

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

(1) CP 25/2010 under PPs No 2, 5, 8, 10. *As submitted*
 (2) CP 26/2010 under PPs No 2, 5, 9, 10. *As submitted*

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E.P/M.A No.....

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SECTION OFFICER (Judl.)

Kalita
 09.10.2017

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

O R D E R S S H E E T

1. Original Application No. 240/67
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Himangshu Paul & Ors -VS- Union of India & Ors

Advocate for the Applicants:- J. L. Sarikar, B.C. Pathak, B. Pathak

Advocate for the Respondents:- S. C. S. C. G. Banerjee

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide PCDD No. <u>326041178</u> Dated <u>22.8.07</u></p> <p><u> </u> Registrar</p> <p><u> </u> 31/8/07</p> <p><u> </u> Petitioners copy of the notices are not received with envelopes</p>	<p>31.8.07</p>	<p>By this application 5 applicants have approached this Tribunal seeking compassionate appointment. Earlier they have also filed O.A. No. 213/02 and 261/02 before this Tribunal. This Tribunal dismissed the applications. Thereafter the matters were taken before the Hon'ble High Court. The High Court by its order dated 27.9.05 passed in WPC No. 8141/02 and WPC 452/03 disposed of the petitions with the following order:</p> <p>"It is therefore, provided that the respondent authority may consider their appointment as Gramin Dak Sevak immediately for the intervening period. However, the appointment on fixed pay will not prejudice the claim of the petitioners for regular appointment under the above scheme of compassionate appointment."</p>

contd..

31.8.07

The contention of the applicant that the direction was to absorb the applicants in Group D post. But however, the respondents has passed the impugned order Annexure-3 rejecting the claim of the order. In the Contempt Petition the Hon'ble High Court directed that the matter may be pursued before the appropriate forum.

Considering the issue involved in this case, I direct that notice may be issued to the respondents. Issue notice to the respondents.

Post on 4.10.07 for admission.

Vice-Chairman

3.10.07

No Steps taken to issue notice.

bn

PG

04.10.07.

On the prayer of Dr.J.L.Sarkar learned Counsel, for the applicant, this matter stands adjourned to be taken up on 30th November, 2007. By that time, the Respondents shall file their Written Statement in this case.

Registry to issue notice to all the Respondents, calling upon them to file their replies by 30th November, 2007. Mr. B. C. Pathak, learned counsel for the applicant states that sufficient copies of the Original Application and Envelops have already filed in this case for issuance of notice.

Call this matter on 30.11.07.

(Khushiram)
Member(A)

Monoranjan Mahanty
Vice-Chairman

lm

Notice & order sent to D/Section for issuing to R-1 to 3 by regd. A/P post.

D/No -1312 to 1314
D/15/11/07

① Service report
dwuitel.

② No W/S filed.

29.11.07

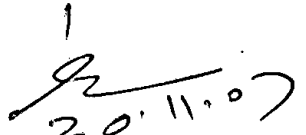
- 3 -

O.A.240/2007

30.11.2007

Dr.J.L.Sarkar, learned counsel for the Applicant is present. Mr.G.Baishya, learned Sr. C.G.S.C. for the Respondents, requests for four weeks time to file written statement. Prayer is granted.

Call this matter on 03.01.2008 awaiting written statement from the Respondents.



20.11.07
(Khushiram)
Member (A)

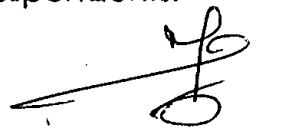
/bb/

03.01.2008

Mr.G.Baishya, learned Sr. Standing counsel for the Central Government, undertakes to file his appearance memo on behalf of the Respondents in this case and also seeks more time to file written statement.

Call this matter on 01.02.2008 awaiting written statement from the Respondents.


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman


/bb/

Notice duly served

on R-3.

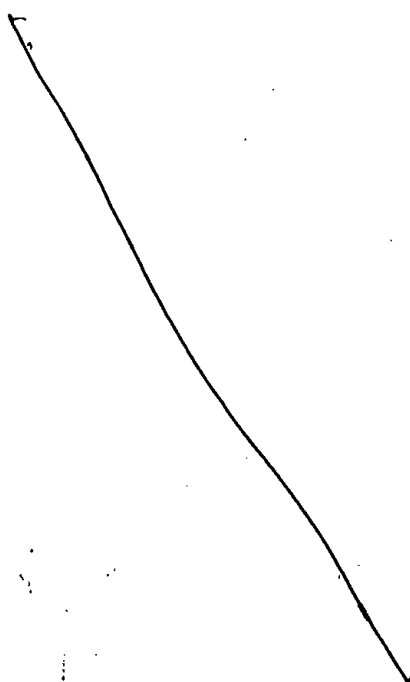
6/12/07.

W/s not filed.


21.2.2008.

W/s not filed.


31.1.08.




01.02.2008

Written statement filed in Court, after serving copy on learned counsel appearing for the Applicant.

Subject to the legal pleas and question of limitation to be examined at the time of final hearing, the application is admitted.

Call this matter on 5th March, 2008 awaiting rejoinder from the Applicant.

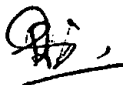
(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

20.2.08

W/s filed by the Respondents. Copy served.



Rejoinder not filed.

3.4.08.

03.03.2008

Dr J.L.Sarkar, learned counsel for the applicant is present and Mr G.Baishya, learned Sr. C.G.S.C is also present for the Respondents. Written statement has already been filed. Counsel for the applicant wants time to file rejoinder.

Call this matter on 04.04.2008. a meeting may hold if any.


(Khushiram)
Member(A)


pg

04.04.2008

in this case written statement has already been filed.

Call this matter for hearing on 1st May, 2008. Rejoinder, if any, may be filed by the Applicant's side by 25th April, 2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

01.05.2008 Call this matter tomorrow on 02.05.2008.

(Khushiram) Member(A)

02.05.2008 Mr. B. C. Pathak, learned counsel appearing for the Applicant has filed a letter of absence. Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondents is present.

Rejoinder not filed.

14.5.08.

Call this matter on 15.05.2008 for final disposal.

(Khushiram) Member(A)

15.05.2008 It is reported that Mr B.C. Pathak, learned Counsel appearing for the Applicant, has sent a sick note. Dr J.L. Sarkar, learned Counsel for the Applicant, seeks an adjournment in presence of Mr. G. Baishya, learned Sr. Standing Counsel for the Union of India.

Rejoinder not filed.

24.6.08

Call this matter on 25.06.2008 for hearing.

(Khushiram) Member (A)

(M.R. Mohanty) Vice-Chairman

nkm

Rejoinder not filed.

6.8.08

25.06.08 On the request of Mr B.C. Pathak (made in presence of Mr G. Baishya, learned Sr. Standing counsel) hearing of this case stands adjourned to 07.08.2008.

(M.R. Mohanty) Vice-Chairman

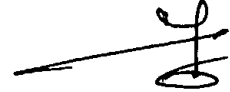
07.08.2008

None appears for the Applicant nor the Applicant is present. Mr G. Baishya, learned Sr. Standing counsel is on accommodation for today.

Call this matter on 14.08.2008.

Rejoinder not filed

13.08.2008



(M.R. Mohanty)
Vice-Chairman

pg

~~(M.R. Mohanty)
Vice-Chairman~~

lm

14.08.2008

Dr. Counsels for the parties are not appearing for the Applicant is present. On the prayer of Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India, call this matter for hearing on 08.09.2008.

W/S filed.

5.9.08

(Khushiram)

(M.R. Mohanty)
Vice-Chairman

lm

W/S filed.

29.09.08

08.09.2008

Counsels for the parties are not present.

Call this matter on 30.09.2008 for hearing.

(Khushiram)
Member(A)

lm

30.09.2008

None appears for the Applicant nor the Applicant is present. Dr J.L. Sarkar, learned Counsel appearing for the Applicant, is on accommodation. However, Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, is present.

N/S filed.

24
27.11.08

Call this matter on 28.11.2008 for

hearing.

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

nkm

28.11.2008

On the prayer of Dr J.L.Sarkar, learned counsel appearing for the Applicants (made in presence of Mr G.Baishya) call this matter on 01.12.2008.

(M.R. Mohanty)
Vice-Chairman

pg

01.12.2008

On the prayer of Mr B.C. Pathak, learned Counsel appearing for the Applicant, made in presence of Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, call this matter on 12.12.2008.

N/S filed.

24
11.12.08

(M.R. Mohanty)
Vice-Chairman

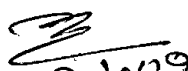
nkm

12.12.2008

Mr. B.C.Pathak, learned counsel for the Applicant files a Misc. Petition in this case. A copy of the said Misc. case has already been served on Mr. G.Baishya, learned Sr. Standing Counsel for the Union of India who is not available today due to personal difficulties.

Call this matter on 28.01.2009

W/s b'leel.


27.1.09


(S.N.Shukla)
Member(A)


/bb/

28.01.2009

Dr.J.L.Sarkar, learned counsel for the Applicant is present. Mr.G.Baishya, learned Sr. Standing counsel representing the Respondents is also present. Dr.Sarkar states that he is not to conduct the case and Mr.B.C.Pathak, Advocate has been entrusted to argue this case on behalf of the Applicant.

In the said premises, call this matter for hearing on 05.02.2009.

W/s b'leel.


6.2.09.


(M.R.Mohanty)
Vice-Chairman


/bb/


05.02.2009

Mr.S.K.Gogoi, Advocate, makes a prayer, on behalf of the Applicant, seeking adjournment. Mr.G.Baishya, learned Sr. Standing counsel for the Union of India is present.

Hearing of this case stands adjourned to be taken up on 20.02.2009.

W/s b'leel.


19.2.09


(M.R.Mohanty)
Vice-Chairman

/bb/

O.A. 240 of 07

20.02.2009

Heard Mr. B. C. Pathak, learned counsel appearing for the Applicant and G. Baishya, learned Sr. Standing Counsel for the Respondents.

For the reasons recorded separately this O.A. stands disposed of.

(M.R. Mohanty)
Vice- Chairman

lm

*Copies received
H.K. Gogoi, Adv.
on behalf of B.C. Pathak,
Advocate
13.3.09*

O.A. 240 of 07

20.02.2009

Heard Mr. B. C. Pathak, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing Counsel for the Respondents.

For the reasons recorded separately, this O.A. stands disposed of.

(M.R. Mohanty)
Vice- Chairman

lm

*Copy received
for Sr GGS
G. Baishya
D. Kaer
Advocate
16.3.09*

16.3.09

*Copy of the order
sent to the office
for issue the same
to the Applicants
No. 1 to 5 and Respondents
No. 1 to 3 by post.*

etc.

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 240 of 2007

DATE OF DECISION : 20.02.2009

Shri Himangshu Paul & Ors.

.....Applicant/s

Mr. B.C.Pathak

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr. G. Baishya, Sr. C.G.S.C.

..... Advocate for the
Respondents

CORAM

THE HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice-Chairman /Member-

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI

Original Application No.240 of 2007

Date of Order: This the 20th Day of February, 2009

HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN

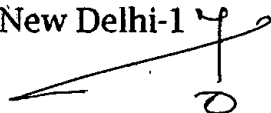
1. Sri Himangshu Paul & Others
S/o- Late Phanibhusan Paul
(Ex-Group- D employee)
Vill-Karatigam, P.O.-Rongpur
P.S.-Silcha, Dist-Cachar (Assam)
2. Sri Babudhan Dhree
S/o -Late Bijoy Kumar Dhree
P.O.-Pallorband
Dist.-Cachar (Assam)
3. Sri Nilotpal Roy
S/O - Late N.C.Roy
Gumra Bazar,
P.O.-Kalain
Dist-Cachar (Assam)
4. Sri Gopal Ch. Mamasudra
(Ex-Group - D employee
Ward No.4, P.O.- Lala
Dist.-Hailakandi (Assam)
5. Sri Kajal Das
S/O - Late Suniti Bala Das
(Ex-Group- D employee
Vill & P.O.-Barkhola
Dist.-Cachar (Assam)

By Advocate Dr.J.L.Sarkar, Mr.B.C.Pathak,
Mr.B.Pathak.

Petitioners

-Vs-

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 Director General
Department pf posts
Dak Bhawan, Sansad Marg
New Delhi-1



3. The Chief Post Master General
Assam Circle, Meghdoot Bhawan
Guwahati-1.

By Mr.G.Baishya, Sr.C.G.S.C.

