra Nath Bayan
Village & P.O: Bhawanipur
Dist: Barpeta (Assam). ... Applicant in O.A.234/2004.

By Advocates Dr. Mrs. M.Pathak, Nr.B.Pathak & Mr.D.Baruah.

Madhumita Purkayastha
Daughter of Late Asit Ranjan Purkayastha
P.O: Chandrapur, Dharma Nagar
North Tripura
Pin- 799251. ... Applicant in O.A. 85/2005.

By Advocates Dr. Mrs. M.Pathak, Nr.B.Pathak & Ms.J.Gogoi.

- Versus -

1. Union of India
Represented by the Secretary
Government of India
Ministry of Communications
Department of Posts
New Delhi.
2. The Director General
Department of Posts
New Delhi.
3. The Postmaster General
Assam Circle, Meghdoot Bhawan
Guwahati-1.
4. The Assistant Postmaster General (Staff)
Office of the Chief Post Master General
Assam Circle, Guwahati-1.
5. Postmaster, Rehabari Post Office
Rehabari, Guwahati-8.
...Respondents in O.A.234/2004.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

1. Union of India
Represented by the Secretary
Government of India
Ministry of Communications
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi-1.
2. The Chief Post Master General
NE Postal Circle
Shillong-793 003.
3. The Director of Postal Services
Tripura, Agartala.
4. The Superintendent of Post Offices
Dharmanagar Division
Dharmanagar - 799 250:

... Respondents in O.A. 85/2005.

By Ms. U. Das, Addl.C.G.S.C.

O R D E R

SIVARAJAN, J.(V.C.):

Both these cases relate to grant of compassionate appointment to dependents of Postal Department employees who had died in harness under a scheme for compassionate appointment published by the Government of India, Department of Personnel & Training (for short DOPT) O.M. No.14014/6/94-Estt.(D) dated 9.10.1998 and subsequent orders. Since both these applications relate to the compassionate appointment under the dying in harness scheme in the Postal Department and since the issues involved in both these cases are common these two cases are being disposed of by a common order.

2. Heard Mr. B. Pathak, learned counsel for the applicants and Mr. A.K. Chaudhuri and Ms. U. Das, learned

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Addl. C.G.S.C. for the respondents in O.A. Nos. 234/2004 and O.A. 85/2005 respectively.

3. The applicant in O.A. No.234 of 2004 is the son of late Upendra Nath Bayan who died while in service as a Group 'D' employee on 1.6.1999. The applicant, it is stated, had obtained a death certificate of his father on 17.7.1999 and applied to the third respondent on 9.8.1999 for appointment to a Group 'C'/'D' post on compassionate ground under the scheme of the Central Government. The applicant, it is stated, had submitted reminder representations on 3.10.2000, 19.1.2001 and ultimately on 25.5.2002. Since there was no response from the respondents, the applicant had filed O.A.No.394/2002 before this Tribunal. The said O.A. was disposed of by order dated 2.1.2004 (Annexure-F). The respondents were directed to consider the case of the applicant for compassionate appointment with utmost sympathy to any Group 'C' or 'D' post available with the respondents to which the applicant is entitled as per rules and regulations relating to compassionate appointment. Pursuant to the said direction, the respondents have passed an order on 7.5.2004 (Annexure-G) rejecting the representation of the applicant. The applicant has impugned the said order in this application.

4. The applicant in O.A. No. 85 of 2005 is the daughter of late Asit Ranjan Purkayastha, SPM, Churaibari under Dharmanagar Sub-Division, North Tripura who died in harness on 29.5.2000. The applicant after obtaining the

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death certificate of her father applied to the forth respondent on 15.9.2000 for appointment on compassionate ground. The fourth respondent thereupon by letter dated 18.9.2000 directed the applicant to submit application in prescribed form. The applicant, it is stated, has complied with the same. The respondents by communication dated 12.3.2002 (Annexure-D) informed the applicant that her request for compassionate appointment could not be recommended by the Circle Relaxation Committee (for short CRC) due to non-availability of vacancy. It is the case of the applicant that the respondents gave assurance to the applicant that her case for compassionate appointment will be considered in due course, but no communication was made by the respondents in this regard. The applicant after seeing advertisement published in the newspaper calling for application for 37 posts under the respondents requested the respondents by representation dated 5.4.2004 (Annexure-E) for giving appointment to her. Since the said representation was not considered, the applicant filed O.A. No.163/2004 before this Tribunal, which was disposed of by order dated 28.7.2004 (Annexure-G). The applicant was directed to file representation to the respondents narrating the grievances within two weeks and the respondents were directed to give reasoned reply within six weeks from the date of receipt of the representation. The applicant accordingly made a representation dated 30.8.2004 (Annexure-H). The second respondent disposed of the said

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representation by order dated 22.9.2004 (Annexure-I) rejecting the request of the applicant.

5. The reason for rejecting the applications for compassionate appointment sought for by the applicant in both these cases is that sufficient number of vacancies in the Circle Office/Division were not available for giving compassionate appointment to the applicants. In one case, it is stated that one vacancy which was available for appointment on compassionate ground was given to a more deserving hand than the applicant. There is a quota of 5% of Direct Recruitment vacancies fixed for appointment on compassionate ground.

6. In order to appreciate the justifiability of the rejection orders passed by the respondents in both these cases it is necessary to advert to the scheme for compassionate appointment. A study report prepared by the Department of Administrative Reforms and Public Grievances in 1990 made certain recommendations which were accepted and communicated by the Government of India, DOPT O.M. No.32/4/98-Welfare dated 29.7.1998. The said O.M. contains the following recommendations: -

- "1. The Department of Personnel and Training should revise its instructions so as to define the term 'near relative' and to include a wife or husband or brother or sister of the deceased Government servant as a beneficiary of the scheme of compassionate appointments.

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2. The power to relax limit of 5% of direct recruitment vacancies for making compassionate appointments should be vested with the Secretary in the Ministries/Departments of Government of India.
3. The Ministries/Departments should ensure that the compassionate appointments are made on means-cum-merits basis.
4. The Welfare Officer in each Ministry/Department should meet the members of the family of the deceased Government servant immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.
5. A time norm of 6 to 8 weeks should be fixed for making compassionate appointments.
6. The Department of Personnel and Training should make arrangements for a periodic review of cases of compassionate appointments dealt with the Ministries/Departments with a view to reduce delay and to get feedback on the problems faced by Ministries/Departments in the implementation of the scheme of compassionate appointments.
7. The officer dealing with compassionate appointments should be made to understand the scheme of compassionate appointments and its objectives so that they take a more humanitarian approach towards processing the cases of compassionate appointment.
8. Wherever the cases are screened by a Board/Committee of officers, the frequency of the meeting of such Board/Committee should be increased to once a month so that the applications do not remain unattended for long.

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9. The Ministry of Defence should allow candidates selected for compassionate appointment to join on a provisional basis pending detailed verification of their character antecedents. Such candidates may, however, be given some non-sensitive charges till completion of detailed verification of their character antecedents."

The relevant paragraphs 3.16.3, 3.16.4, 3.16.5 of the Report are also extracted:

"3.16.3 Appointments on need-cum-economic status basis

It is provided in the instructions/guidelines issued by the Department of Personnel and Training that the appointing authority should be selective in its approach and the economic status of the family and benefits received by the family of the deceased Government servant should be kept in view while considering the cases of compassionate appointment. It was observed that some of the Ministries/Departments/Organisations are not considering this aspect at all. There appears to be a lot of discretion in this regard which may be exercised in favour or against the applicant. The Department of Personnel and Training should consider providing some guidelines for ascertaining the need and economic status of the family of the deceased Government servant. Some of the parameters which can be considered in this regard are (i) income of the family of deceased Government servant; (ii) educational qualifications of the members of the family of the deceased Government servant; (iii) number of dependents and (iv) assets and liabilities left by the deceased Government servant. The Department of Personnel and Training should also reiterate its instructions from time to time to ensure that appointments are made on need-cum-economic status basis and that the latter factor is not ignored by the appointing authority.

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3.16.4 Guidance and Assistance to the family of the deceased

(i) It was observed that processing of application for compassionate appointment is often delayed on the ground that the application is not in the proper pro forma. The dealing officials take their own time to advise the applicant to send application in the prescribed pro forma and to furnish necessary details. Moreover, the information is called for piecemeal. In this process applicants who are not familiar with the procedure are made to run from pillar to post.

(ii) It is suggested that a system of calling the applicant in person at the very initial stage as done in the Ministry of Railways, should be adopted by the other Ministries/Departments/Organizations so that the applicant can be advised in person about the requirements and formalities to be completed by him. Since the entire scheme of compassionate appointment is a welfare measure, the Welfare Officer in each Ministry/Department should be required to meet members of the family of the deceased Government servant immediately after his death, and to advise and assist him applying for appointment on compassionate grounds in a correct manner so that the application can be processed speedily.

3.16.5 Fixing time norms for making compassionate appointment and review by the Department of Personnel and Training.

(i) Department of Personnel and Training should also consider fixing some reasonable time limits, say 6 to 8 weeks, for making compassionate appointments. The cases which cannot be considered on account of non-availability of vacancies may, however, be not subjected to this limitation.

(ii) It was felt that there was a lack of feedback and the review of the implementation of the instructions of the Department of Personnel and Training."

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The Government had accepted the said recommendations by forwarding copy of the Recommendations and the Welfare Officers attached to the Ministry/Department were directed to take action on recommendation No.4 of the report as and when such cases arise in their respective Ministry/Department. The Government of India DOPT in O.M. No.14014/6/94-Estt.(D) dated 9.10.1998 with reference to the above recommendations had revised/simplified the procedure for compassionate appointment and published the same in the form of a scheme for compassionate appointment which has superceded all the existing instructions on the subject. The recommendations and the scheme are contained in Chapter 32 under the caption "Compassionate Appointments" in Swamy's Complete Manual on Establishment and Administration for Central Government Offices, 9th edition-2003. The Scheme provides the object, the person to whom it is applicable, the authority competent to make compassionate appointment, the posts to which such appointment can be made, exemptions and relaxations. Clause 7 provides for determination/ availability of vacancies which reads as under:-

"Determination/Availability of Vacancies"

- (a) Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.
- (b) Compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The

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Appointing Authority may hold back up to 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise, so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category, viz., SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category, he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and, if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependant family member of Government servant on casual/daily wage/ ad hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment, if he is eligible as per the normal rules/orders governing such appointments.

(d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy, e.g., sports quota vacancy."

In the original scheme published by the DOPT there are two more sub-clauses which reads as follows:-

"(e) Employment under the scheme is not confined to the Ministries/Department/Office in which deceased /medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

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- (e) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

Various other matters including Court decisions are specified in the scheme. Another Government order O.M. No.14014/18/2000-Estt.(D) dated 26.2.2001 modified the O.M. dated 9.10.1998. It has been decided that in future the Committee for considering the request for appointment on compassionate ground should take into account the position regarding the availability of vacancy for such appointment and should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under Direct Recruitment quota in any Group 'C' or 'D' post prescribed in this regard in Para.7(b) of O.M. dated 9.10.1998. Another Government order O.M. No.14014/24/99-Estt.(D) dated 28.12.1999 provides for Calculation of Vacancies by Grouping of posts which is reproduced below:-

"(9) Calculation of Vacancies by Grouping of posts.- The question of non-availability of vacancies for appointment on compassionate grounds

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within the ceiling of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post prescribed in this regard in Paragraph 7(b) of O.M. No.14014/6/94-Estt.(D), dated 9-10-1998 [Order (2) above] particularly in small Offices/Cadres has been considered by the Government keeping in view difficulties being experienced in this regard even in genuine/deserving cases.

1. Accordingly, it has been decided to allow grouping of posts in small Offices/Cadres for the purpose of calculation of vacancies for appointment on compassionate grounds. Consequently, Group 'C'/'D' posts in which there are less than 20 direct recruitment vacancies in a recruitment year may be grouped together and out of the total number of vacancies, 5% may be filled on compassionate grounds subject to the condition that appointment on compassionate grounds in any such post should not exceed one.

2. It is also clarified that for the purpose of calculation of vacancies for compassionate appointment, fraction of a vacancy either half or exceeding half but less than one may be taken as one vacancy."

There is another order issued by the DOPT exclusively for postal department in letter bearing No.24/157/78-SPB-I dated 14.7.1978 which reads as follows:-

"(1) Delegation of powers of constitution of committees.- In pursuance of the revised policy, it has been decided to further delegate powers to make compassionate appointments (in the grade of Clerks or any Group 'C' post of comparable rank of Group 'D' post in which there is direct recruitment) of widows/sons/daughters of P&T employees who die harness and leave the family in indigent circumstances to Heads of Circle, etc., declared as Heads of Department under

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SR 2(10) if more than five years have not elapsed between the date of application for employment and the date of death of the employee. For this purpose in each Circle (except in Delhi Postal Circle and J & K Circle), a Committee consisting of the Heads of Circle, etc., and two senior Directors should be constituted. In Delhi Postal Circle, the Committee will consist of PMG and DPS and in J & K Circle, it will consist of PMG/GMT and APMG/AG. The Committee should scrutinize all such cases and decide them keeping in view guidelines provided by the Department of Personnel and AR. Such appointments must conform to the provisions as regards eligibility, etc., of the relevant Recruitment Rules except the condition of merit and nomination by Employment Exchange. The cases requiring relaxation of educational qualifications and age-limits and in which there is already one earning member in the family if recommended by the Committee will continue to be referred to the Directorate as at present. Similarly, the cases in which more than five years have elapsed between the date of death and the date of application will, if recommended by the Committee, be also referred to the Directorate. But in doing so, it should be borne in mind that the main objective of such compassionate appointments is largely related to the need for immediate assistance to the bereaved family. If more than five years had passed between the date of death and the date of application for appointment, it would appear that the family had some other means of subsistence and was in a position to tide over the crisis resulting from the death of the earning member. In such cases, it should be enquired as to why the widow failed to apply for employment in time and whether all children were minors at the time of death of the employee. Enquiries should also be made as to how the family sustained itself during the interim period."