Respondents

ORDER(ORAL)
20.02.2009

M.R.MOHANTY, V.C:

When prayer of the Applicants (made in the previous O.A. Nos. 213 of 2002 & 261 of 2002) to get an employment on compassionate ground was turned down (on the ground of non availability of vacancies), they approached the Hon'ble Gauhati High Court by way of filing Writ Petitions. Before the Hon'ble Gauhati High Court, it is stated, materials were produced to show that a large number of vacancies were available to accommodate the Applicants by providing them with employment on compassionate grounds. In the said premises, the Hon'ble Gauhati High Court directed the Respondents to consider the prayer (of the Applicants) for providing them employment on compassionate ground. On consideration of the matter, the Respondents turned down the prayer of the Applicants; for which they moved the Hon'ble Gauhati High Court with Contempt Petitions. It is said that since the Respondents passed orders on the grievances of the Applicants, the Contempt Petitions were dismissed. Challenging the said (rejection) orders passed by the Respondents, the Applicants, however, have jointly filed the present O.A.No.240 of 2007 (in this Tribunal) under Section 19 of the Administrative Tribunals Act 1985.

2. Non availability of 5% of direct recruitment quota of vacancies (meant for providing employment on compassionate ground) has been shown to be the reason for not providing employment(on compassionate

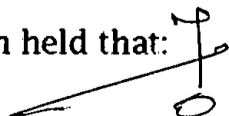


ground) to the five Applicants of this O.A.No.240 of 2007. Respondents have placed on record the revised Office Memorandum dated 9th October, 1998 (filed as Annexure-1 to the written statement); in which provision for granting employment on compassionate ground was limited only to 5% of the direct recruitments vacancies ; as mentioned in Para 7 (b), (c) and (d) of the Revised Scheme (dated 9th October, 1998) for compassionate appointment.

3. It is seen that all the Government Servants (of whom the Applicants were dependants) died much before aforesaid 09.10. 1998 and, thus, vacancies were available well before 09.10.1998 and as against the said vacancies all the five Applicants could have been appointed on compassionate ground. Law is well settled in the case of A. Manoharan and Others Vs. Union of India & Others (reported in 2008 (1) SCC (L&S) 870) that the law governing the field on the date of vacancies would prevail and law brought subsequently can not be enforced as against those vacancies; unless the law is enacted retrospectively. To state in other words, while filling up the vacancies, which were existed prior to the amendment are necessarily to be filled up as per the un-amended rules. In Para -25 of the Judgment rendered by the Apex Court in the case of A. Manoharan (Supra) it has been stated as under:-

“25. Furthermore, the Regulations have been amended only with effect from 11-8-2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto.(State of Rajasthan v. R. Dayal 12 SCC para 8.)”

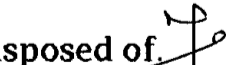
The same view was expressed by the Apex Court in the case of Y.V.Rangaiah Vs. J. Sreenivasa Rao (reported in (1983) 3 SCC 284; wherein it has been held that:



"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

4. It is seen that the revised Scheme dated 9th October, 1998 is an executive instructions (therefore, prospective in character) without any retrospective effect. Thus non availability 5% of the direct recruitment of quota vacancies could not have been shown as a reason to deny the compassionate appointment to the Applicants of this case ; especially when vacancies arose (on the premature death of Govt. Servants) much prior to 9th October 1998. WJ

5. However, more deserving cases only could have superseded the Applicants and, therefore, these matters (pertaining to the five Applicants) are hereby remitted back to the Respondents to give reconsideration in the matter, in order to provide them an employment on compassionate ground. While reconsidering the matter, pertaining to the Applicants; fresh representation dated 03.12.2008 of the Applicants need be taken into consideration by the Respondents and that it should be remembered by the Respondents that the Applicants unjustly deprived of employment on compassionate ground; which led to miscarriage of justice in the decision making process. Entire exercise should be completed by the Respondents within 120 days from the date of receipt of copies of this order.

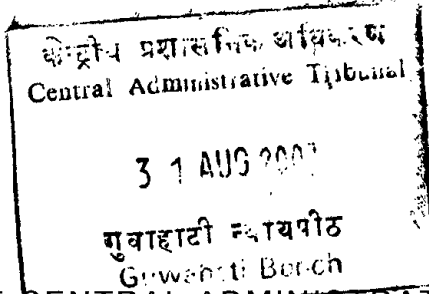
6. With the aforesaid observations and directions the Original Application No.240 of 2007 along with the M.P. 149 of 2008 and M.P.No.91 of 2007 stand disposed of. 

7. Send copies of this order to the Applicants and the Respondents in the address given in the O.A. and free copies of this order be supplied to the Advocates appearing for both parties.


(MANORANJAN MOHANTY)
VICE-CHAIRMAN

LM

①



Filed by:
Rabhaiah Pathak
Advocate
20/8/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

O.A. No. 240 /2007

Sri Himagshu Paul & others Applicants
-versus-
Union of India & others Respondents

SYNOPSIS OF THE CASE:

The father/mother of the applicants were all permanent employee of the Postal Department holding Group – D post, who died in harness. After the death of the sole bread earner in the family, the applicants applied for their appointment in any Group – D or C post on compassionate ground. The applicants were empanelled for compassionate appointment, by the respondent Postal Department and they was approved for appointment in Group – C/D post.

1 The applicant No.1 was appointed as Postman (Group – C) from 28.12.1998 against a vacancy. Thereafter, the applicant was appointed against the regular, Group-D vacancy from 20.1.1999. But his service was terminated on 9.7.2002.

2 The applicant No.2 was not offered any appointment by the respondent authorities although he was wait listed for appointment compassionate ground.

3 *Ten* The applicant no.3 was appointed as Postman (Group – C) from 2.1.1999 against a regular vacancy with time scale. But his service was terminated on 1.7.2002.

4 The applicant No.4 was appointed from time to time on daily rated basis in Group – D post. Subsequently he was appointed against the vacancies ⁱⁿ Group – D with time scale of pay from 22.3.1999 on regular basis. But his service was terminated from 12.7.2002.

5- The applicant No.5 was appointed from time to time on daily rated basis in Group – D post by the respondent authorities against vacant post, but his service was terminated on 17.6.2002.

That being thrown out of job on 9.7.2002 and highly aggrieved at the inaction of the respondents, the applicants had approached this Hon'ble Tribunal through an original applications which were registered as OA No.213/2002 (filed by applicant No. 1) and OA No. 261/2002 (filed by applicant no. 2,3,4 and 5) seeking direction for appointment on compassionate ground. After hearing the parties, the learned Tribunal dismissed the said applications vide order dated 11.10.2002 without appreciating any evidence on record and on the ground of non-availability of vacancies.

The applicants being highly aggrieved and dissatisfied by the said order of the Tribunal approached the Hon'ble Gauhati High Court by way of writ petition [**WPC 8141/2002 and WPC 452/2003**] thereby seeking appropriate direction for appointment on compassionate ground. That the said writ petitions were heard by the Hon'ble High Court and was disposed of on 27.9.2005. By the said judgment/order the Hon'ble High Court in a Division Bench discussed the whole issue raised in the said writ petitions relating to the earlier appointment of the applicants/petitioners both in Group – C and Group – D post and also the vacancy position and directed consideration of the case of the applicants in any Group C/D or ED post like GDS for the intervening period till the cases of the applicants can be considered against regular vacancies in Group C/D posts.

In purported compliance to the said order dated 27.9.2005, the respondents passed the impugned orders dated 20.4.2006 (as in Annexure 3, 4, 5, 6 and 7) rejecting the cases of the applicants in a most perfunctory, arbitrary and illegal manner prima facie against the verdict of the Hon'ble High Court. Hence, this instant application has been filed challenging the orders dated 20.4.2006 and praying for a direction to consider the cases of the applicants afresh.

Filed by:

Bibhas Chandra

Advocate

Date: 30/5/07

3 - AUG 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

O.A. No. /2007

Sri Himangshu Paul & ors Applicants
-versus-
Union of India & others Respondents

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Filed by:

Bishesh Pathak

Advocate

Date: 30/8/07

filed by:
Bibek Natha
Advocate
28/12/17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

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

ORIGINAL APPLICATION NO. OF 2007

BETWEEN

1. Shri Himangshu Paul
S/o late Phani Bhusan Paul
(Ex-group D-employee)
Village – Karatigram, P.O. – Rangpur,
P.S. – Silchar, Dist. Cachar (Assam)
2. Shri Babudhan Dhree
S/o late Bijoy Kumar Dhree
P.O. – Pallorband,
Dist. – Cachar (Assam)
3. Sri Sri Nilotpal Roy
S/o late N.C. Roy
Gumra Bazar,
P.O. – Kalain,
Dist. – Cachar (Assam)
4. Shri Gopal Chandra Namasudra
S/o late Gopendra Namasudra
(Ex-group D-employee)
Ward No.4, P.O. – Lala,
Dist. – Hailakandi (Assam)

Himangshu Paul

5. Sri Kajal Das
S/o late Suniti Bala Das
(Ex-group D-employee)
Village & P.O. – Barkhola
Dist. – Cachar (Assam)

..... **APPLICANTS**

-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 Director General, Department of
Posts, Dak Bhawan, Sansad Marg,
New Delhi-1
3. The Chief Post Mater General,
Assam Circle, Meghdoot Bhawan,
Guwahati-1

... **Respondents**

DETAILS OF THE APPLICATION

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

- (i) This application has been made against the identical orders of rejection for compassionate appointment issued vide order/letter No.VIG/5/VIII/WP/05 dated 20.4.2006 (**Annexure 3, 4, 5, 6 and 7**) as compliance of the direction

Himangshu Paul

given by the Hon'ble Gauhati High Court by judgment and order, dated 27.9.2005 in WPC 8141/2002 and WPC 452/2003 directing specific consideration of the case of the applicants/petitioners in Group C/Group D or GDS/ED posts.

- (ii) The applicants are qualified for appointment on compassionate ground against any Group C or D post under the respondents, but the respondents have most illegally refused to consider their case in spite clear 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. However, as a matter of abundant caution, the applicants have filed a petition for condoning the delay, if any, in filing the instant application.

4. FACTS OF THE CASE:

- 4.1 That the applicants are all citizens of India and as such they are entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder. *The applicants have common cause of action and the application has been filed under Rule 4(5)(a) of the CAT procedure Rules 1985.*

Shimangshu Paul

- 4.2 The father of the **applicant No.1, Himangshu Paul** was a permanent employee of the Postal Department holding Group – D post, who died in harness on 27.7.1995. After the death of his father the applicant applied for his appointment in any Group – D or C post on compassionate ground. The applicant was empanelled for compassionate appointment by the respondent, Postal Department and he was approved for appointment in Group – C post. Subsequently the applicant was appointed as Postman (Group – C) from 28.12.1998 against a vacancy. Thereafter, the petitioner was appointed against the regular, Group-D vacancy from 20.1.1999. But his service was terminated on 9.7.2002.
- 4.3 That the father of the **applicant No.2, Babudhan Dhree** was a permanent employee of the Postal Department holding Group – D post, who died in harness on 1.1.1991. After the death of his father the applicant applied for his appointment in any Group – D or C post on compassionate ground. The applicant was empanelled for compassionate appointment by the respondent, Postal Department and he was approved for appointment in Group – D vide No.Staff/16-Misc/97 dated 22.11.1999. But the applicant was not offered any appointment by the respondent authorities although he was wait listed for appointment for appointment compassionate ground.
- 4.4. That the father of the **applicant No.3, Nilotpal Roy** was a permanent employee of the Postal Department holding Group – D post, who died in harness on 28.1.1996. After the death of his father the applicant applied for his appointment in any Group – D or C post on compassionate ground. The applicant was empanelled for compassionate appointment by the respondent, Postal Department and he was approved for appointment in Group – C post. Subsequently the petitioner was appointed as Postman (Group – C) from 2.1.1999 against a regular vacancy with time scale. But his service was terminated on 1.7.2002.

Himangshu Paul

- 4.5 The father of the **applicant No.4, Gopal Chandra Namasudra** was a permanent employee of the Postal Department holding Group – D post, who died in harness on 1.3.1993. After the death of his father the applicant applied for his appointment in any Group – D or C post on compassionate ground. The applicant was empanelled for compassionate appointment by the respondent, Postal Department and he was approved for appointment in Group – D post. Subsequently the applicant was appointed from time to time on daily rated basis in Group – D post. Subsequently he was appointed against the vacancies Group – D with time scale of pay from 22.3.1999 on regular basis. But his service was terminated from 12.7.2002.
- 4.6 That the mother of the **applicant No.5, Kajal Das** was a permanent employee of the Postal Department holding Group – D post, who retired from service on medical ground on 17.6.1997. After the retirement of his mother the applicant applied for his appointment in any Group – D or C post on compassionate ground. The applicant was empanelled for compassionate appointment by the respondent, Postal Department and he was approved for appointment in Group – C post. Subsequently the applicant was appointed from time to time on daily rated basis in Group – D post by the respondent authorities against the vacancy post, but his service was terminated on 17.6.2002.
- 4.7 That the respondents on 22.6.2001 sought for option from the applicants as to whether they were willing to serve in any other Department other than the Postal Department. The applicant NO.1 exercised his option on 27.6.2001, applicant No.2 and 3 on 30.6.2001 the applicant No.4 on 25.6.2001 and the applicant No.5 on 28.6.2001. The respondent authority assured the applicant No.1 and 2 to be absorbed in

Himangshu Paul

service vide their letter dated 4.6.2001 and 3.9.2001. But the respondents did nothing towards such appointment.

4.8 That while the applicants were in regular service against Group – D post, the respondents had hatched a conspiracy by offering GDS post (Gramin Dak Sevak), which is an extra-Departmental post without any specific benefit and not in regular establishment. Therefore, the applicants did not consider it proper to exercise option at that relevant time as they was already working in regular vacancy against Group – D post.

4.9 That being thrown out of job on 9.7.2002 and highly aggrieved at the inaction of the respondents, the applicants had approached this Hon'ble Tribunal through an original applications which were registered as **OA No.213/2002** (filed by applicant No. 1) and **OA No. 261/2002** (filed by applicant no. 2,3,4 and 5) seeking direction for appointment on compassionate ground. After hearing the parties, the learned Tribunal dismissed the said applications vide order dated 11.10.2002 without appreciating any evidence on record and on the ground of non-availability of vacancies. Then the applicants being highly aggrieved and dissatisfied by the said order of the Tribunal approached the Hon'ble Gauhati High Court by way of writ petition [**WPC 8141/2002 and WPC 452/2003**] thereby seeking appropriate direction for appointment on compassionate ground.

Copy of the order dated 11.10.2002 passed in OA No. 213/2002 and OA 261/2002 is annexed hereto as **Annexure 1**.

4.10 That the said writ petitions were heard by the Hon'ble High Court and was disposed of on 27.9.2005. By the said judgment/order the Hon'ble High Court in a Division Bench

Himangshu Paul

discussed the whole issue raised in the said writ petitions relating to the earlier appointment of the applicants/petitioners both in Group – C and Group – D post. The Hon'ble High Court also clearly held that the learned Assistant Solicitor General did not dispute the facts stated in the writ petitions regarding the eligibility of the applicants/petitioners and the availability of vacancies for appointment on compassionate ground.

The Hon'ble High Court held that some posts in Group-C and D are available and also held that the application for appointment on compassionate ground cannot be thrown out merely because no-vacancy is available. In such contingency, the name of the applicants/petitioners is required to be listed and registered and their case shall be considered as and when vacancy arises along with other eligible or similarly situated persons. The Hon'ble High Court by considering all the aspects of the matter was pleased to set aside the impugned order passed by the Tribunal and was further pleased to direct the respondent authorities to consider the case of the applicants/petitioners for appointment against either Group-C or Group-D posts as per eligibility. By the said direction it was further directed that some vacancies are available as on to-day and the case shall be considered against the aforesaid posts along with other waiting persons, if any, as per existing rules and in case no vacancy exists as on to-day their names shall be registered and their case shall be considered as and when the vacancies arise. It was also specifically mentioned by the Hon'ble High Court that the applicants/petitioners had no objection if they were appointed even in Group – D post, if there is no vacancy in Group – C post. By the said judgment and order the Hon'ble High Court even considered the submission and prayer made on behalf of the applicants/petitioners and was pleased to further direct the respondent authorities to consider the appointment of the applicants/petitioners as Gramin Dak Sevak immediately for

Himangshu Patel

the intervening period observing that the appointment on fixed pay will not prejudice the claim of the applicants/petitioners for regular appointment under the scheme for compassionate appointment.

The copy of the said judgment and order-dated 27.9.2005 is annexed as **Annexure – 2**

4.11 That after receipt of the copy of the said judgment and order dated 27.9.2005, the applicants/petitioners took up the matter with the respondent authorities for consideration of their appointment as directed by this Hon'ble Court and was expecting their appointment very soon.

4.12 That the competent respondent authority, the Chief Post Master General, Assam Circle, however, instead of considering the case of appointment of the applicants/petitioners passed identical impugned orders to all the applicants vide **letter No.VIG/5/VIII/WP/05 dated 20.4.2006** which is nothing but just an opposite action to the direction given by the Hon'ble High Court. By the said lengthy order, the said authority has tried to give a twist to the whole order by placing his arguments against the judgment and order dated 27.9.2005 passed by the Hon'ble High Court. The Hon'ble High Court by the said judgment and order clearly directed the respondent authorities to consider the appointment of the applicant/petitioner on compassionate ground in any Group – C and D post. The Hon'ble High Court also directed the said authority to consider the appointment of the applicant/petitioner in GDS post, in case of non-availability of vacancy in Group C or D post. The Hon'ble High Court also directed the respondent authorities to register the names of the petitioners for future consideration for appointment in case immediate vacancies are not available. But the competent authority, namely, went

Himangshu Paul

out with his lengthy argument to justify as to why the findings of this Hon'ble High Court are not correct according to him. The plea taken by the respondent authorities all along was that the applicant/petitioner could not be appointed due non-availability of vacancies, whereas the applicants/petitioners could show to the Hon'ble high Court that there had been vacancies available and the same was also recorded by the Hon'ble Court. The competent authority in the said order dated 20.4.2006 has not taken the plea of vacancy, which was also not negated by the Assistant Solicitor General in advancing his argument at the time of hearing the matter and passing of the judgment by the Hon'ble High Court. The settled position of law is that any body and everybody must obey the order of the court. It is open for anyone either to obey and comply with the court's order or to challenge the same in the next higher forum if he is aggrieved and dissatisfied by such judgment and order of the court. In the instant case the respondent authorities have not challenged the order of the High Court in any higher forum and the judgment and order dated 27.9.2005 is still holding the field and is enforceable / executable against the respondents.

The copy of the impugned orders dated 20.4.2006 issued to the applicant No.1, 2, 3, 4 and 5 are annexed as **Annexure – 3, 4, 5, 6 and 7** respectively.

- 4.13 That on receipt of the order dated 20.4.2006, the applicants preferred contempt petitions before the Hon'ble Gauhati High Court which were registered as Cont. Case No. 308/2006, 309/2006, 310/2006, 312/2006 and 314/2006 inter alia on the ground that the order dated 20.4.2006 is clearly and out and out a deliberate and willful disobedience of the judgment and order of the Hon'ble High Court and a clear attempt to obstruct the judicial process and execution of the court's order. The said contempt case was heard by the

Hinangothu Paul

Hon'ble High Court on 11.4.2007 and by the order dated 11.4.2007 this Hon'ble Court was pleased to dismiss the contempt petition noting that the contempt petition will not survive as the order dated 20.4.2006 has been passed in compliance of the order judgment and order dated 27.9.2005.

The copy of the order-dated 11.4.2007 is annexed here to as **Annexure 8**

4.14. That thereafter, the applicants were left with no option but the challenge the order dated 20.4.2006 in the appropriate forum with original jurisdiction and accordingly this instant application has been filed.

4.15. That the action of the respondents in not considering the case of the applicants is out right illegal and arbitrary as there was a clear and un-refuted finding of the Hon'ble High Court about the existence of vacancies. The respondents have not challenged the order of the Hon'ble High Court by taking the same for judicial review to the Apex Court. Hence, the order dated 20.4.2006 is prima facie illegal and is liable to be set aside and the case of the applicants is to be considered afresh.

4.16. That the applicants demanded justice from the respondents which has been denied to them.

4.17. That this application has been made bonafide and for the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1. For that the action of the respondents in not considering the appointment of the applicants on compassionate ground

Himangshu Paul

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 the case of the applicants have not been considered in proper perspective by the respondents despite there being a specific order from the Hon'ble Gauhati High Court that some vacancies are available as on to-day and the case shall be considered against the aforesaid posts along with other waiting persons, if any, as per existing rules and in case no vacancy exists as on to-day their names shall be registered and their case shall be considered as and when the vacancies arise. It was also specifically mentioned by the Hon'ble High Court that the applicants/petitioners had no objection if they were appointed even in Group – D post, if there is no vacancy in Group – C post. By the said judgment and order the Hon'ble High Court even considered the submission and prayer made on behalf of the applicants/petitioners and was pleased to further direct the respondent authorities to consider the appointment of the applicants/petitioners as Gramin Dak Sevak immediately for the intervening period

Shimangshu Paul

observing that the appointment on fixed pay will not prejudice the claim of the applicants/petitioners for regular appointment under the scheme for compassionate appointment.

- 5.6 For that the impugned order dated 20.4.2006 failed to consider the case of the applicants as directed by the High Court and has rejected the case of the applicants in a perfunctory and arbitrary manner without reference to the admitted position about existence of vacancy. Rather, the impugned order has sat in appeal over the order of the Hon'ble High Court and hence the same is liable to be set aside and quashed.
- 5.7 For that a welfare scheme should be construed liberally to advance the purpose and not to defeat the same.
- 5.8 For that in any view of the facts and circumstances of the case, the applicants are entitled to be appointed on compassionate ground under the Scheme.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that they have exhausted all the remedies available to them and there is no alternative and efficacious remedy available.

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

That the applicants further declare that they have previously filed the OA No. 213/2002 and OA 261/2002 before this Hon'ble Tribunal which was disposed of vide order dated 11.10.2002. The order dated 11.10.2002 was challenged by

Himangshu Paul

the applicant in the Hon'ble Gauhati High Court and the Hon'ble High Court through WPC 8141/2002 and 452/2003 and the Hon'ble High Court was pleased allow the writ petitions on 27.9.2005. Thereafter the impugned order dated 20.4.2006 was passed by the respondents against which the applicants have approached this Hon'ble Tribunal. Other than this, the applicants have 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 applicants 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 so 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 be the respondents, Your Lordships would also be pleased to direct the respondents :

- Relief*
- 8.1 To set aside and quash the impugned orders dated 20.4.2006 (Annexure 3, 4, 5, 6 and 7) as being illegal and arbitrary;
 - 8.2 To direct fresh consideration the case of the applicants for appointment on compassionate ground in any Group C and D post under the respondents in terms of the order of the Hon'ble Gauhati High Court dated 27.9.2005 and/or against any available post and/or to appoint the applicants against GDS/ED posts or supernumerary post;
 - 8.3 To pay the cost of the application;

Himanglu Paul

- 8.4 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 applicants prays for grant of an interim order to direct the respondents to allow the applicants 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. : 32 G 04178
Date of Issue : 30.8.2007
Issued from : GPO, Guwahati
Payable at : Guwahati

12. LIST OF ENCLOSURES:

As stated in the INDEX.

Verification ...

Himangshu Paul

VERIFICATION

I, Shri Himangshu Paul, son of late Phanibhusan Paul, aged about 29 years, resident of Village- Karatigram, PO- Rongpur, District – Cachar, Assam do hereby solemnly affirm and state that I am the applicant no.1 in the instant case and I am duly authorized by the other applicants to sign and swear this application/verification for and on their behalf. The statements made in para 1, 2, 3, 4.1, 4.10, 4.14, 4.15, 5, 6, 7, 8 and 9 of the application in are true to my knowledge and belief , those made in para 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12 and 4.13 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 30th day of August, 2007 at Guwahati.

Himangshu Paul
Deponent

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ANNEXURE
ANNEXURE : 1

Original Application Nos. 213 of 2002 and 261 of 2002

Date of Order: This the 14th Day of October 2002.

HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER


O.A.No.213 of 2002.

Shri Himangshu Paul
S/O. Late Phani Bhusan Paul Ex.Group 'D'
Village -Karatigram, P.O.Rongpur
P.S.Silchar, Dist.Cachar, Assam

At present working as Post man in Halflong Sub-Post Office,
under Sub-divisional Inspector of PO's Halflong
Sub-Division, Falflong. ... Applicant.

By Advocate Mr. Monorangan Das

-Vs-

- 
1. Union of India,
Represented by the Secretary to the Govt of India,
Ministry of Communication,
Cabinet Secretariate, Sansad Marg,
New Delhi-110001.
 2. The Director General,
Department of Post, Sansad Marg
Dak Bhawan, New Delhi-110001
 3. The Chief Postmaster General, Assam Circle,
Guwahati-781001.
 4. The Postmaster General,
Assam Region, Dibrugarh
 5. The Sr.Supt. of post office,
Cacher Division, Silchar-788001
 6. The Asstt. Supt. of PO's
North Sub-Division, Silchar-788001
 7. The S.D.I.P.O.'s
Halflong Sub-Division, Halflong-788819.
 8. The Sub-Postmaster,
Halflong-788819. ... Respondents.
By Advocate Mr.A.Deb Roy, Sr.C.G.S.C.

O.A.No.261 of 2002

1. Sri Gopal Ch.Namasudra
S/O. Late Gopendra Namasudra,
Ex-Group 'D', Ward No.4
P.O. Lala
Dist.Hailakandi
2. Sri Nilotpai Roy
S/O. Late Nikinja Ch.Roy,
Ex-Postman, Gumra Bazar,
P.O.Kalain, Dist.Cachar

contd/-

Certified to be true Copy.