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~~14~~ The object of the scheme is stated in Clause 1 of the scheme thus:

" The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency."

The Government order and the scheme read along with the recommendations were accepted and implemented by the Government. It is relevant in this context to note one important clause in the scheme i.e. Clause 8(b) which reads as under:-

"(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration."

The Government order containing the recommendations in the study report on employment on compassionate grounds and the scheme published as per O.M.No.14014/6/94-Estt.(D) dated 9.10.1998 mandates that on the death of a Government servant while in service the dependant the widow, son or the daughter of the deceased must be called/contacted at the very initial stage so that they can be advised in person about the requirements and formalities to be complied by them. This, it is stated, is for the reason

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that the entire scheme for compassionate appointment is a welfare measure and therefore, it is the duty of the Welfare Officer in each Ministry/Department/Office to meet the members of the family of the deceased Government servant immediately after his death and to advise and assist them in applying for appointment on compassionate grounds in a correct manner so that the application can be processed speedily. The application for compassionate appointment so filed should be disposed of within six to eight weeks subject to limitation of availability of vacancies. It was also stated that the Committee for considering the application for appointment on compassionate grounds must meet frequently as far as possible every month. The object of giving compassionate appointment to dependents of Government servant dying in harness as stated in the Clause 1 of the scheme is to relieve the family of the Government servant concerned from financial destitution and to help him to get over the emergency. The decision of the Supreme Court in Auditor-General of India and others vs. G. Anantha Rajeswara Rao, (1994) 1 SCC 192 has upheld the scheme of appointment on compassionate grounds to the son or daughter or widow of the Government servant who died in harness only on the grounds of immediate need of assistance in the event of their being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family. Again the Supreme Court in Umesh Kumar Nagpal vs. State of

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Haryana and others JT 1994 (3) SC 525 had observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help him to get over the emergency. All the above matters stated in the Government O.M. dated 9.10.1998 was intended for the guidance of the Head of the Departments and the Welfare Officers of each department. In short, the Government order mentioned above and scheme published under the said order is intended for the officers to expedite the matters of compassionate appointment keeping in mind the object of granting compassionate appointment. In other words, if there are lapses or laches on the part of the officers under whose jurisdiction a Government servant dies in harness the dependents of the Government servant dying in harness will be deprived of the benefit of the scheme. As already stated, the object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help them to get over the emergency. The Supreme Court in its various decisions had clearly stated that compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. (JT 1994 (3) SC 525). Thus, if the Ministry/ Department/Office keeps an application for compassionate appointment without any action under one pretext or other and the matter is delayed for one or two years the Supreme

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Court decision will operate against the applicant and thereby he is deprived of the benefit of the scheme for no fault of the applicant.

7. As already noted, compassionate appointment can be made only against Group 'C' and 'D' posts to which the direct recruitment can be resorted to. A quota of 5% of direct recruitment vacancies is also prescribed under the scheme for compassionate appointment. In the scheme of 1998 Clause 7(e) provides that the employment under the scheme is not confined to the Ministry/Department/Office in which the deceased Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon the availability of a suitable vacancy meant for the purpose of compassionate appointment. Clause 7(f) further provides that if sufficient vacancies are not available in any particular office to accommodate the person in the waiting list for compassionate appointment it is open to the administrative Ministries/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list. These provisions were available in the scheme till 26.2.2001, for as per O.M. dated 26.2.2001 the O.M. dated 9.10.1998 was modified. As per the modified scheme, the Committee for considering the requests for appointment on compassionate grounds should take into account the position regarding the availability of vacancy for such

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 appointment and should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under Direct Recruitment quota in any Group 'C' or 'D' post. By the Government order dated 28.12.1999 regarding calculation of vacancies by grouping of posts the Government of India decided to allow grouping of posts in small offices/Cadres for the purpose of calculation of vacancies for appointment on compassionate grounds as per which Group 'C'/'D' posts in which there are less than 20 direct recruitment vacancies in a recruitment year may be grouped together and out of the total number of vacancies, 5% may be filled on compassionate grounds subject to the condition that appointment on compassionate grounds in any such post should not exceed one. It is in this context Clause 8(b) of the Scheme comes into play. It has already been extracted above which says that the application has to be decided with reference to the date of death of a Government servant and not the age of the applicant at the time of consideration. Thus, the date of death of the Government servant is the crucial date for deciding the eligibility for appointment on compassionate grounds.

8. Now, I will come to the present two cases. As already stated, the father of the applicant in O.A.234 of

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2004 died on 1.6.1999 and the father of the applicant in O.A.85 of 2005 died on 29.5.2000. In view of Clause 8(b) of the scheme of 1998 the eligibility for granting compassionate appointment has to be decided with reference to the date of death of the Government servant concerned. In other words, the law as is stood on that day will apply to the applicants' case. Admittedly, the scheme of 1998 in its original form i.e. as is stood prior to 26.2.2001 will apply to the present cases. As already noted, by virtue of Clause 7(e) and (f) if there are no vacancies in the administrative Ministries/Department/Office in which the deceased Government servant had been working the applicants can be given appointment anywhere under the Government of India depending upon the availability of suitable vacancies meant for the purpose of compassionate appointment and it is the duty of the administrative Ministries/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to the applicants.

9. From the facts stated in paras 2 and 3 of this judgment it can be seen that the Head of the Departments/Welfare Officers attached to the office, where the deceased Government servant was working, neither made any effort to call the dependents of the deceased Government servants to the office nor visited the house of the deceased Government servant, as the case may be, to

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apprise them of the scheme and the formalities to be complied with in applying for compassionate appointment. These resulted in the applicant in O.A.234/2004 filing the application only on 9.8.1999 i.e. after two months. Similarly, the applicant in O.A.85/2005 had filed the application only on 15.9.2000 whereas her father died on 29.5.2000 i.e. approximately four months after the death of her father. It is also seen that the respondents did not take any active steps keeping in mind the object with which the compassionate appointments are being made. Though various representations have been made by the applicant in O.A.234/2004 from 1999 onwards the applicant was not considered by the authorities in the manner they were expected to consider. Inspite of the directions issued by the Tribunal also, the respondents have dealt with the matter in a casual way. The order dated 7.5.2004 (Annexure-G in O.A.234/2004) noted the facts that the Government servant concerned expired on 1.6.1999 and the applicant had filed application for compassionate appointment on 9.10.2000. It is also stated that the application was processed and kept ready for placing the same before the Circle Selection Committee (for short CSC) but the applicant filed O.A.394/2002 before this Tribunal and the Tribunal disposed of the case on 2.1.2004. The respondents have then referred to the guiding principles, yardsticks and parameters for compassionate appointment laid down by the Supreme Court and stated that the case of the applicant has been considered and rejected by the CSC on the ground

that there are more deserving cases than that of the applicant to fill up the limited available posts and that the number of dependents in the family of the applicant are less relatively in comparison to that of other candidates. It is also stated that as per the object of the scheme, compassionate appointment is considered to render immediate assistance for relief from financial destitution to the most indigent and deserving family left behind by the deceased employee and that in the instant case no such situation has been found prevailing on considering the case. Similarly, in the order dated 22.9.2004 (Annexure-I in O.A.85/2005) it is stated that the application filed by the applicant was received on 31.1.2001; the case was examined by the Circle Recruitment Committee alongwith other requests; as there was no vacancy in compassionate quota under the stipulated 5% of direct recruitment vacancies, the applicant's case could not be considered for compassionate appointment. Regarding 37 posts advertised for appointment it is stated that the vacant posts were meant for different divisions/unit for the purpose of recruitment under the direct recruitment quota for the circle as a whole. The respondents in their written statement in O.A.85/2005 has stated that the case of the applicant was considered by the CRC on 29.11.2001 but her case was not found eligible due to non-availability of requisite vacancy and that the some other case found more deserving than that of the applicant were recommended to fill up the limited available vacancies in the given

[Signature]

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period. Regarding Clause 7 (e) and (f) of the scheme for compassionate appointment of 1998 it is stated that the practice of circulating the names of deserving/wait listed applicants to other Ministries/ Department/Office was discontinued vide Department order No.37-16/2001-SPV-1 dated 25.7.2001 in pursuance of the new policy guidelines framed by the DOPT, Ministry of Personnel, Public Grievances and Pensions, Government of India. The case of the applicant, it is stated, arose much later than the Government notification and as such question of referring his case to other Ministries/Departments/ Offices for appointment on compassionate grounds did not arise. It is further stated that the system of maintaining a wait list of approved applicants for compassionate appointment was also discontinued w.e.f. 8.2.2001 vide departments order No.24-1/99-SPB-I dated 8.2.2001 issued pursuant to the new policy issued in the O.M. dated 24.11.2000. The decisions of the Supreme Court is also relied. Further it is stated that the applicant applied for compassionate appointment in a Group 'C' or 'D' post; his case was considered for the post of Group 'D' as she is entitled to being a matriculate; there is no provision in rules/policy that the applicant could have been appointed in the post applied for on compassionate grounds. The claim of the applicant for a GDS post at this stage is legally impermissible. It is stated that the applicants who were approved for compassionate appointment prior to the year 2002 were offered absorption in GDS post to mitigate their hardship.

Jps

10. The applicant in O.A.234/2004 filed a rejoinder and the respondents also filed reply to the said rejoinder.

11. The respondents in this case, according to me, did not bear in mind the recommendations made in the study report which was approved by the Government and the scheme of 1998 issued by the Government while considering the application submitted in the matter of compassionate appointment to the applicants. The respondents never called the dependents of the deceased Government servants to inform them about the formalities to be complied with in the matter of compassionate appointment. Even when the applicants had filed applications, they did not take any appropriate step either for rectifying the mistake, if any, in the applications or for placing the applications before the Committee constituted for the purpose at the earliest opportunity. It is also not clear as to whether the committee constituted for considering the applications for compassionate appointment was sitting regularly once in a month or at least once in three months. As per the scheme, the applications for compassionate appointment have to be disposed of within six to eight weeks. In the instant case, the respondents have kept the applications pending for years together i.e. the application submitted by the applicant in O.A.234/2004 on 9.8.1999 was kept pending till 7.5.2004 and that too an order was passed on 7.5.2004 pursuant to a direction issued by this Tribunal. The respondents are thoroughly at lapses and laches in the

gms

matter of dealing with the applications for compassionate appointment submitted by the applicant. They did not advert to the fact that an application submitted belatedly also has to be considered with reference to the date of death of the Government servant. In the instant case, the consideration was with reference to the date on which the application was taken for consideration and it is with reference to that the orders have been passed. If the respondents had noted that the crucial date for consideration of the application was the date of death of the Government servant as provided under Clause 8(b) of the scheme, they should have applied the provisions of Clause 7(e) & (f) and also would have kept a approved list for compassionate appointment, instead of telling the applicants that there is no vacancy available at 5% quota for compassionate appointment. That apart, under Clause 7(e) it is not only the vacancy available in a particular division or a circle which is relevant for the purpose of determining 5% vacancies, it is the whole department/office/Ministry. If there is no vacancy in the office in which the deceased Government Servant was employed, the vacancy in the department has to be considered and if there is no vacancy in the department, then the vacancy in the Ministry has to be considered. Even if there was no vacancy in these places the Head of the Departments had to address the matter to other departments/Offices/Ministries. But nothing had been done. Not only that the respondents have slept over the matter

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without any regard to the Government orders and the scheme issued thereunder now they are contending that the applications are belated; that the object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help to get over the emergency and that since that stage has crossed, the applicants could not be granted reliefs. Such an attitude on the part of the respondents cannot be approved since they had not done their part of the obligation under the Government orders and the scheme. If as a matter of fact, the respondents had called the applicants and informed them of the scheme and its formalities and if notwithstanding the above there was dereliction on the part of the applicants it may be open to the respondents to rely on the decisions of the Supreme Court and say that the applicants cannot be granted reliefs at a later stage. The attitude taken by the respondents in the present cases has only to be deprecated.

12. To put it shortly, the impugned orders are patently illegal and had been passed in total disregard and in violation of the provisions of the Government orders dated 9.10.1998 as is stood at the relevant time i.e. the date of death of the Government servant in both the two cases. I, accordingly, quash both the orders dated 7.5.2004 (Annexure-G in O.A.234/2004) and 22.9.2004 (Annexure-I in O.A.85/2005). I direct the respondents to consider the case

[Signature]

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of the applicants with reference to the Government order dated 9.10.1998 and the scheme issued thereunder as ¹⁵⁻¹⁰⁻⁹⁸ stood during the relevant period i.e. the date of death of the Government servant in both the cases particularly with reference to Clause 7(e) and (f) of the scheme which I have already extracted earlier in this judgment. This exercise will be done by the concerned authority within a period of four months from the date of receipt of this order. The decision so taken will be communicated to the applicants in both these cases immediately thereafter.

Both these two O.A.s are allowed as above.

sd/VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. No. 85 /2005

Smti Madhumita Purkayastha

.....Applicant

-versus-

Union of India & others

.....Respondents

SYNOPSIS OF THE CASE:

Date	Particulars	Annexure	Page
	One Asit Ranjan Purkayastha under the superintendent of Post Offices, Dharma Nagar, Tripura. He was a permanent staff.		
29.5.00	Asit Ranjan Purkayastha died in harness.	B	
1996	Madhumita Purkayastha, daughter of Asit Ranjan Purkayastha passed the Higher secondary Exams. She is hence eligible for appointment in any Group D or C post under the respondents.	A	
18.9.00	The applicant submitted applications for appointment on compassionate ground to the respondents as per the scheme of the respondents.	C	
12.3.02	Compassionate appointment of the applicant not considered showing non-availability of posts.	D	
5.4.04	Applicant made further representation referring to a newspaper advertisement which showed as many as 37 posts are vacant under the respondents.	E & F	
2.1.2004	Applicant filed OA No.163 before this Hon'ble tribunal and this Hon'ble Tribunal was pleased to pass an order on 28.7.2004 directing the respondents to consider the case of the applicant for compassionate appointment.	G	
22.9.2004	The compassionate appointment of the applicant not considered stating that there are no vacancies in the 5% quota for compassionate appointment. Against this impugned order of non-consideration, the applicant has filed the instant application.	I	

Filed by:

Bibhash Pathak
(Bibhash Pathak)
Advocate
Date: 28.3.05

2/ Filed by:
the applicant through
Bibhash Patra
Advocate
28/3/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

(An Application under Section 19 of the
Central Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 85 OF 2005

BETWEEN

Madhumita Purkayastha
Daughter of Late Asit Ranjan
Purkayastha
PO - Chandrapur, Dharma Nagar
North Tripura
Pin- 799251

... Applicant

-versus-

1. Union of India
Represented by the Secretary,
Govt. of India, Ministry of
Communications, Department of Posts
Dak Bhawan, Sansad Marg, New Delhi-1.
2. The Chief Post Mater General,
NE Postal Circle, Shillong -793003.
3. The Director of Postal Services
Tripura, Agartala.
4. The Superintendent of Post Offices,
Dharmanagar Division,
Dharmanagar - 799250.

... Respondents

Madhumita Purkayastha

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DETAILS OF THE APPLICATION

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

- (i) This application has been made against the order of rejection for compassionate appointment issued vide order No. ✓ STAFF/175-1/2001 dated 22.9.2004 (as in ANNEXURE I) as compliance with the direction given by the Hon'ble Central Administrative Tribunal, Guwahati Bench by order dated 28.7.2004 in OA No.163/04 against any Group C or D posts under the respondents as provided by the Scheme of 1998 after the death in harness of the father of the applicant.
- (ii) The applicant is qualified for appointment on compassionate ground against any Group C or D post under the respondents, but the respondents have refused to consider her case in spite vacancies available for such appointment.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the subject matter of the application is within the period of limitation prescribed under the Section 21 of the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

Madhumita Purkayastha

4.1 That the applicant is a citizen of India and a permanent resident of Village- Chandrapur, Dharmanagar, North Tripura, Tripura and as such she is eligible to all the rights and privileges guaranteed under the Constitution of India and all other laws/ schemes framed thereunder.

4.2 ✓ That the applicant has passed the Higher Secondary Examination (Arts) in 1996. Thereafter the applicant could not pursue further studies due to acute financial hardships in the family.

Photocopy of the Higher Secondary Marksheet is enclosed hereto as **Annexure A.**

4.3 That the father of the applicant, Late Sri Asit Ranjan Purkayastha was a permanent employee of the Postal Depart and was serving as SPM, Churaibari under Dharma Nagar Sub-Division, North Tripura. The father of the applicant died in harness on 29.5.2000 and the death certificate to that effect was issued by the competent Government authorities.

Photocopy of the death certificate is enclosed hereto as **Annexure B.**

4.4 That after getting the death certificate of her Late father, the applicant immediately made an application to the Superintendent of Post Offices, Dharmanagar on 15.9.2000 praying for appointment on compassionate ground. On receipt of the same, the Superintendent of Post Offices, Dharmanagar Division, Dharmanagar vide letter O. WLF/A. Purkayastha/2000 dated 18.9.2000 forwarded copies of the prescribed forms for compassionate appointment to the applicant for submission after duly filling up the same to the SDIOPS, Dharmanagar. Accordingly the petitioner filled up the prescribed forms and submitted the same to the respondents.

Madhumita Purkayastha

Photocopy of the letter-dated 18.9.2000 is enclosed as Annexure C.

- 4.5 That thereafter the applicant kept in constant touch with the respondents and the respondents kept giving verbal assurance to the applicant. However, the respondents took no steps to appoint the applicant on compassionate ground nor did they give any reply to the applications. Then on 12.3.2002 the respondents issued a letter vide no. WLF/RNR/RLG/Corr dated 12.3.2002 thereby informing the petitioner that her case for compassionate appointment could not be recommended by the Circle Relaxation Committee because of non availability of vacancy.

Photocopy of the said letter dated 12.3.2002 is enclosed hereto as Annexure D.

- 4.6 That even thereafter, the respondents kept giving assurance to the applicant that her case for compassionate appointment will be considered in due course. But no official communication was made by the respondents in this regard making the applicant to wait endlessly. Being in extreme penury and difficulty, and while the applicant was made to wait for the vacancies to occur for her appointment on compassionate ground, the applicant was surprised to see an advertisement published in the newspaper asking for applications for appointment in the Department of the respondents. At that stage, the applicant immediately made a representation on 5.4.2004 to the respondent referring to the said Newspaper Advertisement of the Department of Posts, Office of the Chief Post Master General, NE Circle, Shillong published in a local daily "Dainik Sambad" on 15th December 2003 wherein it was shown that there exist as many as 37 posts under the respondents. It was also indicated in the said advertisement of recruitment that there exist 3 unfilled vacancies in Dharmanagar in unreserved category since 2001. The applicant therefore prayed that her case may be considered against the existing vacancies. However the respondents have not taken any step in the matter so far. The applicant therefore, respectfully submits

Madhumita Purkayastha

that the communication made by the respondents vide letter dated 12.3.2003 is false and misleading and nothing but the same has been issued to deprive the applicant from her legitimate claim.

Copy of the representation along with the newspaper advertisement for recruitment showing the existing posts is annexed hereto as Annexure E and F respectively.

- 4.7 That the applicant had the reasons to believe that unless legal steps are initiated against the respondents, her case would not be considered at all. Hence, the applicant approached this Hon'ble Tribunal by filing the O.A. No. 163/2004. After hearing both the parties in the said case this Hon'ble Tribunal was pleased to pass an order on 28.7.2004 thereby directing the respondents to consider the case of the applicant for compassionate appointment and pass reasoned reply on the representation made by the applicant.

Copy of the said order dated 28.7.2004 passed in OA No. 163/2004 is annexed hereto as ANNEXURE G.

- 4.8 That after receipt of the certified copy of the order of this Hon'ble Tribunal dated 28.7.2004 the applicant immediately furnished a copy of the same to the respondents alongwith a fresh representation dated 30.8.2004. In response to the representation of the applicant, the respondents issued an order vide No. STAFF/175-1/2001 dated 22.9.2004 thereby informing the applicant that her case cannot be considered for compassionate appointment as there is "no vacancy in compassionate quota under the stipulated 5% of Direct Recruitment vacancies". This was stated in para 3 of the said letter dated 22.9.2004. Whereas in para 4 the respondents have admitted that 37 posts under the direct Recruitment Quota was available, 5% of which comes to atleast 2 posts.

Madhumi la Puzkayastha

Hence, it is not true that there was no vacancy under the 5% quota and this is a fit case where this Hon'ble Tribunal will be pleased to direct the respondents to re-consider the case of the applicant for appointment on compassionate ground against the actual vacancy position existing in the department.

The copies of the representation dated 30.8.2004 and the letter dated 22.9.2004 is annexed hereto as ANNEXURE H and I respectively.

- 4.9 That the respondents have made no attempt to explain the details of the factors nor have given reason for rejection of the case of the applicant except for making a vague statement that compassionate appointment depends upon the availability of posts and there is no vacancy under the stipulated 5% quota. The respondents are in the habit of passing such stereotype orders without giving the factors that are considered while rejecting a case, the relevant policy in vogue and the actual vacancy position in the Circle for the concerned period. Under similar circumstances, in OA.171/2004 (Sri Rupak Dey -vs- Union of India & others) this Hon'ble Tribunal was pleased to direct the respondents vide order dated 11.2.2005 to pass reasoned and speaking order afresh highlighting the various factors considered while examining the applicant's case for compassionate appointment. Hence, this applicant respectfully prays for a similar relief from this Hon'ble Tribunal.

The copy of the said order dated 11.2.2005 is annexed hereto as ANNEXURE J.

- 4.10. That the respondents seem to have adopted some pick and choose policy in the cases of compassionate appointment and all such appointments are made not as per vacancy position but at the behest of some interested party having unholy nexus. As it would appear that while the respondents are rejecting the genuine claims some extremely compassionate cases like that of

Madhumita Purkayastha

the applicant, on the other hand the respondents are appointing persons of such other cases. The respondents have recently appointed two such candidates in the Circle Office of the N.E.Circle, Shillong under the compassionate ground; namely, one Smti Medarishisha Lyngdoh Nongkynrih, daughter of late Swing J. Warjri, ex-steno of the Circle Office, N.E. Circle, Shillong as PA with effect from 3.3.2004 and Smti Dipali Dey, wife of late Sebak K. Dey, Ex-PA, N.E.Circle Office, Shillong, as Group 'D' with effect from 26.2.2004. This information was published in the "North Eastern Postal Circle Newsletter in Vol. V, Issue 2. As such, the order of rejection of the case of the applicant on the plea of non availability of vacancies is baseless, illegal, arbitrary, bias and discriminatory and violative of the provisions of Art. 14,16 and 21 of the Constitution of India.

The relevant portion of the copy of the Newsletter Vol.V, Issue 2 is annexed as **ANNEXURE-K.**

- 4.11. That as per provisions of the Scheme of 1998, it is the obligation of the respondents to not only make provisions for compassionate appointment against the vacancies available within the department, but also to make arrangement by seeking option from the willing applicant/candidate to arrange compassionate appointment in other departments of the Government of India where vacancies are available. But nothing has been done in this regard. Moreover, it pertinent to mention here that the Department of Post choked out a plan, namely, "Annual Direct Recruitment Plan-2001". As per said plan there were sufficient vacancies out of which the required 5 % could have easily drawn for compassionate appointment for the appointment of the applicant. According to the said plan there are 30 and 8 vacancies in group "C" and "D" posts respectively in the N.E.Circle itself. There are 63 and 14 vacancies in the Assam Circle in the group "C" and "D" respectively. Whereas there are in total 2385 and 512 vacancies in group "C" and "D" vacancies on all India basis as indicated in the said plan. Moreover, it clear

Madhumita Purkayastha

that while calculating the vacancies, both the group "C" and "D" vacancies are to be clubbed together to determine the 5% of the vacancies for compassionate appointment. The department of Post also clarified vide its Circular dated 14.1.2002 that old cases were also to be considered for compassionate appointment under 5% quota from the vacancies of the said Plan of 2001. The applicant applied for compassionate appointment in the year 2000 and her case is well covered by the said planned vacancies also. Hence, it is not a case that the applicant could not be considered for appointment for want of vacancies, rather she has been denied the opportunity by discriminatory tactics in clear violation of her fundamental rights.

The copies of the annual vacancies plan-2001 and the circular dated 14.1.2002 are annexed as ANNEXURE L and M respectively.

4.12 That the applicant being the elder daughter and the only person in the family with qualifications for employment is under the responsibility to look after all the affairs of the family and after the death of her father the family is facing great financial hardship. Under the circumstances, it is therefore, highly essential for the applicant to get a job so that she may protect herself and her family from starvation and penury. The applicant is willing to accept any kind of job under the respondents so that she may survive with the dignity of a human being. The applicant is willing to service in any post/ engagement as EDA (Gramin Dak Sevak) etc, casual labour or Stamp Vendor etc till such time she is regularly appointed against the regular vacancy on compassionate ground.

4.13 That the applicant took steps from her side for immediate appointment on compassionate ground, but it is the respondents who have delayed the matter without assigning any reason or without any notice to the applicant. Therefore, the action of the respondents is illegal and it amounts to violation of the provisions of the principles of natural justice and administrative

Madhumita Purkayastha

fair-play. If there is no available vacancies within the permissible 5% quota, in that case also the respondents could have appointed the applicant in any Extra Departmental Post like EDA, ED Branch Postmaster, ED Mail carrier or in any Casual works pending his appointment under the Scheme. In this connection, the applicant states that recently, the respondents have considered such cases of compassionate appointment in Extra Departmental Posts by relaxing the norms. This was done vide order issued by the Superintendent of Post Offices, Silchar Division, Silchar, No.B1/Rectt/Relax/Misc. dt.11.6.2002.

A copy of the said order dt.11.6.2002 is annexed hereto as the ANNEXURE-N.

- 4.14 That the applicant took steps from her side for appointment on compassionate ground immediately after the death of her father. There has been no delay or laches on her part in making the application for compassionate appointment. But it is the respondents who have delayed the matter despite their being vacancies under the disposal of the respondents. Therefore, the action of the respondents is illegal, arbitrary and the inaction on the part of the respondents amounts to violation of the provisions of the principles of natural justice and administrative fairplay and also the provisions of Article 14,16 and 21 of the Constitution of India.
- 4.15 That there are sufficient vacancies in the establishment of the respondents as the same is understood from the advertisements published in the Newspapers and as indicated in Annexure F and the Annual Vacancy Plan-2001 (Annexure L). The applicant is ready to work anywhere within the N.E. Circle.
- 4.16 That the applicant demanded justice from the respondents which has been denied to her.
- 4.17 That this application has been made bonafide and for the ends of justice.

Madhumita Purkayastha

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- 5.1 For that the action of the respondents in not considering the appointment of the applicant on compassionate ground under the Scheme of the Govt. of India is highly illegal and arbitrary.
- 5.2 For that the action of the respondents in not appointing the applicant whereas appointing some other similarly situated persons as Extra Departmental Staff under the rules is clearly discriminatory which has violated the provisions of the Article 14, 16 and the 21 of the Constitution of India.
- 5.3 For that the apparent action or inaction of the respondents in dealing with the matter of the applicant is discriminatory and negligent act of the respondent, which cannot sustain in law.
- 5.4 For that the appointment of the applicant on compassionate ground has not been considered by the respondents in spite of there being sufficient number of vacancies.
- 5.5 For that a welfare scheme should be construed liberally to advance the purpose and not to defeat the same.
- 5.6 For that in any view of the facts and circumstances of the case, the applicant is entitled to be appointed on compassionate ground under the Scheme.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that she has exhausted all the remedies available to her and there is no alternative and efficacious remedy available to her.