Bibhash Pathak
Advocate

- 3. Sri Kajal Das
S/O Late Suniti Bala Das,
Ex-Group 'D' , Vill.& P.O.Barkhola,
Dist. Cachar.
- 4. Sri Babudhan Dhree
S/O Late Bijoy Kumar Dhree,
EX-OS Mail
P.O. Palloraboni,
Dist.Cachar. ... Applicants.

By Advocate Mr. Monoranjan Das
-Vs-

- 1. Union of India,
Represented by the Secretary
to the Govt. of India,
Ministry of Communication,
Cabinet Secretariat,
New Delhi-110001.
- 2. The Director General
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
- 3. The Chief Post master General
Assam Circle, Meghdoot Bhawan,
Guwahati-781001.
- 4. Teh Sr.Supt. of POs.
Cachar Division,
Silchar-788001.
- 5. The Sr.Post Master,
Head Post Office,
Silchar-788001
- 6. The Postmaster,
Head Post Office
Hailakandi,
- 7. The Sub-Divisional
Inspector of POs
Hailakandi.
- 8. Sub-Divisional
Inspector of POs, West Sub-Division,
Silchar. ... Respondents.

By Advocate Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R.

K.K.SHARMA MEMBER(ADMN):

Both the applications are taken up together as
 issue involved ^{is} with the same ^{there is} one applicant in O.A.No.213
 of 2002 and four applicants in O.A.No.261 of 2002. The four

contd/-



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Applicants in O.A.No.261 of 2002 have been allowed to pursue their grievances by a common by a common application under the provision of Rule 4(5)(a), CAT(Procedure) Rules, 1987. All the applicant were approved for inclusion in the waiting list of Postman on compassionate ground on different dates. By an order dated 11.6.2002 the applicants were allotted the post of GDS on compassionate ground. All the applicants they have been working as Postman with some breaks in continuity in service. It is claimed that the applicants are approved candidates for Postman cadre against regular vacancy enlisted for future absorption against relevant qupta. The applicant had been engaged against vacant post of Postman. By letter dated 22.6.2001 the Respondents called for willingness of the applicants for job in other Department. The relevant portion of the letter is reproduced below:-



"Sub: Discontinuation of waiting list of candidates approved for compassionate appointment willingness of the approved candidates for consideration by other ministries.

The following approved candidates were allotted to your unit for working in short term vacancies.

You are requested to intimate whether they are willing for job in other department. If so submit a list of willing approved candidates at an early date as desired by the C.O. Guwahati for taking the matter with other ministries and alongwith the Directorate."

The applicants conveyed the willingness for appointment in other department. The applicants however, requested the Postmaster General, Assam Region to regularise them in the vacant posts against which they were working continuously working. It is stated that by letter dated 3.9.2001 the applicants were informed that they would be absorbed in the cadre in due course, as there was no vacancy then. The letter dated 3.9.2001 is reproduced below:-

contd/-

short time leave vacancies as per necessity and they could not be absorbed permanently. Since there will be more delay in their employment permanently against vacant post, it was decided by the department to offer them with some lower post if willing to accept such employment but they denied to accept such employment and claimed for their permanent employment in Postman cadre. Mr. A. Deb Roy, Sr. C.G.S.C. argued that there was a scheme for appointment on compassionate ground within the ceiling of 5% of direct recruitment vacancies in each year. Thus out of 20 vacancies for direct recruitment, one was available for compassionate appointment. A waiting list was prepared as there were no available vacancies for compassionate appointment. In order to minimise hardship the applicants ^{short term} were offered vacancy term due to leave. There is no possibility of the applicants being appointed against the regular post.

4. I have considered the submission made on behalf of the parties and have also perused the records. The application is decided on the basis of the facts of the case. The appointment letter issued to the applicant in O.A.No.213 of 2002 is reproduced below:-

"In pursuance of the SSPOB Silchar Memo No.B1/Rectt./Relax/Misc. dated 28.12.98 Shri Himungshu Paul approved for appointment in Postman cadre on compassionate ground and kept in panel for absorption in future relaxation vacancies by C.O. is hereby engaged on short term duty in the event of the undersigned and kept attached to G.C. College. So, against an unfilled vacancy until further orders.

Shri Himungshu Paul should clearly understand that the engagement is purely temporary basis and he cannot claim any seniority/pay benefit in future for such short term engagement."

The subsequent application also shows that the applicants were appointed for short term duties. The letter dated 24.8.2001 by which the applicants were offered the post of

contd/-

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GDS is extracted below:-

" This is to inform you that since wait listing of candidates for compassionate appointment has been dispensed with, chance of absorption of these approved candidates in the waiting list against vacancies available within 5% ceiling of direct recruitment quota is remote. This may cause hardship to the approved candidates who have been waiting for quite a long period. In consideration of this aspect the Postal Directorate has decided to consider such waitlisted candidates for appointment against vacant posts of GDS (Gramin Dak Sevak) if they are willing and eligible for the post.

As per information of the Directorate you are requested to submit your willingness or otherwise and choice of place if any for taking appointment against vacant Gramin Dak Sevak post.

This recruitment will be made subject

to

1. Fulfilment of all required conditions of recruitment like educational qualification etc.
2. Approved applicants with their acceptance of GDS post would have no further claim for appointment on any special consideration against regular departmental vacancies 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. All undertaking in this regard may be submitted with your willingness.

This offer will be valid for one year."

There is no dispute that the applicants have not been offered compassionate appointment. The regular appointment on compassionate ground depends on Rules and Regulations/Guidelines on the subject. There is no dispute that there is a quota of 5% of regular direct recruitment vacancies for appointment on compassionate ground. Mr. A. Deb Roy, Sr. C.S.C. submitted that there is no vacancy for Postman post. The vacancy position for the years from 95 to 2001 is given below:



Handwritten signature

contd/-

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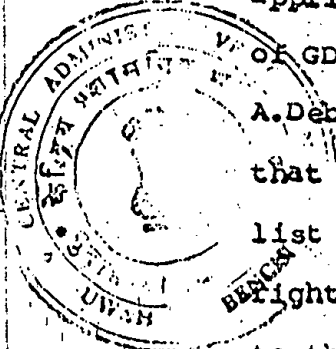
"Vacancy position of Postman and Group D
year wise

Year	Postman	Group D
1995	-	5
1996	06	6
1997	16	5
1998	12	3
1999	11	4
2000	03	4
2001	08	3

As such no appointment on compassionate ground could be offered to the applicants. In the circumstances the respondents have sympathetically considered the case of the applicants. The applicants have been offered the post of GDS, which is a lower post than that of Postman. Mr. A. Deb Roy, Sr.C.G.S.C. argued on behalf of the respondents that the inclusion of name of the applicants in the waiting list for compassionate appointment has not conferred any rights for regular appointment. As such offer of appointment to the post of GDS was justified.

5. I have given careful consideration to the submissions, made on behalf of the parties and also perused the record. The Govt. provided a scheme for giving immediate relief to Govt. employees dying while in service by giving compassionate appointment to a dependent relation. The courts have not approved of compassionate appointment being given long after the death of the employee. The scheme has provided for a quota and it is not that dependent of every employee dying in service will be offered appointment. The name of the applicants appeared in

contd/-



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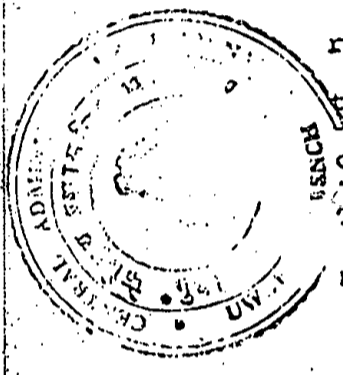
waiting list for compassionate appointment. The Courts have not approved the delay in offering compassionate appointment. The applicants could not be appointed on compassionate ground within the quota of 5% of vacancies available for direct recruitment of post man. The vacancy position given by respondents shows that there was no vacancy for compassionate appointment during the years 1995-2001. The respondents do not anticipate any such vacancies in the future. This has been informed to the applicants. Keeping the names of the applicants in waiting list gives rise to a false hope. The respondents had valid reasons for discontinuing the waiting list. The action of the respondents in offering alternative appointment of GDS cannot be faulted. I find no illegality in the impugned order. The applicants have not acquired right to a regular appointment outside the quota for compassionate appointment simply because their name was included in the waiting list for appointment on compassionate ground even if they have worked in short term leave vacancies. It is not the case that the respondents have appointed persons outside the waiting list against vacancies for compassionate appointment.

The applications stand dismissed. There shall be no order as to costs.

TRUE COPY

Sd/MEMBER (Adm)

Section Officer (Adm) 20/10/2002
 Section Officer (Adm) 20/10/2002
 Section Officer (Adm) 20/10/2002
 Section Officer (Adm) 20/10/2002



তারিখ Date of application for the copy.	সম্পন্ন হইতে হইবে তারিখ Date fixed for notifying the requisite number of stamps and folios.	দেওয়া যাইবে তারিখ Date of delivery of the requisite stamps and folios.	প্রতিলিপি তৈয়ার থা তারিখ Date on which the copy was ready for delivery.	তারিখ Date of making over the copy to the applicant.
30/09/05	30/09/05	30/09/05	04/10/05	04/10/2005

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ANNEXURE : 2

IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA
MANIPUR TRIPURA MIZORAM AND ARUNACHAL PRADESH.

W.P(C) No.8141/02

1. Shri Himangshu Paul,
Son of Late Phani Bhusan Paul
(Ex-Group D employee)
Village- Keratigram P.O. Rongpur
P.S. Silchar, Dist. Cachar, Assam.

2. Shri Gopal Chandra Namasudra
Son of Late Gopendra Namasudra
(Ex Group D employee), Ward No.4
P.O.Lala, Dist. Hailakandi(Assam)

3. Shri Kajal Das
Son of Late Suniti Bala Das
(Ex-Group D employee)
Vill & P.O. Barkhola
Dist. Cachar, Assam.

Gauhati High Court at Guwahati
Petitioners.

Versus

1. Union of India
Represented by the Secretary to the
Govt of India, Ministry of
Communications, New Delhi-1

✓ 2. The Director General, Department of
Posts, Dak Bhawan, Sansad Marg,
New Delhi. 1

✓ 3. The Chief Postmaster General Assam
Circle, Meghdoot Bhawan, Guwahati.

✓ 4. The Postmaster General, Assam
Region, Dibrugarh

✓ 5. The Sr. Superintendent of Post
Offices, Cachar Division
Silchar 1.

6. The Asstt Superintendent of Post
Offices, North Sub-Division, Silchar 1

7. The S.D.I.P. Os, Halfong Sub Division

Certified to be true Copy.

Bibhosh Pathak
Advocate

Haflong 788819

8. The Sub Postmaster,
Haflong 788819

9. The Postmaster, Head Post Office,
Hailakandi

10. S.D.I.P. Os, Hailakandi

11. S.D.I.P Os, West Sub-Division, Silchar

12. Shri V. Hmar (Postman)
MDG, Haflong

13. Shri Karuna Das (GDS)
H.P.O., Hailakandi

14. Bidyut Deb (GDS)
H.P.O. Silchar.

Respondents

W.P. (C) No. 452/03.

1. Shri Nilotpal Roy
Son of Late N.C. Roy
Gumra Bazar, P.O. Kalain
Dist. Cachar
Guwahati High Court at Guwahati

2. Shri Brajchandra Dhee
Son of Late Bijoy Kumar Dhee
P.O. Pallorhand
Dist. Cachar

Respondents

Versus

1. Union of India
Represented by the Secretary
to the Govt of India,
Ministry of Communications,
New Delhi 1.

2. The Director General, Department of
Posts, Dak Bhavan, Sansad Marg,
New Delhi 1.

3. The Chief Postmaster General, Assam
Circle Meghalaya Bhawan
Guwahati 1

4. The Postmaster General, Assam
Region, Dibrugarh

5. The Sr. Superintendent of Post
Offices, Cachar Division, Silchar 1

6. S.D.I.P. Os, West Sub Division, Silchar

7. Shri V. Hmar (Postman)
MDG, Haflong

8. Shri Karuna Das (GDS)
H.P.O. Hallakandi

9. Bidyut Deb
H.P.O. Silchar.

Respondents.

PRESENT

THE HON'BLE MR JUSTICE P.G. AGARWAL
THE HON'BLE MR JUSTICE H.N. SARMA.

For the Petitioners: Mr. B.C. Pathak, Advocate

For the Respondents: Mr. H.B. Rahman, Advocate.

Date of hearing : 27.9.05

Date of Judgment : 27.9.05

JUDGMENT AND ORDER (ORAL)

Agarwal, J.

1. Heard Mr. B.C. Pathak, assisted by Dr. (Mrs) M. Pathak learned counsel for the petitioners and Mr H.B. Rahman, learned Assistant Solicitor General.