Madhumita Purkayastha

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

That the applicant further declares that she has previously filed the OA No. 163/2004 before this Hon'ble Tribunal which was disposed of vide order dated 28.7.2004. After the passing of the said order dated 28.7.2004, the impugned order dated 22.9.2004 was passed by the respondents against which the applicant has approached this Hon'ble Tribunal. Other than this, the applicant has not filed any application, writ petition or suit regarding the grievances in respect of which this application is made, before any court or any other Bench of the Tribunal or any other authority nor any such application or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances of the case, the applicant most respectfully prays in this Hon'ble Court that the application be admitted, records of the case be called for and notices be issued to the respondents directing them to show cause as to why the relief sought for should not be granted to the applicant as prayed for and after hearing the parties and perusing the records including the causes, if any shown by the respondents, Your Lordships would also be pleased to direct the respondents :

8.1 To consider the case of the applicant for appointment on compassionate ground in any Group C and D post under the respondents against the vacancies that occurred as per advertisement published on 12.3.2003 or other available post and/or to appoint the applicant against the supernumerary post if the said vacancies are already filled illegally without considering the case of the applicant;

8.2 To pay the cost of the application;

Madhumita Prakash

- 8.3 Or may pass order for any other relief to which the applicant is found entitled to under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application, the applicant prays for grant of an interim order to direct the respondents to allow the applicant to work in any casual or ED basis against any vacant post or job in the establishment of the respondents.

10. The application is filed through Advocate.

11. PARTICULAR OF I.P.O.:

I.P.O. NO.	: 20 G. 160167
Date of Issue	: 28-3-05
Issued from	: G.P.O. Guwahati,
Payable at	: Guwahati.

12. LIST OF ENCLOSURES:

As stated in the INDEX.

Verification ...

Madhumita Purkayastha

VERIFICATION

I, Smti Madhumita Purkaystha, daughter of Late Asit Ranjan Purkaystha, aged about 26 years, permanent resident of village Dharmapur, District- North Tripura, Tripura, do hereby solemnly affirm and state that the statements made in the application in para 1,2,3,5,6,7 and 8 ——— are true to my knowledge and belief, those made in para 4.2 to 4.13 and 4.14 ——— being matter of records, are true to my information derived therefrom and the rest are my humble submission and legal advice. I have not suppressed any material fact of the case.

And I sign this verification on this 28th day of March, 2005 at Guwahati.

Madhumita Purkaystha

Deponent

-14-

-11-

ANNEXURE : A

ANNEXURE : A

003486/96



GENERAL STREAM COURSES

TRIPURA BOARD OF SECONDARY EDUCATION MARK-SHEET

HIGHER SECONDARY (+2 Stage) EXAMINATION 1996

The following is the Statement of Marks obtained by

MADHUMITA PURKAYASTHA

S/D of ASIT RANJAN PURKAYASTHA

Roll NORTH F

No. 15755

of CHANDRAPUR GOVT. H.S. SCHOOL

at the

Higher Secondary (+2 stage) Examination, 1996

	LANGUAGES		COMPULSORY ELECTIVE SUBJECTS						OPTIONAL ELECTIVE SUBJECT		GRAND TOTAL	DIVISION
	Gr. A	Gr. B										
Subjects	BNGA	ENGB	POLS		HIST		PHIL		ECON			
			Th	Pr	Th	Pr	Th	Pr	Th	Pr		
Full Marks	200	200	200		200		200		200		1000	Minimum Marks required for First Division 600 Second Division 450 Pass Division 300
Pass Marks	60	60	60		60		60		60		300	
Marks obtained	76	60	73		81		137		49		427	

Remarks

Specified Activity

SOCIAL SERVICE

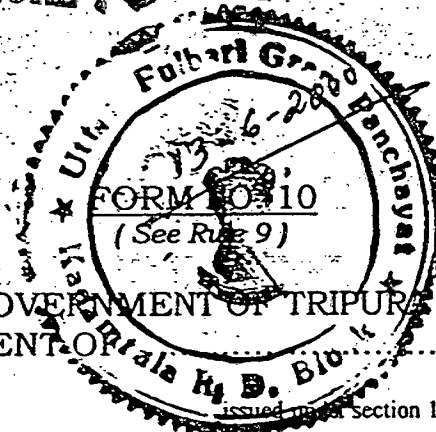
(See overleaf)

FOUR TWO SEVEN
 DR. R. D. PURKAYASTHA
 V.A.S. (V.S. Grade-VI)
 A.I. Centre, Chandrapur, North Tripura.

Certified to be true Copy.
 Bishash Pathak
 Advocate

ANNEXURE: B

M. D. Spl. Form No. 115



GOVERNMENT OF TRIPURA
DEPARTMENT OF REGISTRATION

CERTIFICATE OF DEATH

issued under section 12 of the Registration of

issued under section 17 Births and Deaths Act, 1969

This is to certify that the following information has been taken from the original record of death which is in the register for Uttar Fulbari of Tehsil Churair Bari of (local area)

District N. Tripura of State T.R.I.P.U.R.A.

Name Ashut Ranjan Burkoyastha Nationality Indian

Sex Male Permanent address Uttar Fulbari G.P.

Date of Death 29-5-2000

Registration No. 4

Place of Death Uttar Fulbari G.P.

Date of Registration 13-6-2000

Name of Father/Mother/Husband Anna & da Churan Burkoyastha

Registration No. 4

Gang Gopal Das
Signature of issuing authority.
Register of Births & Death

Uttar Fulbari G/P

Date 13-6-2000

4/2/2000
Additional District Registrar
BIRTH & DEATHS
Kadamala R. D. Block
North Tripura

*Note: In the case of death, no disclosure shall be made of particular regarding the cause of death as entered in the Register.

Certified to be true Copy.
Bibash Pathak
Advocate

Regd

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

From

Supdt. of Post Offices,
Dharmanagar, Division
Dharmanagar, 799259

भेजना

To Miss Madhumila Purkayastha
c/o Manju Purkayastha
V.H.D.P.O. - Chanchapour - 799251

कम रीति

No. W.F./A. Purkayastha/2000

दिनांक

Dated at Dharmanagar the 13/9/2000

विषय
Subject

Appointment under
relaxation of normal
rules — Case of Miss
Madhumila Purkayastha
d/o late Pril R. Purkayastha
Ex-Sm, Chauraisari S.O.

Ref:- your application dtd 15/9/2000

6 (Six) copies of synopsis Part I, Part II
and Part III are sent herewith for submission
of the same through S.D.P.Os. Dharmanagar
after duly filled in including all
necessary documents as early as possible.

Supdt. of Post Offices,
Dharmanagar, Division
Dharmanagar, 799259

Copy to :- The S.D.P.Os, Dharmanagar Sub
Division for information and
n/a

Certified to be true Copy.
Bishakh Pattah
Advocate

3
Supdt. of Post Offices,
Dharmanagar, Division
Dharmanagar, 799259

Department of Posts : India
Office of The Supt. Of Post Offices, Dharmnagar Division,
Dharmnagar ::::: 799 250.

NO:-WLF/RNR/ILG/Corr.,

Dated at Dharmnagar the 12.03.02.

Subject :-Request for appointment on
compassionate ground Relaxation
of Normal rules.

I have been directed, vide C.Os letter no.Staff/
175-111/2001/sel dated 28.02.2002 to intimate you that the
compassionate appointment cases of the following applicants
under this Division were put up before the DFC(Circle relaxation
Committee) for the purpose, on 29.11.2001 at Shillong for con-
sideration, but regret to inform that the cases could not be
recommended by the Committee due to reason indicated against
each. The competent authority accepts the opinion of the comm-
ittee duly considering the fact of each case.

SL.NO.	Name of the candidate	Post applied for	Reason for non reco- mmendation
1.	2.	3.	4.
(1)	Smt. Madhumita Purkayastha, D/O.Late A.R. Purkayastha, EX-S.M.Churaibari	PA.	Non availa- bility of requisite vacancy. ✓
(2)	Shri Ganendra Sokhar Das, S/O.Late G.K. Das, EX-S.M.Panisagar S.O.	PA.	- DO -
(3)	Santanu Goswami S/O.Late Sachinanda Goswami, EX-Group 'D' Dharmnagar H.O.	Postman	Non availa- bility of requisite vacancy.
(4)	Shri Swapan Mitra Das S/O.Late B.K. Das, EX-B.M.Dhuma Cherria ED.EO.	LDA	The applicant is having his own family and maintaining them since long. He, therefore cannot be treated as dependent on deceased ED employee. Hence, it was not recommended by the committee.

Certified to be true Copy.
Bibhan Pathali
Advocate

... (2) ...

42

SL.NO.	Name of the candidate	Post applied for	Reason for non recommendation
1.	2.	3	4.
(5)	Miss Bina Rani Reang D/O.Late Bhaktiram Reang EX-B.M.Garchirampara ED.NO.	EDA	As the wife of the deceased official is a Govts employee the family is not in indigent condition. The applicant does not possess requisite qualification also. Hence, the case was not recommended by the circle relaxation appointment Committee.

[Signature]
12/03/12
Supt. of Post Offices,
Dharmnagar : Division,
Dharmnagar : 799 250.

Copy to :-

- [Signature]*
12/03/12
- 1) Smti Madhumita Purkayastha, D/O.Late Asit Kanjan Purkayastha, EX-S.M.Churaiheri P.O.Churaiheri for information.
 - 2) Shri Ganendra Sekhar Das, S/O.Late Gouranga Kumar Das, EX-S.M.Panisagar, P.O. Dharmnagar, Nayapara for information.
 - 3) Shri Santanu Goswami, S/O.Late Sachinandan Goswami, EX-Group 'D' Dharmnagar H.O., P.O.Dharmnagar for information.
 - 4) Shri Swapen Mitra Das, S/O.Late B.K. Das, EX-B.M. Dhuma Chorra ED.LO., Via.Manughat S.O. for information.
 - 5) Miss Bina Rani Reang, D/O.Late Bhaktiram Reang, EX-B.M. Garchirampara ED.LO., Via. Dasda Bazar S.O. for information.
 - 6-11) Respective files of the concerned applicants.

[Signature]
12/03/12
Supt. of Post Offices,
Dharmnagar : Division,
Dharmnagar : 799 250.

Certified to be true Copy
Bhram Palkah
Advocate

[Signature]

To
The Chief Postmaster General
N.E. Circle
Shillong - 793 001.

Sub : Appointment under Compassionate Ground Relaxation of Normal rules.

Respected Sir,

I beg to refer the following matters for your kind perusal and for sympathetic consideration,

1. That, my father Ashit Ranjan Purkayastha during service as Sub-Postmaster of Churaibari Sub-Post Office within Dharmanagar Sub-Division, North Tripura District under Supdt. of Post Office, Dharmanagar, North Tripura of N.E. Circle, died on 29-05-2000 A/C. in the office premise of Churaibari Post Office.

2. That my father who died on 29-05-2000 A/D. left behind the following family members.

- i) Smti. Manju Purkayastha (Wife, aged 49 years).
- ii) Smti. Madhumita Purkayastha (daughter, aged 26 years).
- iii) Smti. Manidipa Purkayastha (daughter, aged 22 years).
- iv) Sri Arindam Purkayastha (Son, aged 8 years).

3. That, I Smti. Madhumita Purkayastha being educated passed (10+2 stage) examination but could not proceed further studies due to financial hardship. There is/are none to provide our family with any financial aid after the death of my father. In the hard days, we are remaining helped only on the poor amount of family pension.

4. That, I submitted an application dated, 15-09-2000 addressed to the Supdt. of Post offices, Dharmanagar for providing me in the service under Postal Department on the compassionate Ground and said petition processed and ultimately Supdt. of Post Offices vide his letter dt. 12-03-2002 (Xerox copy enclosed), showing my name in the first of list and informed me that my case could not be recommended by the committee to non availability of requisite vacancy against the post of "Postal Assistant".

5. That, I made so many correspondances with prayer for consideration for providing me with service on Compassionate ground. Some xerox copy of the correspondences dated, 23-12-2003, 31-12-2003 and 10-03-2004 are sent herewith.

6. That, for the purpose of review and reconsideration I beg to place the office Memorandum No. 14014/19/2002 Esst.(D), Govt. of India, Ministry of Personal Public Grievances and pensions etc. dated, New Delhi, the 5th May, 2003 (xerox copy enclosed).

7. That, with reference to letter dated, 12-03-2002 of Supdt. of Post Office, Dharmanagar, I beg to place the xerox copy of the paper cutting of newspaper namely "Dainik Sambad" dt. 15th December, 2003 published from Agartala where in it was notified from your office inviting application to fill up the post of P.A. (Postal Assistant) and other post where in against Dharmanagar total numbers of six post of P.A. was notified to be filled showing 3 (three) numbers post of P.A. as unfilled vacancies of 2001 all in U.R. category. But unfortunately vide letter dt. 12-03-2002. I was informed that my case could not be recommended for non-availability of requisite vacancy. When vacancies were available it is known to me how and why my case could not be recommended. There might have been some mistake in the accounts of the department as regards vacant posts and notice of some authority might have been escaped during consideration of my case for the purpose of recommendation and which created deprivation.

8. That, during hard days of 'Price Rice' I along with my family members are at stake.

9. That, I hope and believe your honour would be pleased enough to consider above stated facts and situation for review of the matter sympathetically.

In the above circumstances I beg to knock your kind heart and pass necessary order for appointing me in the post of P.A. or in any other post suited to my educational qualification under your kind control and disposal and save me and my family members from utter ruin.

And for the act of kindness, I shall remain ever grateful.

Dated,
The _____/2004.