2. These writ petitions have arisen out of OA No. 213/2002 and O.A. No. 261/2002 and the order dated 11.10.2002 passed by the Central Administrative Tribunal in OA No. 261/2002. Both the writ petitions are taken up for hearing analogously and disposed of by this common order.

3. The father of the petitioner No.1 Sri Nilotpal Roy died in harness on 28.1.96 whereas the father of the petitioner No.2 Sri Babudhan Dhree died in harness on 1.1.91. The petitioners thereafter approached the concerned authority for their appointment as Postman Group-C under the scheme of compassionate appointment. The name of the 2(two) petitioners were approved by the order dated 22.12.98 and 22.11.99 respectively. The petitioner No.1 was appointed as Postman(Group C) against regular vacancy on adhoc basis vide order dated 2/1/99 and subsequently vide order dated 1.7.2002 the services of the petitioner No.1 were terminated. The petitioner thereafter approached the learned Central Administrative Tribunal, Guwahati Bench for a direction to the respondents, Postal Department for appointment in Group C post or in the alternative Group D post under the scheme. Two other petitioners Sri Gopal Ch. Namasudra and Sri Kajal Das's name were approved for Group D posts only vide impugned judgment and order, the learned Central Administrative Tribunal, Guwahati Bench dismissed both the O.A. solely on the ground that at present there is no vacancy, and hence the present writ petitions.

4. The broad facts of the case as stated in the writ petitions are not disputed by Mr H.B.Rahman, learned Assistant Solicitor General. It is however submitted that for appointment on compassionate ground no right is created for appointment to a particular post by the competent authority. Mr. B.C. Pathak, learned counsel for the petitioners has submitted that the name of Sri Himangshu Paul was approved for Group C post. He has no objection if he is appointed to Group D post in case no post in Group C is available.

5. So far as the findings recorded by the learned Tribunal that no vacancy is available and such prayer cannot be allowed. It is vehemently disputed by the learned counsel for the petitioners by filing documents to show that some posts in Group C & D are available. Vide order dated 6.1.2005 the respondent authorities were directed to produce the documents showing the number of vacancies available from the year

1995 onwards, under the scheme for appointment on compassionate ground (die in harness) which is limited to the extent of 5% of the total vacancies. The learned Assistant Solicitor General has submitted that in spite of communication to this effect, no information has yet been received by him till date.

6. The law is settled that an application for appointment under the scheme die in harness on compassionate ground, cannot be thrown out merely because no vacancy is available. In such a contingency, the name of the petitioner is required to be registered and his case shall be considered as and when vacancy arises along with other eligible or similarly situated persons.

7. In view of the aforesaid situation, we set aside the impugned judgment and order passed by the learned Central Administrative Tribunal, Guwahati Bench and direct the respondent authorities to consider the ~~case of the petitioners for appointment against either~~ Group C or Group D post as per their eligibility and if some vacancies are available as on today, their case shall be considered against the aforesaid post along with other waiting persons, if any, as per the existing rules and in case no vacancy exist as on today, their names shall be registered and their case shall be considered as and when the vacancies arise. As stated above, Sri Himangshu Paul and Sri Nilotpal Roy and other petitioners have no objection, if they are appointed even in Group D post if there is no vacancy in Group C Post.

8. Mr. B.C. Pathak further submitted that the petitioners have no objection if the respondent authority appoint the petitioners as Gramin Dak Sevek on fixed honorium pay only for the time being, till the vacancy in Group C and Group D arise in the department for their regular appointment. It is further submitted by Mr. Pathak that under the Rules/Scheme the petitioners are entitled to regular appointment and till such appointment on regular basis, if they accept the post of Gramin Dak Sevek, their case shall be considered for regular appointment

subsequently as and when vacancy arises without effecting their right accrued thereunder.

9. It is, therefore, provided that the respondent authority may consider their appointment as Gramin Dak Sevek immediately for the intervening period. However, the appointment on fixed pay will not prejudice the claim of the petitioners for regular appointment under the above scheme of compassionate appointment.

10. The writ petitions are disposed of as aforesaid.

Sd/ H.N. Sazma
Judge

Sd/ P. G. Agarwal
Judge

CERTIFIED TO BE TRUE COPY
Ak on Borpatra Nohain
Date 04/10/05
Superintendent (Copy & W Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

Gauhati High Court at Guwahati

Pet no 41439
dt 30/10/05

Checked
04/10/05

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

No. VIG/5/VIII/WP/05

Dated Guwahati-1 the 20-04-2006.

Subject: Compassionate appointment - case of Shri Himangshu Paul, S/O Late Phani Bhusan Paul - reconsideration of the case in compliance with the judgement/order dated 27-09-2005 delivered by the Hon'ble High Court, Guwahati in WP(C) No.8141/2002.

ORDER

Shri Himangshu Paul, S/O Late Phani Bhusan Paul applied for consideration for compassionate appointment in the post of Postman cadre under relaxation of normal rules. The applicant's father Late Phani Busan Paul was a Group 'D' official in the Department of Posts and expired on 27-07-1995 while in service.

2. The compassionate appointment case of the applicant along with other cases, was placed before the Circle Selection Committee (hereinafter referred to as CSC) which met on 23-09-1997 for consideration and recommendation. The CSC considered the case sympathetically but did not recommend on the ground that there were more deserving cases than the applicant, to fill up the limited (5% of the direct quota) available vacancy for the purpose. The CSC while considering the compassionate cases on 23-09-97 had taken into consideration of all the guidelines/instructions of the Scheme for Compassionate Appointment under Central Government, issued by the Department of Personnel and Training, New Delhi.

3. The name of Shri Himangshu Paul was approved for such appointment for the post of Postman and kept in wait list on the basis of availability of vacancy. The applicant was allowed (not appointed) on short time duty purely on temporary basis with clear undertaking that he would not claim seniority/pay benefit etc, for such short term engagement and he accepted such conditional engagement. Such post which was not for compassionate appointment was filled up by the candidate who was qualified for the appointment in such unreserved post. As he was not engaged against earmarked vacancy for compassionate appointment and as such he can not claim for regular appointment against such post depriving the legitimate claim of the persons entitled for appointment against such post. Later on, this wait list was discontinued as per instructions issued by the Department of Personnel and Training, New Delhi circulated vide Postal Directorate's letter No. 24-1/99-SPB-I dated 08-02-2001

Contd....

20/4/06

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Bondhesh Pathral
Advocate

4. It is pertinent to mention here that the Hon'ble Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal Vs State of Haryana and others [JT 1994(3) S.C.525] has laid down the following important principles, yardsticks and parameters for deciding the compassionate appointment cases :-

- i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- ii) 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 it get over the emergency.
- iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant, is legally impermissible.
- iv) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

5. As per instructions issued by Department of Personnel and Training, New Delhi, wait listing of candidates for compassionate appointment was dispensed with. Once panel list is discontinued, the name of Shri H. Paul can not be registered and listed again. It is mentioned here that inclusion of the name of the applicant in the waiting list for compassionate appointment has not conferred him any right for regular appointment. The practice of circulating the names of such candidates to other Ministries/Departments/Offices was also discontinued vide Postal Directorate's letter No.37-16/2001-SPB.I dated 13-09-2002.

6. Since wait listing of candidates for compassionate appointment has been dispensed with and this may cause hardship to approved candidate who have been waiting for quite a long period, so, on consideration of this aspect, the Postal Directorate decided to consider such wait listed candidates for vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible for the post. As per instructions of the Postal Directorate, Shri H. Paul was asked vide Senior Superintendent of Post offices (SSP) Cachar Division, Silchar letter No. B1/Rectt/Relax/Misc dated 24-08-2001, to offer his willingness for acceptance of GDS post with condition that no further claim for appointment or any special consideration against regular departmental vacancies would be allowed and the applicant must fulfill all the required conditions of recruitment like educational qualification etc. This offer was valid for one year. The formal allotment letter was also issued by the SSP Silchar allotting him as ED (GDS) Packer, Karnamadhu PO under Karimganj HO. But, Shri H. Paul declined to accept the offer for the post of GDS vide his letter dated 20-02-2002

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7. In the meantime, Shri H. Paul without accepting the offer for the post of GDS Packer, Karnamadhu PO, filed an application in OA No. 213/2002 in the CAT Guwahati Bench, praying for appointment to the post of Postman under compassionate grounds. The Hon'ble Tribunal, Guwahati was pleased to dismiss the application filed by Shri H. Paul, in its common judgement [including OA No. 261/2002] delivered on 11-10-2002.

8. Being not satisfied, Shri H. Paul assailed in WP(C) No. 8141/2002 in the High Court, Guwahati challenging the order of the Hon'ble Tribunal, Guwahati in OA No.213/2002. The Hon'ble High Court, Guwahati delivered the common judgement [including WP(C) No.452/2003] setting aside the judgement/order passed by the learned CAT Guwahati Bench and directed the respondent authority to consider the case of the petitioners for the post of GDS.

9. It is mentioned here that the case of Shri Himangshu Paul was processed and considered as per determined guidelines of the Scheme for Compassionate Appointment which was issued by the Department of Personnel and Training, New Delhi, after review in the light of the various court judgements and other decisions arrived at from the various recommendations from appropriate levels. In the said scheme, it stipulates that -

- a) Compassionate appointment is limited to 5% of direct vacancies quota. Appointment on compassionate grounds can be made only if a vacancy is available for that purpose. It is the policy of the Government that the compassionate appointment will be upto the extent of 5% of the vacancies available in the current year. Ministry of Law citing the Apex Court's order, opined that the policy decision of the Government shall not be interfered and no Tribunal or Court can compel the Government to change its policy.

In the instant case, vacancy for compassionate grounds was calculated on the basis of 5% of direct quota and not on total vacancies. This is according to the prescribed formula for calculation of vacancy issued by the Government of India, which is in force since the issue of instructions on Compassionate Appointment. Moreover, during those last few years, the vacancy position for direct recruitment was very few. As such, there was no anomaly in calculation of vacancy and earmarking the vacancy for compassionate appointment.

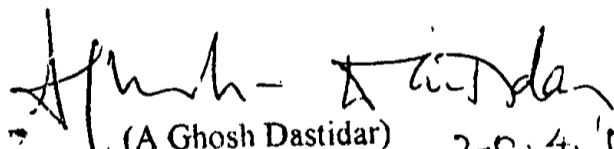
- b) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs Asha Ramchandra Ambekar and others [JT 1994(2) S.C.183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

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- c) Appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say, one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds, which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

10. From the foregoing paras, it transpires that the guidelines and rules of the Highest Court of the land as well as the relevant rules, guidelines of the Department and parameters and percentage of vacancies available for the purpose, were kept in mind while considering the case of Shri H. Paul. Shri Paul was given the ample opportunity by offering alternative appointment of GDS post. Shri Paul declined to avail the offer of GDS post and therefore it is construed that he has no necessity for means of sustenance. The specific and limited purpose of the scheme for compassionate appointment is to provide immediate financial support to the family of a Govt servant who dies in harness, without any means of lively-hood and to save it from financial destitution. But, declining of the offer for the post of GDS by Shri H Paul, amply speaks that the basic purpose for providing assistance in the case of Shri Paul, is no longer relevant. That offer for GDS post was valid for one year. As such, it is concluded that such offer can not be granted after lapse of a reasonable period of time and it is not a vested right which can be exercised at any time in future.

11. Keeping in view of these facts and circumstances explained above and the relevant rules and guidelines, the request of Shri Himangshu Paul could not be considered for appointment for the post of Gramin Dak Sewak (GDS), though it was duly examined and reconsidered sympathetically, in view of the common judgement/order of the Hon'ble High Court, Guwahati in WP(C) No.8141/2002 and WP(C) No.452/2003 and hence rejected.


(A Ghosh Dastidar) 20.4.06
Chief Postmaster General,
Assam Circle, Guwahati-781001.

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Repealed

Copy to:

- ✓ 1. Shri Himangshu Paul, S/O Late Phani Bhusam Paul, Ex-Group 'D' of Cachar Postal Division (Through SSP Silchar).
- W/E 2. The Senior Superintendent of Post Offices, Cachar Division, Silchar-788001. Copy of order-addressed to at serial 1 above, is enclosed herewith for effecting delivery to Shri H. Paul under receipt and acknowledgement be sent to this office for records. [Encl : One cover].
- 3. The Postmaster General, Dibrugarh Region, Dibrugarh-786001.
- 4. The APMG (Staff), O/O the Chief PMG, Assam Circle, Guwahati-781001
- 5. The Chief Postmaster General (Staff), Assam Circle, Guwahati-781001.
- Regd. 6. The Registrar, High Court, Guwahati-781001, for favour of information. This refers to WP(C) No. 8141/2002 and WP(C) no. 452/03.

A Ghosh Dastidar
 (A Ghosh Dastidar) 20.4.06
 Chief Postmaster General,
 Assam Circle, Guwahati-781001.

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL ASSAM CIRCLE
MEGHIDOOT BHAWAN, GUWAHATI-781001.

No. VIG/5/VIII/WP/05

Dated Guwahati-1 the 20-04-2006.

Subject: Compassionate appointment - case of Shri Babudhan Dhree, S/O Late Bijoy Kumar Dhree - reconsideration of the case in compliance with the judgement/order dated 27-09-2005 delivered by the Hon'ble High Court, Guwahati in WP(C) No.452/2003.

ORDER

Shri Babudhan Dhree, S/O Late Bijoy Kumar Dhree applied for consideration for compassionate appointment in the Group 'D' post under relaxation of normal rules. The applicant's father Late Bijoy Kumar Dhree was Overseer (Cash) at Silchar HPO in the Department of Posts and retired on invalidation on 02-01-1994.

2. The compassionate appointment case of the applicant along with other cases, was placed before the Circle Selection Committee (hereinafter referred to as CSC) for consideration and recommendation. The CSC considered the case sympathetically but did not recommend on the ground that there were more deserving cases than the applicant, to fill up the limited (5% of the direct quota) available vacancy for the purpose. The CSC while considering the compassionate cases had taken into consideration of all the guidelines/instructions of the Scheme for Compassionate Appointment under Central Government, issued by the Department of Personnel and Training, New Delhi

3. The name of Shri Babudhan Dhree was approved for such appointment for the post of Group 'D' and kept in wait list on the basis of availability of vacancy. The applicant was allowed (not appointed) on short time duty purely on temporary basis with clear undertaking that he would not claim seniority/pay benefit etc. for such short term engagement and he accepted such conditional engagement. Such post which was not for compassionate appointment was filled up by the candidate who was qualified for the appointment in such unreserved post. As he was not engaged against earmarked vacancy for compassionate appointment and as such he can not claim for regular appointment against such post depriving the legitimate claim of the persons entitled for appointment against such post. Later on, this wait list was discontinued as per instructions issued by the Department of Personnel and Training, New Delhi circulated vide Postal Directorate's letter No. 24-1/99-SPB-I dated 08-02-2001.

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Certified to be true Copy.

Bibhash Pathak
Advocate

4. It is pertinent to mention here that the Hon'ble Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal Vss State of Haryana and others [JT 1994(3) S.C.525] has laid down the following important principles, yardsticks and parameters for deciding the compassionate appointment cases :-

- j) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- v) 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 it get over the emergency.
- vi) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant, is legally impermissible.
- vii) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

5. As per instructions issued by Department of Personnel and Training, New Delhi, wait listing of candidates for compassionate appointment was dispensed with. Once panel list is discontinued, the name of Shri Babudhan Dhree can not be registered and listed again. It is mentioned here that inclusion of the name of the applicant in the waiting list for compassionate appointment has not conferred him any right for regular appointment. The practice of circulating the names of such candidates to other Ministries/Departments/Offices was also discontinued vide Postal Directorate's letter No.37-16/2001-SPB.I dated 13-09-2002

6. Since wait listing of candidates for compassionate appointment has been dispensed with and this may cause hardship to approved candidate who have been waiting for quite a long period, so, on consideration of this aspect, the Postal Directorate decided to consider such wait listed candidates for vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible for the post. As per instructions of the Postal Directorate, Shri B. Dhree was asked vide Senior Superintendent of Post offices (SSP) Cachar Division, Silchar letter No. B1/Rectt/Relax/Misc dated 24-08-2001, to offer his willingness for acceptance of GDS post with condition that no further claim for appointment or any special consideration against regular departmental vacancies would be allowed and the applicant must fulfill all the required conditions of recruitment like educational qualification etc. The formal allotment letter was also issued by the SSP Silchar allotting him as EDDA-C-EDMC (GDS), Dariarghat Grant BPO in account with Manipur Bagan SO, under Hailakandi HO. The SSP Silchar vide his letter No. B1/Rectt/Relax/Misc dated 13-02-2002 again asked Shri Babudhan Dhree to offer his willingness in clear terms whether he was agreeable to accept the post of GDS as offered

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earlier vide letter dated 24-08-2001. In reply, Shri Dhree vide his application dated 24-07-2002 declined to accept the offer for EDDA-C-EDMA (GDS) at Dariarghat Grant BPO in account with Manipur Bagan under Hailakandi HO. On the other hand, he opted for working as GDS provided he is posted in the jurisdiction of Silchar Sub Division (North). He also stated in his application that he was initially selected as Group 'D' post and termed this option/willingness to GDS in lieu of Group 'D' post. Department is not liable to accept such condition offer/option of Shri D. Dhree. Shri Dhree declined to accept the GDS post of Dariarghat Grant BPO in account with Manipur Bagan SO. as offered by the SSP Silchar - which was valid for one year.

7. In the meantime, Shri Babudhan Dhree without the accepting the post of EDDA-C-EDMC (GDS) at Dariarghat Grant BPO, filed an application in OA No. 261/2002 in the CAT Guwahati Bench, praying for appointment to the post of Group 'D' under compassionate grounds. The Hon'ble Tribunal, Guwahati was pleased to dismiss the application filed by Shri B. Dhree, in its common judgement [including OA No.213/2002] delivered on 11-10-2002.

8. Being not satisfied, Shri B. Dhree assailed in WP(C) No. 452/2003 in the High Court, Guwahati challenging the order of the Hon'ble Tribunal, Guwahati in OA No.261/2002. The Hon'ble High Court, Guwahati delivered the common judgement [including WP(C) No.8141/2002] setting aside the judgement/order passed by the learned CAT Guwahati Bench and directed the respondent authority to consider the case of the petitioners for the post of GDS.

9. It is mentioned here that the case of Shri Babudhan Dhree was processed and considered as per determined guidelines of the Scheme for Compassionate Appointment which was issued by the Department of Personnel and Training, New Delhi, after review in the light of the various court judgements and other decisions arrived at from the various recommendations from appropriate levels. In the said scheme, it stipulates that --

- a) Compassionate appointment is limited to 5% of direct vacancies quota. Appointment on compassionate grounds can be made only if a vacancy is available for that purpose. It is the policy of the Government that the compassionate appointment will be upto the extent of 5% of the vacancies available in the current year. Ministry of Law citing the Apex Court's order, opined that the policy decision of the Government shall not be interfered and no Tribunal or court can compel the Government to change its policy.

In the instant case, vacancy for compassionate grounds was calculated on the basis of 5% of direct quota and not on total vacancies. This is according to the prescribed formula for calculation of vacancy issued by the Government of India, which is in force since the issue of instructions on Compassionate Appointment. Moreover,
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during those last few years, the vacancy position for direct recruitment was very few. As such, there was no anomaly in calculation of vacancy and earmarking the vacancy for compassionate appointment.

- b) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs Asha Ramchandra Ambekar and others [JT 1994(2) S.C.183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.
- c) Appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say, one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds, which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

10. From the foregoing paras, it transpires that the guidelines and rules of the Highest Court of the land as well as the relevant rules, guidelines of the Department and parameters and percentage of vacancies available for the purpose, were also kept in mind while considering the case of Shri Babudhan Dhree. Shri Dhree was given the ample opportunity by offering alternative appointment of GDS post. Shri Dhree declined to avail the offer of GDS post and therefore it is construed that he has no necessity for means of sustenance. The specific and limited purpose of the scheme for compassionate appointment is to provide immediate financial support to the family of a Govt servant who dies in harness, without any means of livelihood and to save it from financial destitution. But, declining of the offer for the post of GDS by Shri Babudhan Dhree, amply speaks that the basic purpose for providing assistance in the case of Shri Dhree, is no longer relevant. That offer for GDS post was valid for one year. As such, it is concluded that such offer can not be granted after lapse of a reasonable period of time and it is not a vested right which can be exercised at any time in future.

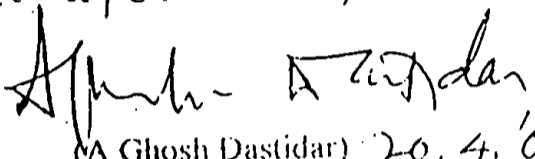
11. Keeping in view of these facts and circumstances explained above and the relevant rules and guidelines, the request of Shri Babudhan Dhree could not be considered for appointment for the post of Gramin Dak Sewak (GDS), though it was duly examined and reconsidered sympathetically, in view of the common judgement/order of the Hon'ble High Court, Guwahati in WP(C) No.8141/2002 and WP(C) No.452/2003 and hence rejected.

A Ghosh Dasgupta
(A Ghosh Dasgupta)
Chief Postmaster General, 4/10/03
Assam Circle, Guwahati-781001.

contd ---

Copy to :

- ✓ 1. Shri Babudhan Dhree, S/O Late Bijoy Kumar Dhree, Ex-O/S (Cash) of Cachar Postal Division. (Through SSP Silchar).
- W/E 2. The Senior Superintendent of Post Offices, Cachar Division, Silchar-788001. Copy of order addressed to at serial 1 above, is enclosed herewith for effecting delivery to Shri Babudhan Dhree under receipt and acknowledgement be sent to this office for records. [Encl: One cover].
3. The Postmaster General, Dibrugarh Region, Dibrugarh-786001.
4. The Chief Postmaster General (Staff), Assam Circle, Guwahati-781001.
- Regd. 5. The Registrar, High Court, Guwahati-781001, for favour of information. This refers to WP(C) No. 452/2003 and copy no 814/02.


(A Ghosh Dastidar) 20.4.02
Chief Postmaster General,
Assam Circle, Guwahati-781001.

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

No. VIG/5/VIII/WP/05

Dated Guwahti-1 the 20-04-2006.

Subject: Compassionate appointment - case of Shri Nilothpal Roy, S/O Late Nikunja Chandra Roy - reconsideration of the case in compliance with the judgement/order dated 27-09-2005 delivered by the Hon'ble High Court, Guwahati in WP(C) No.453/2003.

ORDER

Shri Nilothpal Roy, S/O Late Nikunja Ch. Roy applied for consideration for compassionate appointment in the post of Postman cadre under relaxation of normal rules. The applicant's father Late Nikunja Ch. Roy was a Postman at Gumra Bazar BPO under Cachar Postal Division in the Department of Posts and expired on 28-01-1996 while in service.

2. The compassionate appointment case of the applicant along with other cases, was placed before the Circle Selection Committee (hereinafter referred to as CSC) for consideration and recommendation. The CSC considered the case sympathetically but did not recommend on the ground that there were more deserving cases than the applicant, to fill up the limited (5% of the direct quota) available vacancy for the purpose. The CSC while considering the compassionate cases, had taken into consideration of all the guidelines/instructions of the Scheme for Compassionate Appointment under Central Government, issued by the Department of Personnel and Training, New Delhi.

3. The name of Shri N Roy was approved for such appointment for the post of Postman and kept in wait list on the basis of availability of vacancy. The applicant was allowed (not appointed) on short time duty purely on temporary basis with clear undertaking that he would not claim seniority/pay benefit etc, for such short term engagement and he accepted such conditional engagement. Such post which was not for compassionate appointment was filled up by the candidate who was qualified for the appointment in such unreserved post. As he was not engaged against earmarked vacancy for compassionate appointment and as such he can not claim for regular appointment against such post depriving the legitimate claim of the persons entitled for appointment against such post. Later on, this wait list was discontinued as per instructions issued by the Department of Personnel and Training, New Delhi circulated vide Postal Directorate's letter No. 24-1/99-SPB-I dated 08-02-2001.

Contd....

Certified to be true Copy.

Bibhash Pathak
Advocate

4. It is pertinent to mention here that the Hon'ble Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal Vs State of Haryana and others [JT 1994(3) S.C.525] has laid down the following important principles, yardsticks and parameters for deciding the compassionate appointment cases :-

- i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- ii) 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 it get over the emergency.
- iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant, is legally impermissible.
- iv) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

5. As per instructions issued by Department of Personnel and Training, New Delhi, wait listing of candidates for compassionate appointment was dispensed with. Once panel list is discontinued, the name of Shri N Roy can not be registered and listed again. It is mentioned here that inclusion of the name of the applicant in the waiting list for compassionate appointment has not conferred him any right for regular appointment. The practice of circulating the names of such candidates to other Ministries/Departments/Offices was also discontinued vide Postal Directorate's letter No.37-16/2001-SPB.I dated 13-09-2002

6. Since wait listing of candidates for compassionate appointment has been dispensed with and this may cause hardship to approved candidate who have been waiting for quite a long period, so, on consideration of this aspect, the Postal Directorate decided to consider such wait listed candidates for vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible for the post. As per instructions of the Postal Directorate, Shri N Roy was asked vide Senior Superintendent of Post offices (SSP) Cachar Division, Silchar letter No. B1/Rectt/Relax/Misc dated 24-08-2001, to offer his willingness for acceptance of GDS post with condition that no further claim for appointment or any special consideration against regular departmental vacancies would be allowed and the applicant must fulfill all the required conditions of recruitment like educational qualification etc. This offer was valid for one year. The formal allotment letter was also issued by the SSP Silchar allotting him as EDDA-C-EDMC (GDS) Chirukandi BPO under Cachar Postal Division. But, Shri N Roy declined to accept the offer for the post of GDS.