Certified to be true Copy.
Bishesh Pathak
Advocate

Yours faithfully,

D/O. Late Ashit Ranjan Purkayastha,
P.O. Chandrapur, Dharmanagar,
Dist. North Tripura.

এই পত্রটির প্রথম পৃষ্ঠা, দ্বিতীয় পৃষ্ঠা এবং তৃতীয় পৃষ্ঠায় তিনটি পৃষ্ঠার উপর এবং চতুর্থ পৃষ্ঠায় দুই পৃষ্ঠার উপর মোট ছয়টি পৃষ্ঠার উপর প্রযোজ্য।

এই মাতৃভাষা অধিকার বিকাশের জন্য বিশেষ দায়িত্ব নিয়ে গিয়েছিলেন শ্রীমা সারনাদেবীকে এবং কালক্রমে তাঁর মধ্যে বিকশিত হয়েছিল মাতৃভাষার পরম উৎসর্গ। শ্রীমা সারনাদেবী মাতৃভাষার অধিষ্ঠাত্রী দেবীর মর্যাদায় আজ প্রতিষ্ঠিত। উচ্চ মাত্রার মাতৃভাষা ছিল তাঁর সারা জীবনের প্রধান রাগিনী, তাঁর আবেগের মুক্ত উৎস এবং জীবন দর্শনের বনিয়াদ। মাতৃভাষার অন্তর্নিহিত স্বাধীনতাশীল এবং জাতি, ভাষা,

সংবাদ প্রতিনিধি, আগরতলা, ১৪ ডিসেম্বর : রাধাকিশোর পুর থানাধীন পালাটানার এক কিশোরী আত্মঘাতী হয়েছে। পুলিশ জানিয়েছে, গতকাল রাত ৮টা নাগাদ পালাটানার লোকস্বাস সবিতা সিংহ (১৫) নামে জনৈক কিশোরী নিজ বাড়ীতেই বিষপান করে। হাসপাতালে নিয়ে আসার পথেই তার মৃত্যু হয়। বিষপানে কিশোরীর মৃত্যুর ঘটনায় এলাকায় শোকের ছায়া নেমে এসেছে।

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL: N.E. CIRCLE: SHILLONG

Applications are invited for the following Posts against the vacancies for the year 2002 in the following Divisions/Units.

- There are 4 (four) categories of recruitment:-
a) Postal Assistants for Postal Division.
b) Postal Assistants for Circle Office.
c) Postal Assistants for SBCO.
d) MMS Drivers for Postal Divisions.

দৈনিক সংবাদ, আগরতলা, সোমবার, ১৫ ডিসেম্বর, ২০০৩ ইং

1. FOR POSTAL ASSTTS. (Post Offices)

Sl.No.	Name of Division	SC	ST	UR	OBC	Total	Application to be addressed to.
1.	Agartala	*2	*3	*4	-	9	Director of Postal Services, Agartala
2.	Arunachal Pradesh	-	2	2	-	4	Director of Postal Services, Itanagar
3.	Dharmanagar	1	-	*5	-	6	Superintendent of Post offices, Dharmanagar
4.	Manipur	-	-	*3	4	7	Director of Postal Services, Imphal
5.	Meghalaya	-	1	*3	-	4	Sr. Superintendent of Post Offices, Shillong
6.	Mizoram	-	1	1	1	3	Director of Postal Services, Aizawl
7.	Nagaland	-	2	2	-	4	Director of Postal Services, Kohima

Total - 37

- Agartala - 1 (one) - Ex-servicemen, * 5 unfilled vacancies of 2001 (UR-2, SC-1, ST-2)
- Manipur - 1 (one) - Ex-servicemen, *1 unfilled vacancy of 2001 in UR category
- Meghalaya - 1 (one) - Ex-servicemen and 1 (one) - Physically handicapped, *1 unfilled vacancy of 2001 in UR category
- Dharmanagar - *3 unfilled vacancies of 2001 all in UR category

2. FOR POSTAL ASSISTANTS (Circle Office)

FOR MMS Drivers

- Pay - Rs. 3050-4590
- Age - Between 21 and 28 years.
- (Relaxable for Government Servants up to 35 years in accordance with the instructions or orders issued by

Certified to be true Copy.
Bishash Pathak
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Ord.App/ Misc.Petn/Cont.Petn/Rev.Appl. 163/04

In O.A.

Name of the Applicant(s) M. Purkayastha

Name of the Respondent(s) U.O.I. Govt

Advocate for the Applicant Mrs. M. Pathak, D-Bornah, B. Pathak

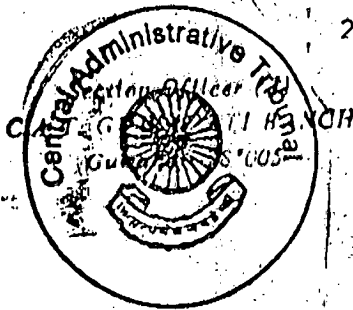
Counsel for the Railway/ C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

28.7.2004



The application is against the order dated 12.3.2002 (Annexure - D) rejecting the claim of the applicant for compassionate appointment in the postal department. The Respondents published certain advertisements in the newspaper for recruitment of postal assistant in the office of the Chief Postmaster General, N.E. Circle, Shillong showing available vacancies.

The O.A. is disposed of with the direction that the applicant shall file representation to the respondents narrating the grievances within two weeks from the date of receipt of this order. If such, representation is made by the applicant, the

Contd/-

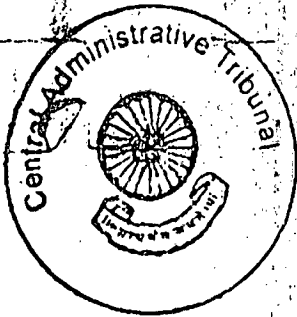
Certified to be true Copy.
Bhishan Pathak
Advocate

O.A. 163/2004

Contd/-
28.7.04. respondents are directed to give
reasoned reply within six (6)
weeks from the date of receipt of
the representation.

No order as to costs.

Sd/MEMBER(ADM)



TRUE COPY

NS 4/8/04
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

Certified to be true Copy.
 B. Shank Palkal
 Advocate

thereby informing me that my case for compassionate appointment could not be recommended by the Circle Relaxation Committee because of non availability of vacancy.

4. That even thereafter I was given verbal assurance by the Dharmanagar office that my case for compassionate appointment will be considered in due course. But no official communication was made in this regard making me to wait endlessly. Being in extreme penury and difficulty, and while I was made to wait for the vacancies to occur for her appointment on compassionate ground, I was surprised to see an advertisement published in the newspaper asking for applications for appointment in the departments of posts. At that stage, I immediately made a representation on 5.4.2004 to the Dharmanagar office referring to the said Newspaper Advertisement of the Department of Posts, Office of the Chief Post Master General, NE Circle, Shillong published in a local daily "Dainik Sambad" on 15th December 2003 wherein it was shown that there exist as many as 37 posts. It was also indicated in the said advertisement of recruitment that there exist 3 unfilled vacancies in Dharmanagar in unreserved category since 2001. I therefore prayed that my case may be considered against the existing vacancies. However no steps in the matter has been taken so far from the side of your office. I therefore respectfully submit my legitimate claim will be given due consideration.

Copy of the representation along with the newspaper advertisement for recruitment showing the existing posts is enclosed hereto as **Enclosure A and B** respectively.

5. That on receiving no reply from the Postal Department and being under great financial constraint, I had to approach the Hon'ble Central Administrative Tribunal seeking a direction for my compassionate appointment in light of the newspaper advertisement that show available vacancies in the Department of Posts even at the time when my case for compassionate appointment was rejected. My application was registered as OA. No. 163/2004. On 28.7.2004 the Hon'ble CAT, Guwahati bench was pleased to hear the matter and on hearing the contention made by me, the Hon'ble CAT was pleased to issue a direction that in light of the newspaper advertisement showing available vacancies, I shall file a fresh representation. The Hon'ble CAT has also directed the respondents to give

reasoned reply within 6 weeks from the date of receipt of the representation. Accordingly this representation has been filed.

Copy of the said order dated 28.7.2004 is enclosed herewith as Enclosure C.

6. That Sir, I being the elder daughter and the only person in the family with qualifications for employment am under the great responsibility to look after all the affairs of the family and after the death of her father the family is facing great financial hardship. Under the circumstances, it is therefore, highly essential for me to get a job so that I may protect myself and my family from starvation and penury. I am willing to accept any kind of job under you so that I may survive. Please consider my representation sympathetically. And for your kindness, my poor family and I shall ever pray.

Yours sincerely,

Madhumita Purkayastha

Madhumita Purkayastha
Daughter of Late Asit Ranjan
Purkayastha, PO – Chandrapur,
Dharma Nagar, North Tripura,
Pin- 799251

Copy to:

1. The Director of Postal Services
Tripura, Agartala.
2. The Superintendent of Post Offices,
Dharmanagar Division,
Dharmanagar – 799250.

Madhumita Purkayastha
(Madhumita Purkayastha)

DEPARTMENT OF POSTS:INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL:N.E.CIRCLE:SHILLONG.

No.STAFF/175-1/2001

Dated at Shillong the 22-9-2004.

To,

SMTI MADHUMITA PURKAYASTHA,
Daughter of (L) Ashit Ranjan Purkayastha,
PO- Chandrapur ,Dharmanagar,
North Tripura,Pin- 799 251.

SUBJECT: Request for appointment under Compassionate ground.

This refers to your representation dated 30-8-2004 on the above subject. Your representation has been examined in the light of Hon'ble CAT, Guwahati order dated 28-7-2004 in OA No.163/04 and the outcome is as follows-

1. It is a fact that (L) Ashit Ranjan Purkayastha died on 29-5-2000 and that he suddenly suffered from cerebral stroke while performing his duty. He was immediately brought to hospital at a distance of 5 Kms where he was declared "Dead". It is however not correct that the official was seriously ill and had applied for leave to undergo medical treatment. The RL No.1544 dated 8-5-2000 under reference was not actually received by Dharmanagar H.O. and therefore, could not be delivered to the office of the Supdt. of POs, Dharmanagar. It is also incorrect that the said RL No.1544 contained the application for leave of absence on health ground of the official concerned as evident from subsequent letter dated 17-5-2000 submitted by the said Shri Ashit Ranjan Purkayastha. According to the said letter 3 (three) days C.L. effecting from 13-5-2000 to 15-5-2000 was reported to have been applied on 8-5-2000 to attend the Shraddha ceremony of his father-in-law. In the said letter, it was also mentioned that the C.L. application was sent under RL No.1544 dated 6-5-2000. Examination of the Registered Abstract of Churaibari S.O. for the month of May'2000 revealed that the RL was practically issued on 8-5-2000 and was despatched to Dharmanagar H.O. alongwith other 5 RLs but it was received short by the H.O. Therefore, the contention that the Late official was suffering from illness and was not granted leave for undergoing treatment in not correct.

2. Your application for appointment under compassionate ground was received in this office from the SPOs, Dharmanagar on 31-1-2001.

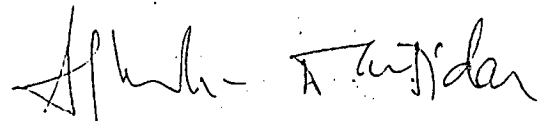
3. The case was examined by the Circle Recruitment Committee alongwith other Requests. However, as there was no vacancy in compassionate quota under the stipulated 5% of Direct Recruitment vacancies, your case could not be considered for appointment.

Certified to be true Copy.

Bibhash Pathak
Advocate

4. Verbal assurance if any, cannot be taken into account unless confirmed in writing. The advertisement for recruitment of 37 posts as asserted by you in para-4 of your representation did not mean for one unit of Recruitment viz. Dharmanagar Division and falling under the quota of compassionate appointment. The vacant posts were meant for different Divns/Unit for the purpose of recruitment under the Direct Recruitment Quota for the circle as a whole and the advertisement was made including the unfilled vacancies of departmental quota of vacancies for the previous year centrally by this office. The recruitment advertisement was published centrally for several units in N. E. Postal Circle. Compassionate appointment may be allowed only when it satisfies the parameter of 5% of Direct Recruitment vacancies cleared by the Screening committee of the Postal Directorate for the year in a particular cadre.

5. In view of what is narrated above, your prayer for compassionate appointment, it is regretted, cannot be acceded to; due to reasons as stated above.



(A.GHOSH DASTIDAR)
Chief Postmaster General,
N.E.Circle,Shillong-793 001.

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

Original Application No. 171/2004.

Date of Order : This the 11th day of February, 2005.

THE HON'BLE MR. M.K. GUPTA, JUDICIAL MEMBER.

Sri Rupak Dey
Son of Late Hrishindra Ch. Dey
Resident of Lakshminicharan Road,
Ward No. 6
P.O., P.S. and District - Karimganj (Assam)

Applicant.

By Advocates Mr. P.K. Deka, Mr. I.H. Laskar, Ms. I. Krishniya and
Mr. S. Baruah.

- Versus -

1. The Union of India, represented by the Secretary to Govt. Of India, Ministry of Communications, New Delhi.
2. The Director General of Post Office New Delhi.
3. The Chief Post Master General, Assam, Guwahati.
4. The Post Master General, Assam Region, Dibrugarh.
5. The Senior Superintendent of Post Offices, Cachar Division, Silchar - I, Assam.
6. The Head Post Master, Karimganj Head Office, Karimganj, Assam

Respondents

Mr. A. Deb Roy, Sr. C.G.S.C. not present.

ORDER (ORA)

M.K. Gupta, Member (J):

I have heard Mr. S. Baruah, learned counsel for the applicant. Since none appeared on behalf of the Respondents, I peruse the pleadings carefully and decided to proceed in the matter under the provisions of Rule 15(1) of the C.A.T. (Procedure) Rules, 1987.

Certified to be true Copy.