Contd.....

7. In the meantime, Shri N Roy without accepting the offer for the post of GDS Packer, ... PO, filed an application in OA No. 261/2002 in the CAT Guwahati Bench, praying for appointment to the post of Postman under compassionate grounds. The Hon'ble Tribunal, Guwahati was pleased to dismiss the application filed by Shri N Roy in its common judgement [including OA No. 213/2002] delivered on 11-10-2002.

8. Being not satisfied, Shri N Roy assailed in WP(C) No. 452/2003 in the High Court, Guwahati challenging the order of the Hon'ble Tribunal, Guwahati in OA No. 261/2002. The Hon'ble High Court, Guwahati delivered the common judgement [including WP(C) No. 8141/2002] setting aside the judgement/order passed by the learned CAT Guwahati Bench and directed the respondent authority to consider the case of the petitioners for the post of GDS.

9. It is mentioned here that the case of Shri N Roy was processed and considered as per determined guidelines of the Scheme for Compassionate Appointment which was issued by the Department of Personnel and Training, New Delhi, after review in the light of the various court judgements and other decisions arrived at from the various recommendations from appropriate levels. In the said scheme, it stipulates that -

- a) Compassionate appointment is limited to 5% of direct vacancies quota. Appointment on compassionate grounds can be made only if a vacancy is available for that purpose. It is the policy of the Government that the compassionate appointment will be upto the extent of 5% of the vacancies available in the current year. Ministry of Law citing the Apex Court's order, opined that the policy decision of the Government shall not be interfered and no Tribunal or Court can compel the Government to change its policy.

In the instant case, vacancy for compassionate grounds was calculated on the basis of 5% of direct quota and not on total vacancies. This is according to the prescribed formula for calculation of vacancy issued by the Government of India, which is in force since the issue of instructions on Compassionate Appointment. Moreover, during those last few years, the vacancy position for direct recruitment was very few. As such, there was no anomaly in calculation of vacancy and earmarking the vacancy for compassionate appointment.

- b) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs Asha Ramchandra Ambekar and others [JT 1994(2) S.C.183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

Contd..

c) Appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say, one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds, which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

10. From the foregoing paras, it transpires that the guidelines and rules of the Highest Court of the land as well as the relevant rules, guidelines of the Department and parameters and percentage of vacancies available for the purpose, were kept in mind while considering the case of Shri N Roy. Shri Roy was given the ample opportunity by offering alternative appointment of GDS post. Shri Roy declined to avail the offer of GDS post and therefore it is construed that he has no necessity for means of sustenance. The specific and limited purpose of the scheme for compassionate appointment is to provide immediate financial support to the family of a Govt servant who dies in harness, without any means of lively-hood and to save it from financial destitution. But, declining of the offer for the post of GDS by Shri N Roy, amply speaks that the basic purpose for providing assistance in the case of Shri Roy, is no longer relevant. That offer for GDS post was valid for one year. As such, it is concluded that such offer can not be granted after lapse of a reasonable period of time and it is not a vested right which can be exercised at any time in future.

11. Keeping in view of these facts and circumstances explained above and the relevant rules and guidelines, the request of Shri Nilotpal Roy could not be considered for appointment for the post of Gramin Dak Sewak (GDS), though it was duly examined and reconsidered sympathetically, in view of the common judgement/order of the Hon'ble High Court, Guwahati in WP(C) No.8141/2002 and WP(C) No.452/2003 and hence rejected.

A Ghosh Dastidar
 (A Ghosh Dastidar) 20.4.02
 Chief Postmaster General,
 Assam Circle, Guwahati-781001.

Contd...

Copy to :

- ✓ 1. Shri Nilothpal Roy, S/O Late Nikunja Ch. Roy, Ex-Postman at Gumra Bazar BPO of Cachar Postal Division. (Through SSP Silchar).
- W/E 2. The Senior Superintendent of Post Offices, Cachar Division, Silchar- 788001. Copy of order addressed to at serial 1 above, is enclosed herewith for effecting delivery to Shri N. Roy under receipt and acknowledgement be sent to this office for records. [Encl: One cover].
3. The Postmaster General, Dibrugarh Region, Dibrugarh-786001.
4. The Chief Postmaster General (Staff Sec.), Assam Circle, Guwahati-781001.
- Regd. 5. The Registrar, High Court, Guwahati-781001, for favour of information

This refers to WP(C) No. 452/2003. *cmw*

WP(C) No. 8141/0

A Ghosh Dastidar

(A Ghosh Dastidar) 20. 4. '07
Chief Postmaster General,
Assam Circle, Guwahati-781001.

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

No. VIG/5/VIII/WP/05

Dated Guwahati-1 the 20-04-2006.

Subject: Compassionate appointment - case of Shri Gopal Chandra Namasudra, S/O Late Gopendra Chandra Namasudra - reconsideration of the case in compliance with the judgement/order dated 27-09-2005 delivered by the Hon'ble High Court, Guwahati in WP(C) No.8141/2002.

ORDER

Shri Gopal Chandra Namasudra, S/O Late Gopendra Chandra Namasudra applied for consideration for compassionate appointment in Group 'D' post under relaxation of normal rules. The applicant's father Late Gopendra Ch. Namasudra was a Group 'D' official under Cachar Postal Division in the Department of Posts and expired on 28-01-1996 while in service.

2. The compassionate appointment case of the applicant along with other cases, was placed before the Circle Selection Committee (hereinafter referred to as CSC) for consideration and recommendation. The CSC considered the case sympathetically but did not recommend on the ground that there were more deserving cases than the applicant, to fill up the limited (5% of the direct quota) available vacancy for the purpose. The CSC while considering the compassionate cases had taken into consideration of all the guidelines/instructions of the Scheme for Compassionate Appointment under Central Government, issued by the Department of Personnel and Training, New Delhi.

3. The name of Shri G C Namasudra was approved for such appointment for the post of Group 'D' and kept in wait list on the basis of availability of vacancy. The applicant was allowed (not appointed) on short time duty purely on temporary basis with clear undertaking that he would not claim seniority/pay benefit etc, for such short term engagement and he accepted such conditional engagement. Such post which was not for compassionate appointment was filled up by the candidate who was qualified for the appointment in such unreserved post. As he was not engaged against earmarked vacancy for compassionate appointment and as such he can not claim for regular appointment against such post depriving the legitimate claim of the persons entitled for appointment against such post. Later on, this wait list was discontinued as per instructions issued by the Department of Personnel and Training, New Delhi circulated vide Postal Directorate's letter No. 24-1/99-SPB-I dated 08-02-2001.

Contd....

certified to be true Copy

Bibhash Pathak
Advocate

4. It is pertinent to mention here that the Hon'ble Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal Vs State of Haryana and others [JT 1994(3) S.C.525] has laid down the following important principles, yardsticks and parameters for deciding the compassionate appointment cases :-

- i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- ii) 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 it get over the emergency.
- iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant, is legally impermissible.
- iv) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

5. As per instructions issued by Department of Personnel and Training, New Delhi, wait listing of candidates for compassionate appointment was dispensed with. Once panel list is discontinued, the name of Shri G C Namasudra can not be registered and listed again. It is mentioned here that inclusion of the name of the applicant in the waiting list for compassionate appointment has not conferred him any right for regular appointment. The practice of circulating the names of such candidates to other Ministries/Departments/Offices was also discontinued vide Postal Directorate's letter No.37-16/2001-SPB.I dated 13-09-2002

6. Since wait listing of candidates for compassionate appointment has been dispensed with and this may cause hardship to approved candidate who have been waiting for quite a long period, so, on consideration of this aspect, the Postal Directorate decided to consider such wait listed candidates for vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible for the post. As per instructions of the Postal Directorate, Shri G C Namasudra was asked vide Senior Superintendent of Post offices (SSP) Cachar Division, Silchar letter No. B1/Rectt/Relax/Misc dated 24-08-2001, to offer his willingness for acceptance of GDS post with condition that no further claim for appointment or any special consideration against regular departmental vacancies would be allowed and the applicant must fulfill all the required conditions of recruitment like educational qualification etc. The formal allotment letter was also issued by the SSP Silchar allotting him as EDDA (GDS), Bhairabnagar BPO in account with Lakhisahar SO, under Hailakandi HO. Shri G C Namasudra vide his declaration dated 16-07-2002, expressed to accept the offer for the post of GDS until clear vacancy of Group 'D' is available for which he was initially approved. Shri Namasudra did not agreed with the terms and conditions of the offer for the post of GDS as noted in the letter dated 24-08-2001 and thus declined the offer which was valid for one year.

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7. In the meantime, Shri G C Namasudra filed an application in OA No. 261/2002 in the CAT Guwahati Bench, praying for appointment to the post of Group 'D' under compassionate grounds. The Hon'ble Tribunal, Guwahati was pleased to dismiss the application filed by Shri G C Namasudra, in its common judgement [including OA No.213/2002] delivered on 11-10-2002.

8. Being not satisfied, Shri G C Namasudra assailed in WP(C) No. 8141/2002 in the High Court, Guwahati challenging the order of the Hon'ble Tribunal, Guwahati in OA No.261/2002. The Hon'ble High Court, Guwahati delivered the common judgement [including WP(C) No.452/2003] setting aside the judgement/order passed by the learned CAT Guwahati Bench and directed the respondent authority to consider the case of the petitioners for the post of GDS.

9. It is mentioned here that the case of Shri G C Namasudra was processed and considered as per determined guidelines of the Scheme for Compassionate Appointment which was issued by the Department of Personnel and Training, New Delhi, after review in the light of the various court judgements and other decisions arrived at from the various recommendations from appropriate levels. In the said scheme, it stipulates that -

- a) Compassionate appointment is limited to 5% of direct vacancies quota. Appointment on compassionate grounds can be made only if a vacancy is available for that purpose. It is the policy of the Government that the compassionate appointment will be upto the extent of 5% of the vacancies available in the current year. Ministry of Law citing the Apex Court's order, opined that the policy decision of the Government shall not be interfered and no Tribunal or Court can compel the Government to change its policy.

In the instant case, vacancy for compassionate grounds was calculated on the basis of 5% of direct quota and not on total vacancies. This is according to the prescribed formula for calculation of vacancy issued by the Government of India, which is in force since the issue of instructions on Compassionate Appointment. Moreover, during those last few years, the vacancy position for direct recruitment was very few. As such, there was no anomaly in calculation of vacancy and earmarking the vacancy for compassionate appointment.

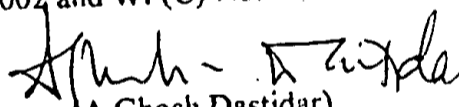
- b) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs Asha Ramchandra Ambekar and others [JT 1994(2) S.C.183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

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- c) Appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say, one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds, which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

10. From the foregoing paras, it transpires that the guidelines and rules of the Highest Court of the land as well as the relevant rules, guidelines of the Department and parameters and percentage of vacancies available for the purpose, were kept in mind while considering the case of Shri G^c Namasudra. was given the ample opportunity by offering alternative appointment of GDS post. Shri L^c declined to avail the offer of GDS post and therefore it is construed that he has no necessity for means of sustenance. The specific and limited purpose of the scheme for compassionate appointment is to provide immediate financial support to the family of a Govt servant who dies in harness, without any means of lively-hood and to save it from financial destitution. But, declining of the offer for the post of GDS by Shri G^c Namasudra, amply speaks that the basic purpose for providing assistance in the case of Shri Namasudra, is no longer relevant. That offer for GDS post was valid for one year. As such, it is concluded that such offer can not be granted after lapse of a reasonable period of time and it is not a vested right which can be exercised at any time in future.

11. Keeping in view of these facts and circumstances explained above and the relevant rules and guidelines, the request of Shri Gopal Namasudra could not be considered for appointment for the post of Gramin Dak Sewak (GDS), though it was duly examined and reconsidered sympathetically, in view of the common judgement/order of the Hon'ble High Court, Guwahati in WP(C) No.8141/2002 and WP(C) No.452/2003 and hence rejected.

Namasudra

 (A Ghosh Dastidar)
 Chief Postmaster General, 4. '06
 Assam Circle, Guwahati-781001.

Contd....