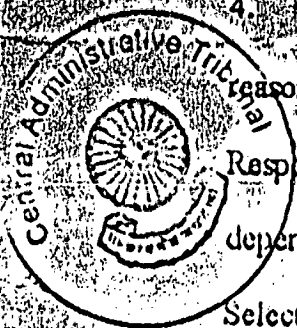
Bibhash Pathak
Advocate

2. By the present O.A. the applicant, the son of Late Hrishindra Ch Dey, ex Night Guard, Department of Post, Grade 'D' employee, seeks direction for quashing the impugned communication dated 31.05.2004 rejecting his request for appointment on compassionate ground as well as direction to appoint him in Grade 'D' post in the postal department.

3. The applicant's father died on 11.10.2002 while duty and the applicant being certificate holder of 10th standard certificate applied for compassionate appointment. The Respondents after considering his request rejected the same vide order dated 31.05.2004 stating that Circle Selection Meeting which was held on 22.04.2004 considered his case for appointment with utmost sympathy did not find it covered under the guidelines governing compassionate appointment.

4. It is contended that Principle of Natural Justice were not observed and no reasons furnished in the said communication. Further, in the reply filed by the Respondents except for making vague statement that compassionate appointment depends upon the availability of posts and the decision was taken by Circle Selection Committee, no reference was made neither to policy in vogue on the said subject nor any plausible reasons were stated for arriving at the said conclusion. Recording of reasons is necessary to appreciate as to what was considered by the respondents, which is totally absent in the present O.A., contended the learned counsel for the applicant.

5. On bestowing my careful consideration to the contentions raised and on perusal of pleadings, I find that the respondents have made no attempt to explain the details of factors considered nor stated any reasons while rejecting the applicant's request. Even the Counter affidavit, which in my view, is very scathily and vague. No attempt was made to explain as to why the Circle Selection

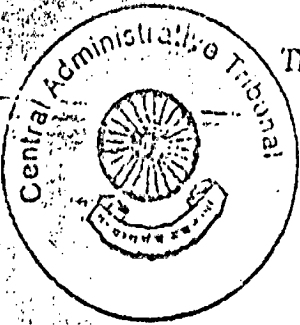


2

Committee, which considered stated that the applicant's did not find any justification in his request.

6. On perusal of the impugned communication dated 31.05.2004, I am satisfied that same is neither a speaking order nor it contain any reasons, which is must to appreciate the background in which such decision was arrived at. The Respondents are, accordingly, directed to pass reasoned and speaking order highlighting the various factors considered while examining applicant's case for compassionate appointment. This exercise shall be completed within a period of three months from the date of receipt of this order.

The application is accordingly disposed of. No order as to costs.



/mb/

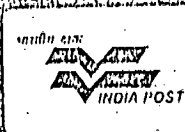
SO/ MEMBER (C)

Rectified to be true & correct
प्रमाणित किया जाता है

Section Officer (C)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

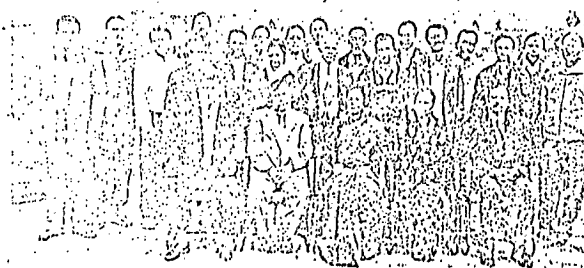
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29/2/05

North Eastern Postal Circle Newsletter

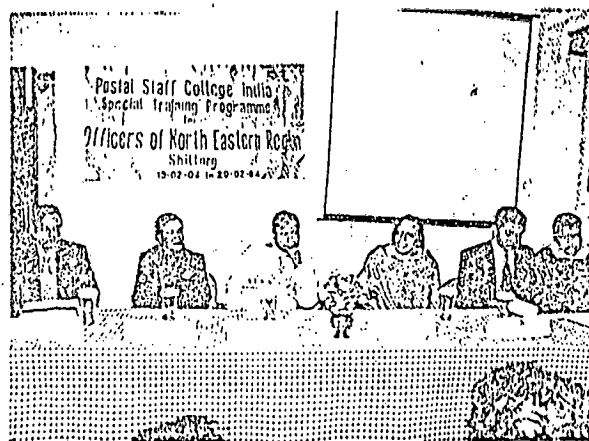


Postal Staff College, Special Training Programme for Officers of North Eastern Region, Shillong.

Special Training Programme for Officers of North Eastern Region was conducted by the staffs of Postal Staff College, India on the 19th and 20th February, 2004. 18 officers attended the training.



Group photograph of staffs (sitting) and the officers (Trainees) standing behind



Vineet Pandey (Joint Director, PSCI), M. lawphniaw (PMG Rajkot [Designate]), Lalhluna (PMG, Shillong), Indu Gupta (Addl. Director, PSCI), Rajinder Kashyap (Director PTC Guwahati), I. Pangernungsang (DAP, Shillong)

Contents

- Staff
- Philately
- P L I
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Retirement

Sri. S. C Deb Barma Dy. SPOs,
Agartala 29.02.2004

Sri. J. M. Dutta AD (A/cs &
Welfare) 29.02.2004

Smti. S. R. Shome SS
(PLI) 29.02.2004

Smti. C. Lyngdoh PA
CO 29.02.2004

Sri. Monoranjan Saha SPM
Bisramganj 31.01.2004

Sri. Suresh Ch. Das PM / R. K.
Pur HO 31.01.2004

Sri. Bipen Deb Barma SPM
Kamalghat 29.02.2004

Sri. Manik Lal Roy Sr.
Supervisor / SBCO, Agartala HO,
31.03.2004

Sri. Joharlal Nandi PA
Agartala HO 31.03.2004

Sri. Amit Lal Deb Stg.
Postman, Agaratal HO 31.03.2004

Sri. Sukrai Deb Barma O/S Mail
Agartala HO, 29.02.2004

Sri. Gouranga Bardhan SPM
Agartala College, 29.02.2004

Sri. Bhuban Chakma Postman
Gumti Project, 31.03.2004

Sri. Sibendra Ch. Dutta SPM
Agartala Sectl.

Sri. Krishna Mohan
Choudhury PA / R. K. Pur
31.03.2004

Sri. Jiban Majumdar SPM /
Amarpur 31.03.2004

Sri. Rajendra Deb Barma SPM
/ Ranirbazar 31.03.2004

Sri. Bhupesh Ch. Roy Runner /
Bamutia 31.03.2004

Sri. Kaikhenpao Vaiphei
Overseer

Churachandpur 31.03.2004

Smti. Jharna Deb SPM
Daporijo 29.02.2004

Shri. Riggin Pabin Group 'D'
Itanagar 29.02.2004

Sri. Hiren Deb Choudhury C.I.
Divisional Office, Shillong 29.02.2004

Sri. Deepak Dutta Manager Speed
Post, Shillong GPO 31.03.2004

Linus Shylla PA Shillong GPO
31.03.2004

Transfer and Promotions

Sri. K. K. Choudhury, ASPOs has been promoted in Group 'B' cadre in approved capacity and posted as Dy. SPO, Agartala w.e.f. 01.03.2004

Sri. Manik Das an approved officer in Gr. 'B' cadre from Assam Circle has joined as AD (Mails & Bldg) in CO from 01.03.2004

Sri. P. C. Boro an approved officer in Gr. 'B' cadre from Assam Circle has joined as Dy. SP, Aizawl on 03.03.2004

Sri. Santosh Chakraborty, Inspector of Posts has been promoted in ASPOs cadre on regular basis and posted as ASP (Cell) CO, Shillong

Sri. H. Yimchungar, Inspector of Posts has been promoted in ASPOs cadre on regular basis and posted as ASPOs Kohima Sub Division

Compassionate Appointment

Smti. Medarishisha Lyngdoh Nongkynrih, daughter of late Swing J. Warjri, ex-steno, Circle Office, was appointed as PA CO Shillong w.e.f. 03.03.2004 on compassionate ground

Smti. Dipali Dey, wife of late Sebak K. Dey, ex-PA CO, was appointed as Gr. 'D' Circle Office, Shillong w.e.f. 26.02.2004 on compassionate ground

f_i and f_{i-1}

STATEMENT OF VACANCIES APPROVED BY SCREENING COMMITTEE FOR BEING FILLED UP FOR THE YEAR 2001

Sl No.	Circle	IPO	PA in (Post Offices) only	Postman	Driver in MMS	Jr. Acct.	Steno Gr. III Admn. Offices (CO/RO)	Gr-D (Post Offices) only
1	ASSAM	13	34	14	-	1	1	14
2	A.P.	6	104	44	-	-	-	31
3	BIHAR	-	84	21	-	3	-	18
4	CHHATISGARH	2	9	6	2	-	1	9
5	DELHI	3	17	16	1	-	-	19
6	GUJARAT	9	90	42	3	-	2	51
7	HARYANA	2	63	14	-	-	-	12
8	H.P.	2	15	5	-	-	-	6
9	J&K	-	4	1	-	-	-	2
10	JHARKHAND	-	18	10	-	-	-	11
11	KARNATAKA	6	103	44	-	-	-	28
12	KERALA	2	61	41	1	-	-	18
13	M.P.	-	26	13	-	2	-	12
14	MAHARASHTRA	10	335	221	22	1	-	56
15	N.E.	1	20	8	-	1	-	8
16	ORISSA	-	32	6	-	-	-	7
17	PUNJAB	2	61	12	-	-	1	10
18	RAJASTHAN	4	34	11	-	-	-	15
19	TAMIL NADU	5	91	35	1	1	-	27
20	U.P.	6	132	64	-	-	-	81
21	UTTRANCHAL	2	22	11	-	-	2	11
22	W.B.	-	174	100	7	-	3	66

19 18 19 199 37 7 10 512

(नाम प्रतीति)
(R. SRINIVASAN)
सहायक महानिदेशक
Assistant Director General
ए. ए. ए. ऑफिस, पोस्ट
अ. ए. ए. न्यू देहली-11001

10

JULY 2002

Certified to be true Copy.
Bibhadh Pathak
Advocate

15 JAN 2002

Assam Circle
Govt. No. 781001

Mi
Dkt. No.
New Delhi-110 001

ANNEXURE : M

Dated 14th January, 2002

To

All Heads of Circles

Sub: Clarifications regarding Compassionate Appointments

Dear Madam / Sir,

Clarifications regarding compassionate appointment have been called for by some of the circles on the following issues. The same has been considered and the clarifications are as follows. :-

Sl. No.	Clarifications requested for	Clarifications
	<p>The UP Circle has intimated that approved candidates from the year 1996 onwards could not be given appointment under compassionate quota due to want of vacancies within 5% of the direct recruitment vacancies. The Circle had called for willingness of such approved candidates for appointment against GDS posts as per this Directorate's instruction in letter dated 25th July, 2001. Some of the approved candidates have approached hon'ble CAT and succeeded to get directions of CAT in their favour, for exploring vacancies to accommodate the candidates. Circle has suggested as follows:-</p> <p>i. <u>Candidates approved upto 8.10.98 may be given appointment against vacancies for the year 2001 and 2002 in the respective cadres.</u></p> <p>ii. Candidates approved after 9.10.98 till date may be intimated that the approval may be treated as cancelled in case they do not give their willingness for consideration against GDS posts.</p>	<p>The instructions regarding restricting the compassionate appointment upto 5% of the direct recruitment vacancies was issued vide DOP&T No. 14014/6/95-Estt(D) dated 26th September, 1995 which was circulated by this Directorate on 11.12.95. Therefore, the suggested invidious distinction between candidates waitlisted prior to 09.10.98 and thereafter will not be justified. <u>Circles may hold regular CRC meetings as per instructions keeping in view the vacancies available for compassionate appointment within 5% of direct recruitment vacancies.</u> Further, the instructions of the DOP&T and also the judgement given by the apex court require that fresh cases should be given preference over past cases. However, Circle may consider past cases in which applicants were approved and kept in the wait list if vacancies under compassionate quota of 5% of direct recruit vacancies are still available after considering all fresh cases.</p>
	<p>UP Circle has also stated about possible legal implications and likelihood of filling of large number of cases by the approved candidates whose names were kept in the wait list for compassionate appointment due to non-availability of vacancy within stipulated 5% quota.</p>	<p>Circles may defend these cases as per the extant rules and instructions on the subject bringing out the full facts of the case. In this connection, a counter filed in similar case of Don Bosco & 20 others Vs. GOI by T.N. Circle, Chennai is enclosed for information.</p>
	<p>Delhi Circle has mentioned that 66 applicants for of compassionate appointment for the year 2000 have been recommended by the CRC in their meeting held on 29th May, 2001. It is</p>	<p><u>Recommending names of candidates in absence of vacancies to accommodate such candidates against 5% of the direct recruited vacancies in</u></p>

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Bibhash Pathak
Advocate

<p>stated that meeting could not be held earlier due to non-availability of a PMG who is one of the Members of the CRC. On this ground they have suggested that the candidates considered and recommended by the CRC who cannot be appointed against 5% of vacancies may be considered for GDS posts. This would involve practically to change of the cut-off date from 8.2.2001 to 29.5.2001.</p>	<p>spite of instructions of the DOP&T and Directorate's letter No. 24-SPB-I dated 26-04-2001 to the contrary is not appropriate. Offer of GDS posts or otherwise is in no way concerned with the recommendations of the CRC dated 29th May, 2001 which is subsequent to this Directorate letter No. 24-1/99 -SPB-I dated 08-02-2001. It was decided to offer GDS posts to wait listed applicants for compassionate appointment as a special consideration in this Department. These applicants were wait-listed under fortuitous circumstances inspite of instructions against such practice. However, discontinuation of waiting list was advised in our letter dated 8.2.2001. In the circumstances, it would not be permissible for any CRC to recommend name of such applicant to be kept in waiting list after 8.2.2001. Instructions on compassionate appointment clearly indicate that these are limited to 5% of the vacancies for direct recruitment within a year. However, vacancies filled up by compassionate appointment would be within the overall vacancies approved by the Screening Committee in the Annual Direct Recruitment Plan.</p>
<p>Annual Direct Recruitment Plan for the year 2001 has not yet been finalized for determining the direct recruitment vacancies. Delhi Circle has stated that they are not in a position to arrive at 5% of direct recruitment vacancies for the year 2001 without finalisation of the said plan.</p>	<p>The suggestion of TN Circle to take up the issue with the Department of Personnel to make one time exception for the candidates who have been wait listed by the Circles due to want of vacancy within 5% of direct recruitment quota has already been examined. The matter had been taken up earlier with DOP&T at various levels and only after their final clarification, this Directorate issued the instructions vide letter No. 24-1/99 -SPB-I dated 8th February, 2001.</p>
<p>TN Circle has requested for taking up the case with Department of Personnel to make an one-time exception to absorb the wait listed candidates against the vacancies as and when they arise.</p>	<p>These issues have been examined before issue of the instructions vide this Directorate's letter No. 37-16/2001-SPB-I dated 25-07-2001. The approved waitlisted candidates are to be offered only such GDS posts for which they are eligible as per existing rules. The restriction of 5% of vacancies for compassionate appointment does not apply to the offer of compassionate appointment to the dependents of GDS as clarified by the Estt. Dn.</p>
<p>Andhra Pradesh Circle has expressed apprehensions regarding offering of GDS vacancies to the approved candidates for compassionate appointments as follows:- It will deprive the employment to the rural educated and unemployed youth; This will also deprive the compassionate appointment to the dependents of the EDAs who die in harness; Fulfillment of conditions like residence, suitability will also lead to a problem besides causing unrest among the rural unemployed youth.</p>	<p>These issues have been examined before issue of the instructions vide this Directorate's letter No. 37-16/2001-SPB-I dated 25-07-2001. The approved waitlisted candidates are to be offered only such GDS posts for which they are eligible as per existing rules. The restriction of 5% of vacancies for compassionate appointment does not apply to the offer of compassionate appointment to the dependents of GDS as clarified by the Estt. Dn.</p>

24/c

16/c

16/c


16/c

34/c

It has been also observed that in most of the CAT / Court cases, the counters filed do not make relevant references to the instructions of the Nodal Ministry and the orders of the Apex court as mentioned at pages 10 and 11 of DOP&T instructions No. 14014/6/94-List(I) dated 09-10-1998. Such omissions have obviously led to lack of proper appreciation of the Department's point of view in the judicial fora.

3. It is also observed that there is increase in cases of litigations and also number of references from the VIPs addressed to MOC and MOS(C) because of the fact that Circles are not conducting the CRC meetings every month as already instructed vide this Directorate DO No. 24-1/2000-SPB-I dated 2nd May, 2000 that cases of appointment on compassionate grounds shall be decided in a month's time. The instructions in DOP&T letter dated October 9, 1998 also require that the Circle Relaxation Committee should meet once during every month to consider cases received during the previous month. Most of the Circles do not hold meetings of the CRC regularly on one plea or other leading to avoidable delay in disposal of applications for appointment on compassionate grounds. It is, therefore, requested that all pending applications upto 31.12.2001 may please be considered by the CRC immediately and a report to the effect may be sent by 31.1.2002 positively to the undersigned by name.

Yours faithfully,


(A. K. Dash)
Director (Staff)

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SENIOR SUPDT OF POST OFFICES
CACHAR DIVISION, SILCHAR-788 001

Memo No. B1/Rectt/Relax/Misc

Dated at Silchar the 11-06-2002.

The following candidates as approved by the Chief Postmaster, Genl. Assam Circle, Guwahati No. Staff/16-Rlg/88/Part dated 10-05-2002 and R.O Dibrugarh No. Staff/23-Approved Case/92/RP, dated 14-05-2002 for compassionate appointment against GDS posts are hereby approved. If post noted against their names.

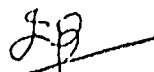
Name and address	Particulars of approval by C.O	Post against which approved	Alloted GDS post for absorption
1. Smt. Smitikana Das, Sister of late Buddhunoy Das, Ex-P. A. Badarpur SO	Staff/16-Misc/97 dated 11-11-99	PA	ED Stamp Ven Badarpur
2. Smt Nilotpol Roy, S/O late Nikunja Ch. Roy, Ex-Postman, Gumrabazar	Staff/16-Misc/97 dated 06-10-97	Postman	EDDA-C-EDMC, Chirukandi
3. Himangshu Paul, S/O late Phani Bh. Paul, Ex-Group 'D' P&T Dispensary, Silchar	Staff/16-Misc/97 dated 06-10-97	Postman	ED Packer, Kamarnadhu
4. Smt. Azati Rani Deb, W/O late Gopal Ch. Deb, Ex-Postman, Tarapur S.O	Staff/16-Misc/97 dated 06-10-97	Postman	ED Packer, Kumbhari
5. Smt Gopal Namasudra, S/O late Gopendra Namasudra, Ex-Group 'D' Cachar Dn.	Staff/16-100/93 dated 07-12-93	Group 'D'	EDDA, Bhairabi (Lakhi sathi)
6. Smt Sanjib Kr. Sengupta, S/O late Sukhendu Sengupta, Ex-SPM, Badarpur Bazar	Staff/16-103/93 dated 07-12-93	Group 'D'	EDMC, Harnadih TB Ranamukhih Tg
7. Smt Jayanta Debnath, s/o late Benoke Behari Debnath, Ex-Group 'D' Hailong	Staff/16-105/93 dated 07-12-93	Group 'D'	ED Packer, Kalinaga
8. Smt Kajal Das, s/o Smt. Sunil Nala Das, Ex-Group 'D' Silchar	Staff/16-Misc/97 dated 07-10-97	Group 'D'	EDDA-C-EDMC Chengurghat (in m. Kandi)

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Bibhash Pathak
Advocate

Sri Babudhan Dirce S O late Bijoy Kr. Dhree. Ex-O/S Cash, Silchar H.O	Staff/16-Misc/97 dated 11-11-99	Group 'D'	EDDA-C-EDMC Darnaghat Grant (in account with Manipurbagan S.O)
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Their appointment is subject to the following condition.

Since the candidates have accepted the GDS Post, they would have no further claim for appointment on any special consideration against regular departmental vacancies for which they were initially approved and that they would have to take their turn as per present departmental policy for GDS in the matter of their appointment against future departmental vacancies. For this, they will submit their undertaking to their respective appointing authorities before joining to the post of GDS.



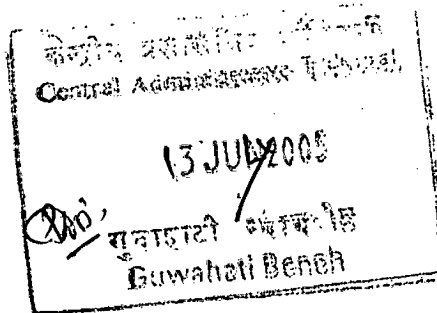
(J. K. BARBHUIYA)
Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Copy to:-

1. The Chief Postmaster General, Assam Circle, Guwahati-781 001 w.r.t his letter cited above.
2. The Postmaster General, Dibrugarh Region, Dibrugarh-786 001 w.r.t his No. Staff/23-Approved Case/99/RP dated 03-02-01 and 14-05-02.
- 3-5. The Sr. Postmaster, Silchar/Postmaster, Karimganj/Hailakandi H.O for information.
- 6-10. The ASPOs (N) Sub-Dn./SDIPOs, West/Hailakandi/Karimganj Sub-Dn. for information. They will obtain requisite undertaking as per instruction given above and issue posting and appointment letters to the candidates immediately. The undertaking should be duly countersigned and forward to this office for record. Any candidate if declined to submit declaration or refuse to join against the post, the fact should be intimated immediately to this office.
- 11-19. The concerned candidates. They will submit undertaking before joining.
- 20-22. Spare.



Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO 85/05

SMTI MADHUMITA PURKAYASTHA

.....APPLICANT

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

Filed by

the Respondents through
Asstt. Postmaster General (Legal Cells),
O/o the Chief Postmaster General,
N.E. Circle, Shillong-793 001.

Alsha Das.
Addl. Secy.
13/7/05

WRITTEN STATEMENT FILED BY THE RESPONDENTS


- 1) That the respondents have received copy of Original Application (OA) filed by the applicant, have gone through the same and have understood the contentions made thereof. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on record, are also denied and the applicant is put to the strictest proof thereof.
- 2) That before traversing various paragraphs of the OA, the respondents beg to give the brief history of the case.

Late Asit Ranjan Purkayastha was a permanent employee of the Department of Posts in Group 'C' cadre. His last assignment was Sub- Postmaster, Churaibari Sub-Post Office in Dharmanagar Postal Division. The said Late Asit Ranjan Purkayastha died in harness. He suddenly suffered from cerebral stroke on 29.05.2000. While performing his duty and was immediately rushed to a nearby Hospital, where he was declared dead.

Consequently, the following particularized terminal benefits were paid to the bereaved family; besides, monthly family pension of Rs. 3025 plus dearness relief was prescribed from time to time.

1. DCRG-Rs. 2,75,517/-
2. Leave encashment- Rs. 83,490/-
3. CGEGIS - Rs. 42,630/-

4. GPF-Rs. 1,15,711/-


 Asstt. Postmaster General
 O/o the Chief Postmaster
 N.E. Circle, Shillong-753 001

The bereaved family consists of two daughters, one adopted son and the widow; and family possesses a building at Chandrepur (a Suburb of Dharmanagar Town) a portion of which is rented out at monthly rent of Rs.800.00. Therefore, the family cannot be said to have been suffering from starvation and penury.

Upon the demise of Late Asit Ranjan Purkayastha, his daughter, Smti. Madhumita Purkayastha applied for appointment to the cadre of Postal Assistant (Group-C), Dharmanagar (recruitment Division) on compassionate grounds in relaxation of normal rules. The candidature of Smti. Madhumita Purkayastha was considered by the Circle Relaxation Committee (CRC) on 29.11.01 and was not recommended on the ground of non-availability of requisite vacancy within the parameter of 5% of the vacancies of Direct recruitment quota in the recruiting unit of Dharmanagar Division, i.e. the recruiting unit to which she had applied for. In fact, no recruiting unit of N. E. Circle at the point of time possessed any vacancy within the ambit of 5% of the direct recruitment to accommodate any aspirant on compassionate ground in relaxation of normal rules. The Supdt accordingly, communicated the fact to the applicant on 12.3.2002. of Post Offices, Dharmanagar, i.e. the Head of the recruiting unit of Dharmanagar Division vide his letter No. WLF/DNR/Rlg/Corr, dated 12.3.2002 (Annexure-D to the OA).

The decision of the Circle Relaxation Committee was in accordance with the rules, extent terms and conditions prescribed for the Scheme. In OM No. 4202/4/2000 Estt (D), dated 24.11.2000, Government of India, Ministry of Personal, PG & Pension, Department of Personal and Training clearly enjoined that the Scheme of compassionate appointment possesses no provision for approving cases in absence of vacancies for compassionate appointment and keeping them in waiting list; further more the question of consideration and accommodation would arise only if there is there is vacancy for the purpose. There is no scope for relaxing the ceiling of 5% even as a temporary measure for making appointment on compassionate grounds. In OM No. 14013/18/2000-Estt (D), dated 22.6.2001, the said Ministry clearly postulates that the relaxation Committee shall limit its recommendation(s) for appointment on compassionate grounds only in really deserving cases, and only if vacancy meant for appointment on compassionate grounds available within the ceiling of 5% of the vacancies falling under direct recruitment quota in any group 'C' or 'D' post. This implies that there is no provision for clubbing of group 'C'

& 'D' together for the purpose of reckoning with the compassionate quota and also communicated with the decision of non-circulation of the particulars of any deserving candidates to other Department. Further, more the Department of Posts in its letter No. 37-16/2001-SPB-1, dated 25.7.2001 having reference to the aforesaid OMs clearly directed to consider the case(s) in case of vacancies within the ceiling of 5% of direct recruitment quota and not to circulate the candidature of deserving appointee to other Department. Letter No. 24-1/99-SPB-1 (Pt), dated 14.01.2002, issued by the Department of Posts in clarification of certain points raised by some Circles manifests against Serial- No.1 that the fresh cases should be given preference over the past/old cases. The applicant is thereby bound within the frame of the scheme she wanted to avail.

Being aggrieved, the applicant agitated before the Hon'ble CAT, Guwahati Bench vide OA No. 163/04. The Hon'ble CAT, Guwahati Bench disposed of the said OA on 28.7.04 with direction to the applicant to prefer her grievance before the respondents and also with direction to the respondents to consider the prayer of the applicant and to dispose it of with a reasoned and speaking order. The applicant submitted her prayer on 30.8.2004 and the respondents once again examined and considered in the light of rules in force and disposed of with a cogent and speaking order on 22.9.2004 (Annexure-1 to the OA).

The recruitment to the 37 posts for the year 2002, as asserted by the applicant in her application do not appertain to one recruiting unit/office, but 7 (seven) recruiting units of North East Circle. All these units are quite distinct and independent from each other for the purpose of recruitment, and, only the Office of the Chief Postmaster General, N. E. Circle, Shillong for wide circulation, made the advertisement centrally. Practically, no recruitment was made by the Office of the Chief Postmaster General, N. E. Circle, Shillong against any of these 37 posts. The Office of the Chief Postmaster General, N.E. Circle, Shillong is also another distinct unit for the purpose of recruitment for his office establishment. Centrally issuing advisements from Shillong does not necessarily mean to have supplanted the independency of the units.

3) That with regard to the statement made in paragraph 1 (i) of the OA, the respondents while denying the contentions made therein beg to state that in accordance with the directions dated 28.07.04 passed in OA No. 163/04 by the Hon'ble Tribunal, the representation of the applicant dated 30.8.04 was examined and considered in the light

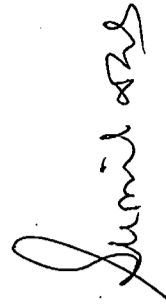
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Asstt. Postmaster General (Legal)
O/o the Chief Postmaster General,
N.E. Circle, Shillong-793 001.

of the rules in force in the Department and rejected with a reasoned and speaking order. The case is therefore not maintainable and warrants summarily rejected.

- 4) That with regard to the statement made in paragraph 1(ii) of the OA, the respondents while denying the contentions made therein beg to state that appointment on compassionate grounds is not a matter of right, but on certain terms, conditions and also subject to availability of vacancy of post applied for. The claim of the applicant was rejected on the ground of non-availability of vacancy in the post within the ambit of 5% of direct recruitment quota, which is one of the conditions of compassionate appointment. The case is therefore not maintainable and deserves to be rejected summarily.
- 5) That with regard to the statement made in paragraph 2 of the OA, the respondents beg to offer no comment on it.
- 6) That with regard to the statement made in paragraph 3 of the OA, the respondents while denying the contentions beg to state that the case is barred by the law of limitation. The cause of action arose on 12.03.02, when her case was rejected vide SPOs, Dharmanagar's letter No. WLF/DNR/Rlg/Corr dated 12.03.02 (Annexure-D to OA). The subsequent representation etc reported to have been made by the applicant cannot be held to be the cause of action revived once again. Thus, the limitation of one year expired on 12.03.03.
- 7) That with regard to the statement made in paragraph 4.1 of the OA, the respondents beg to offer no comment being matter of record.
- 8) That with regard to the statement made in paragraph 4.2 of the OA, the respondents beg to state that the applicant passed the Higher Secondary Examination (10+2) in 1996 but it is not a fact that she could pursue further Higher studies due to acute financial hardships. The father of the applicant was a permanent Govt. employee of the Department in the Postal Assistant (PA) cadre and she did not pursue her further studies from 1996 although her father was alive then. He died 4 years later in May, 2000.



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Asstt. Postmaster General (Legal Cells),
O/o the Chief Postmaster General,
N.E. Circle, Shillong-793 001.

- 9) That with regard to the statement made in paragraph 4.3 of the OA, the respondents beg to state that it is admitted to the extent that late Sri Asit Ranjan Purkayastha was last serving as SPM Churaibari in Dharmanagar Postal Division.
- 10) That with regrd to the statemnt made in paragraph 4.4 of the OA, the respondents beg to offer no comment.
- 11) That with regrd of the statement made in paragraph 4.5 of the OA, the respondents bevehemently deny that any assurance was given by any respondents to the applicant at any stage of dealing with the case of the applicant on compassionate appointemtn in relaxation of normal rules. The vacancies for direct recruitment of the recruiting unit viz. Dharmanagar Division were in the year 2000-01, 2001-02, 2002-03. In none of theses three years, direct recruitment quota fulfilled the parameter of 5% for compassionate quota to appoint the applicant at that point of time.
- 12) That with regard to the statement made in paragraph 4.6 of the OA, the respondents deny the contentions made thereof. The applicant concocted a fallacious story of assurance with ulterior motive to have her case be fitted. Her candidature had already been decided duly paying empathy to the circumstances, terms and conditions prescribed for the purpose. The advertisement for recruitment of 37 posts as asserted by the applicant at this sub-para does not mean that they belong to one recruiting unit/office, but of 7 units in North Eastern Circle. These units are quite distinct and independent from each other for the purpose of recruitment and only advertisement was made centrally with a view to give wide publicity by office of the Chief Postmaster General, N. E. Circle, Shillong. Centrally giving advertisement does not necessarily imply supplanting the independency of the units to one string or that the applicant's case can be brought under the ambit of Circle as a whole. Compassionate case is to be considered for a particular recruiting unit. In her case it is recruiting unit of Dharmanagar Division. The total vacant posts thrown open for direct recruitment during the year 2002 were 5 which does not satisfy the parameter of 5% of the direct recruitment of the year to accommodate the applicant. The action of the respondents is in accordance the rules. The respondents emphatically obeyed the direction of the Hon'blr Tribunal made in OA No. 163/2004 by examining the case in the light of the rules in force and rejected the representation with a reasoned reply.



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Asstt. Postmaster General (Legal) (P.O.)
O/o the Chief Postmaster General,
N.E. Circle, Shillong-763 001.

13) That with regard to the statement made in paragraph 4.8 of the OA, the respondents while denying the contentions made therein beg to state that it is not correct that the prayer of the applicant was not considered taking into account the terms and conditions prescribed for the scheme. The prayer of the applicant was not recommended in view of the ceiling of 5% for direct recruitment. The contentions made in this para by the applicant are sheer surmise and conjecture, and is not at all based in facts and figures. The 37 vacancies stated by the applicant were not possessed by one recruiting unit/Office, but 7 recruiting units and under no circumstances can be said to be under one recruiting unit and thereby the calculation made by the applicant is not in accordance with the spirit of the rules.

14) That with regard to the statement made in paragraph 4.9 of the OA, the respondents deny the allegation made by the applicant. The Annexure-1 to the OA, itself is self explanatory. It is, undoubtedly, a reasoned and speaking order. Compassionate appointment cannot be adjudged as a matter of right. In fact, it depends upon certain terms and conditions, which an aspirant has to abide by. The decision of the respondents is quite consonant with the direction made in OM No. 42012/4/2000-Est (D), dated 24.11.2000 & 14014/18/2000-Estt. (D), dated 22.6.2001 of Ministry of Personal, PG & Pension.

15) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to state that the allegation brought in this paragraph is quite fallacious and fabricated & the respondents strongly deny it. Each recruiting unit has its own cases of compassionate ground and is to be adjusted on the totality of the concerned recruiting unit. Further more, fresh deserving cases have to be awarded preference over the old cases as emphasized in the Department of Posts letter No.24-1/99-SPB-1(Pt), dated 14.01.2002. The cases mentioned by the applicant came up subsequent to the case of the applicant and also belong to two distinct, independent and separate recruiting units. Ergo, the applicant cannot claim her candidature similarly placed with them.

16) That with regard to the statement made in paragraph 4.11 of the OA, the respondents deny the averment made by the applicant. No such order making compassionate appointment obligatory or mandatory to the ward of each and every official who died in harness is issued by the Govt. of India. Compassionate appointment in relaxation of

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normal rules can not be claimed as a matter of right. The practice of circulation of candidature of a deserving applicant to other Ministry/Department/Office has been discontinued vide OM No. 14014/18/2000 Estt. (D), dated 22.6.2001 of Ministry of Personal, Public and Pension. The vacancies of direct recruiting unit to which the applicant sought for appointment on compassionate ground were 3 in the year 2002 and 5% of which come up only 0.15, which stipulated no share on compassionate quota. The vacancy position of the said recruiting unit for the year 2003 was 'nil' & for the year 2004 also was no permissible quota to accommodate the applicant. Nowhere in Annexure M to the OA made it obligatory to appoint all the claimants without following the proposition of rules prescribed for; nor, is it enjoined that the post of Group-D and Group-C be clubbed together for determining the compassionate quota. Even then, the vacancies for Group-D for the year 2002 were 3 and total vacancies came up 6 (six), 5% of which is less than 0.5, and did not permit to accommodate the applicant.

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N.E. Circle, Shillong-793 001.

17) That with regard to the statement made in paragraph 4.12 of the OA, the respondents beg to state that it is not correct that the applicant's family is suffering from financial hardship. Besides the monthly family pension @Rs.3, 025+Dearness relief prescribed from time to time, the following terminal benefits were paid.

1. DCRG-Rs.2, 75,517/-
2. GPF balance-Rs.1, 15,711/-
3. CGEGIS-Rs.42, 630/-
4. Encashment of leave -Rs.83, 490/-
5. Financial assistance from welfare- Rs.4, 000/-

Additionally, the applicant's family possesses a residential building at a Suburb of Dharmanagar town and a portion of which is rented out @Rs.800.00 per month. It is, therefore, evident that the family is neither suffering from starvation nor from penury. The contention of the applicant that she may be first provided with GDS employment till such time she is regularly appointed to Govt. service is quite contrary to the terms and conditions prescribed for appointment on compassionate grounds in relaxation of normal rules.

16) That with regard to the statement made in paragraph 4.13 of the OA, the respondents beg to state that it is not correct that the candidature of the applicant was not considered

sympathetically. In fact, it was considered empathetically with due regards of the circumstances reckoning with the rules in force. The applicant had neither applied for GDS employment, nor is she entitled to the same in relaxation of normal rule of recruitment. According to Annexure-M to the OA it is enjoined that the decision to offer GDS post to waitlisted approved claimants is a one-time special consideration and also emphasizes non-recommendation in absence of vacancies by the (Circle Relaxation Committee) after 08.02.2001. Offer of GDS posts is in no way concerned with the recommendation of CRC in respect of candidature of the ward of Departmental staff after the said date. The annexure N to the OA on plain reading manifests that all the cases mentioned therein were approved prior to 1999 and not at all similarly placed with that of the applicant, who was not at all wait-listed.

- 18) That with regard to the statement made in paragraph 4.14 of the OA, the respondents beg to state that the contention made in this paragraph is neither convincing nor tenable; rather, it is predicated on sheer surmise and conjecture. The advertisement for recruitment to the 37 posts by 7 distinct and independent recruiting units/offices was made centrally by the office of the Chief Postmaster General for wide circulation which does not necessarily imply that the posts belong to one recruiting unit/office. Compassionate appointment case is to be considered with refferance to the vacancy of particular recruiting unit for which application is made. In the instanat case, it is Dharmanagar Division to which the applicant sought for appointment to Group-C post on compassionate ground. Further more, vacancies of other recruiting Division also' as appeared, did not fulfill the parameter of 5% to absorb any aspirant on compassioanate ground.
- 19) That with regard to the statement made in paragraph 4.16 of the OA, the respondents while denying the contentions made therein beg to state that due regard was paid to the case of the applicant and her case was decided recking with the rules in force. No justice was caused to the applicant.
- 20) That with regard to the statemnt made in paragraph 4.17 of the OA, the respondents beg to state that the plea of the applicant is misconceived and on sheer supposition and presumption, and, therefore deserved to be rejected summarily.
- 21) That with regard to the statement made in paragraph 5.1 of the OA, the respondents while denying the contentions made therein beg to state that the ground adduced is not

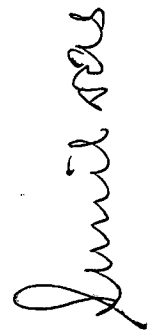
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N.E. Circle, Shillong-793 001.

correct. In fact, the applicant's prayer for appointment on compassionate grounds by the respondents paying due regards to the circumstances and the rules in force and found not satisfying the terms and conditions prescribed for the purpose.

- 22) That with regard to the statement made in paragraph 5.2 of the OA, the respondents vehemently deny the allegation. No discrimination action has been meted out to the applicant. Some wait-listed approved candidates prior to the year 2000 were appointed under to recruiting unit concerned. No fresh appointment of departmental staff's ward was offered to the extra-departmental posts.
- 23) That with regard to the statement made in paragraph 5.3 of the OA, the respondents beg to state that the argument made by the applicant is denied. Action of the respondents in dealing with the applicant's prayer is bonafide and in accordance with the rules.
- 24) That with regard to the statement made in paragraph 5.4 of the OA, the respondents beg to state that the ground adduced is on presumption and supposition. No permissible vacancy for appointment of an aspirant on compassionate grounds in relaxation of normal rules was either available now to the unit to which the applicant applied for.
- 25) That with regard to the statement made in paragraph 5.5 of the OA, the respondents while denying the contentions made therein beg to state that the scheme has got its own terms and conditions. Everybody who wishes to avail the benefit of the scheme bounds himself/herself within the ambit of the terms and conditions of the scheme.
- 26) That with regard to the statement made in paragraph 5.6 of the OA, the respondents while denying the contentions made therein beg to state that the appointment on compassionate grounds in relaxation of normal rules is not at all automatic nor mandatory; it is governed by certain rules, terms and conditions. The applicant was not recommended to be appointed by the CRC in view of ceiling of 5% of the direct recruitment vacancies in the recruiting unit/office.
- 27) That with regard to the statement made in paragraph 6 of the OA, the respondents beg to offer no comment.

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28) That with regard to the statement made in paragraph 7 of the OA, the respondents beg to deny the contentions made therein and beg to state that in accordance with the direction of the Hon'ble Tribunal, dated 28.7.2004 in OA.No. 163/04, the Respondent No. 2 had examined and considered the representation made by the applicant on 30.8.2004 in the light of the rules in force on the score and rejected the same with reasoned and speaking order.

29) That with regard to the statement made in paragraph 8 of the OA, the respondents beg to deny the statements made therein and state that the applicant is not entitled to the relief sought for. The actions of the respondents are bonafide and strictly in accordance with rules in force on the subject in question. The appointment on compassionate grounds in relaxation of normal rules is neither automatic nor mandatory, but subject to the terms and conditions of the scheme.

30) That with regard to the statement made in paragraph 9 of the OA, the respondents beg to state that no such provision exists in the department.

31) That in view of the facts and circumstances narrated above the respondents pray before the Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to dismiss the OA with costs.

VERIFICATION

I Shri Sumil Das,
 aged about 59 years at present working as
Asstt. Postmaster General

.....,who is taking steps in this case, being duly authorized and
 competent to sign this verification, do hereby solemnly affirm and state that

the statement made in paragraph
1, 5 & 31 are true

to my knowledge and belief, those made in paragraph
2, 3, 4, 6, 7 to 30 being matter of records, are

true to my information derived there from and the rest are my humble
 submission before this Humble Tribunal. I have not suppressed any material
 fact.

And I sign this verification this 12 the day of July 2005 at Shillong.

Sumil Das
 Asstt. Postmaster General (Legal Cells),
 O/o the Chief Postmaster General,
 N.E. Circle, Shillong-793 001.