Copy to :

- ✓ 1. Shri Gopal Namasudra, S/O Late Gopendra Ch. Namasudra, Ex-Group 'D' of Cachar Postal Division. (Through SSP Silchar).
- W/E 2. The Senior Superintendent of Post Offices, Cachar Division, Silchar- 788001. Copy of order addressed to at serial 1 above, is enclosed herewith for effecting delivery to Shri Gopal Namasudra under receipt and acknowledgement be sent to this office for records. [Encl: One cover].
- 3. The Postmaster General, Dibrugarh Region, Dibrugarh-786001.
- 4. The Chief Postmaster General (Staff Sec), Assam Circle, Guwahati-781001.
- Regd. 5. The Registrar, High Court, Guwahati-781001, for favour of information.

This refers to WP(C) No. 452/2003 and WP(C) 8141/2002.

A Ghosh Dastidar
 (A Ghosh Dastidar)
 Chief Postmaster General, 20.4.06
 Assam Circle, Guwahati-781001.

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

No. VIG/5/VIII/WP/05

Dated Guwahati-1 the 20-04-2006.

Subject: Compassionate appointment – case of Shri Kajal Das, S/O Smt Suniti Bala Das - reconsideration of the case in compliance with the judgement/order dated 27-09-2005 delivered by the Hon'ble High Court, Guwahati in WP(C) No.8141/2002.

ORDER

Shri Kajal Das, S/O Smt Suniti Bala Das applied for consideration for compassionate appointment in the Group 'D' post under relaxation of normal rules. The applicant's mother Smt Suniti Bala Das was a Group 'D' official at Silchar HPO in the Department of Posts and retired on invalidation on 17-05-1995.

2. The compassionate appointment case of the applicant along with other cases, was placed before the Circle Selection Committee (hereinafter referred to as CSC) for consideration and recommendation. The CSC considered the case sympathetically but did not recommend on the ground that there were more deserving cases than the applicant, to fill up the limited (5% of the direct quota) available vacancy for the purpose. The CSC while considering the compassionate cases had taken into consideration of all the guidelines/instructions of the Scheme for Compassionate Appointment under Central Government, issued by the Department of Personnel and Training, New Delhi.

3. The name of Shri Kajal Das was approved for such appointment for the post of Group 'D' and kept in wait list on the basis of availability of vacancy. The applicant was allowed (not appointed) on short time duty purely on temporary basis with clear undertaking that he would not claim seniority/pay benefit etc. for such short term engagement and he accepted such conditional engagement. Such post which was not for compassionate appointment was filled up by the candidate who was qualified for the appointment in such unreserved post. As he was not engaged against earmarked vacancy for compassionate appointment and as such he can not claim for regular appointment against such post depriving the legitimate claim of the persons entitled for appointment against such post. Later on, this wait list was discontinued as per instructions issued by the Department of Personnel and Training, New Delhi circulated vide Postal Directorate's letter No. 24-1/99-SPB-I dated 08-02-2001.

Contd.....

Certified to be true Copy
Biswajit Pathak
Advocate

4. It is pertinent to mention here that the Hon'ble Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal Vss State of Haryana and others [JT 1994(3), S.C.525] has laid down the following important principles, yardsticks and parameters for deciding the compassionate appointment cases -

- i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- ii) 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 it get over the emergency.
- iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant, is legally impermissible.
- iv) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

5. As per instructions issued by Department of Personnel and Training, New Delhi, wait listing of candidates for compassionate appointment was dispensed with. Once panel list is discontinued, the name of Shri Kajal Das can not be registered and listed again. It is mentioned here that inclusion of the name of the applicant in the waiting list for compassionate appointment has not conferred him any right for regular appointment. The practice of circulating the names of such candidates to other Ministries/Departments/Offices was also discontinued vide Postal Directorate's letter No.37-16/2001-SPB.I dated 13-09-2002

6. Since wait listing of candidates for compassionate appointment has been dispensed with and this may cause hardship to approved candidate who have been waiting for quite a long period, so, on consideration of this aspect, the Postal Directorate decided to consider such wait listed candidates for vacant post of Gramin Dak Sewaks (GDS), if they are willing and eligible for the post. As per instructions of the Postal Directorate, Shri Kajal Das was asked vide Senior Superintendent of Post offices (SSP) Cachar Division, Silchar letter No. B1/Recit/Relax/Misc dated 24-08-2001, to offer his willingness for acceptance of GDS post with condition that no further claim for appointment or any special consideration against regular departmental vacancies would be allowed and the applicant must fulfill all the required conditions of recruitment like educational qualification etc. The formal allotment letter was also issued by the SSP Silchar allotting him as EDDA-C-EDMC (GDS), Chengurgrant BPO in account with Binnakandighat SO, under Silchar HO. Shri Kajal Das vide his declaration dated 04-07-2002, expressed to accept the offer for the post of GDS until clear vacancy of Group 'D'

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is available for which he was initially approved. Shri Das did not agree with the terms and conditions of the offer for the post of GDS as noted in the letter dated 24-08-2001 and thus declined to accept the offer which was valid for one year.

7. In the meantime, Shri Kajal Das filed an application in OA No. 261/2002 in the CAT Guwahati Bench, praying for appointment to the post of Group 'D' under compassionate grounds. The Hon'ble Tribunal, Guwahati was pleased to dismiss the application filed by Shri Kajal Das, in its common judgement [including OA No.213/2002] delivered on 11-10-2002.

8. Being not satisfied, Shri Kajal Das assailed in WP(C) No. 8141/2002 in the High Court, Guwahati challenging the order of the Hon'ble Tribunal, Guwahati in OA No.261/2002. The Hon'ble High Court, Guwahati delivered the common judgement [including WP(C) No.452/2003] setting aside the judgement/order passed by the learned CAT Guwahati Bench and directed the respondent authority to consider the case of the petitioners for the post of GDS.

9. It is mentioned here that the case of Shri Kajal Das was processed and considered as per determined guidelines of the Scheme for Compassionate Appointment which was issued by the Department of Personnel and Training, New Delhi, after review in the light of the various court judgements and other decisions arrived at from the various recommendations from appropriate levels. In the said scheme, it stipulates that -

- a) Compassionate appointment is limited to 5% of direct vacancies quota. Appointment on compassionate grounds can be made only if a vacancy is available for that purpose. It is the policy of the Government that the compassionate appointment will be upto the extent of 5% of the vacancies available in the current year. Ministry of Law citing the Apex Court's order, opined that the policy decision of the Government shall not be interfered and no Tribunal or court can compel the Government to change its policy.

In the instant case, vacancy for compassionate grounds was calculated on the basis of 5% of direct quota and not on total vacancies. This is according to the prescribed formula for calculation of vacancy issued by the Government of India, which is in force since the issue of instructions on Compassionate Appointment. Moreover, during those last few years, the vacancy position for direct recruitment was very few. As such, there was no anomaly in calculation of vacancy and earmarking the vacancy for compassionate appointment.

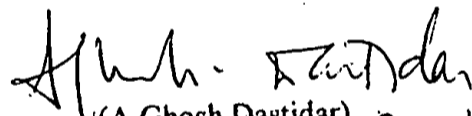
- b) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs Asha Ramchandra Ambekar and others [JT 1994(2) S.C.183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

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- c) Appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say, one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure will lead to bulk appointment on compassionate grounds, which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

10. From the foregoing paras, it transpires that the guidelines and rules of the Highest Court of the land as well as the relevant rules, guidelines of the Department and parameters and percentage of vacancies available for the purpose, were also kept in mind while considering the case of Shri Kajal Das. Shri Das was given the ample opportunity by offering alternative appointment of GDS post. Shri Das declined to avail the offer of GDS post and therefore it is construed that he has no necessity for means of sustenance. The specific and limited purpose of the scheme for compassionate appointment is to provide immediate financial support to the family of a Govt servant who dies in harness, without any means of livelihood and to save it from financial destitution. But, declining of the offer for the post of GDS by Shri Kajal Das, amply speaks that the basic purpose for providing assistance in the case of Shri Das, is no longer relevant. That offer for GDS post was valid for one year. As such, it is concluded that such offer can not be granted after lapse of a reasonable period of time and it is not a vested right which can be exercised at any time in future.

11. Keeping in view of these facts and circumstances explained above and the relevant rules and guidelines, the request of Shri Kajal Das could not be considered for appointment for the post of Gramin Dak Sewak (GDS), though it was duly examined and reconsidered sympathetically, in view of the common judgement/order of the Hon'ble High Court, Guwahati in WP(C) No.8141/2002 and WP(C) No.452/2003 and hence rejected.


(A Ghosh Dastidar) 20.4.02
Chief Postmaster General,
Assam Circle, Guwahati-781001.

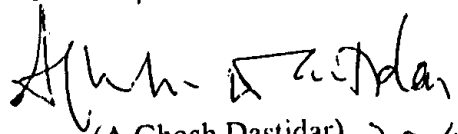
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Copy to :

- ✓ 1. Shri Kajal Das, S/O Smt Suniti Bala Das, Ex-Group 'D' of Cachar Postal Division. (Through SSP Silchar).
- W/E 2. The Senior Superintendent of Post Offices, Cachar Division, Silchar-788001. Copy of order addressed to at serial 1 above, is enclosed herewith for effecting delivery to Shri Kajal Das under receipt and acknowledgement be sent to this office for records. [Encl : One cover].
3. The Postmaster General, Dibrugarh Region, Dibrugarh-786001.
4. The Chief Postmaster General (Staff), Assam Circle, Guwahati-781001.
- Regd. 5. The Registrar, High Court, Guwahati-781001, for favour of information.
This refers to WP(C) No. 452/2003 and wp(c) no 8141/2002


(A Ghosh Dastidar) 20.4.07
Chief Postmaster General,
Assam Circle, Guwahati-781001.

तारीख Date of application for the copy	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
25/07	25/07	25/07	25/07	25/07

- 54 -

ANNEXURE : 8

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from _____ Cont. case (C) No. 310 of 2006
 Civil Rule

Himangshu Paul

Appellant
Petitioner

Versus

M.S. Baki
 A. Ghose Dasgupta &

Ans. Respondent
Opposite Party

Appellant
 For _____
 Petitioner Mr. C. C. Pathak
 Dr. M. Pathak
 Mr. B. Pathak
 Respondent
 For _____
 Opposite Party Mr. M. Singha.

Mr. H. Rahman, Z. Wahid, J. Huda,
 S. Sena, R. S. Tamrakar S. Jahan-oori

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or proceedings with signature
	2	3	4

Certified to be true Copy
 Biswesh Pathak
 Advocate

IN THE MATTER OF :

Sri Himagshu Paul
 S/o Late Phani Bhusan Paul
 (Ex-group D-employee)
 Village - Karatigram, P.O. - Rangpur,
 P.S. - Silchar, Dist. Cachar (Assam)
 Petitioner

Sri M. S. Bali
~~Sri A. Chose Dastider~~
 Chief Postmaster General,
 Assam Circle, Meghdoot Bhawan
 Guwahati - 781001.

2. Dr. U Srinivasa Raghavan,
 Director General, Department of
 Posts, Dak Bhawan, Sansad Marg, New
 Delhi -1

..... Respondents/Contemnors

* As per Hon'ble Court's order dtol
 17.01.07 passed in MC No. 4225/06.

The name of Resp. No. 1 gets struck off and
 his place by H. K. Bali has been impleaded as Resp. No. 1
 and Mrs. P. Gopinathan has been
 newly impleaded as Resp. No. 3.

3. Mrs. P. Gopinathan,
 Director General, Deptt. of Posts,
 Dak Bhawan, Sansad Marg,
 New Delhi - 1

17/01/07

3

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
<p style="text-align: right;">Cont Case(C) No. 310/2006</p> <p style="text-align: center;">BEFORE</p> <p style="text-align: center;">THE HON'BLE MR. JUSTICE A H SAIKIA THE HON'BLE MR. JUSTICE AMITAVA ROY</p> <p>11.04.2007 <u>SAIKIA, J/</u></p> <p>Heard the learned counsel representing the rival parties.</p> <p>Having meticulously scrutinized the averments made in the pleadings exchanged by and between the parties and also upon hearing the learned counsel for the parties, it appears that the competent authority i.e. the Chief Postmaster General, Assam Circle, Guwahati by his order dated 20.04.2006 had considered the case of the petitioner in compliance with the Judgement and order dated 27.9.2005 passed by this Court, non-compliance of which has been alleged in this petition and we are, therefore, of the considered view that the judgement and order dated 27.9.2005 has already been complied with.</p> <p>In view of the above, we are of the opinion that this contempt petition will not survive.</p> <p>Consequently this contempt petition stands dismissed.</p>			

Sd/- Amitava Roy *Sd/- A. H. Saikia*
Judge *Judge*

Sl. 74240
Vol-2197

CERTIFIED TO BE TRUE COPY
Kerung Ram Laha
 Date *7/5/07*
 Superintendent (..... Section)
 Gauhati H. b. (.....)
 Authenticated 11/5/76

File in Court of.....

Court Officer.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

1 FEB 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. No.240 OF 2007

Sri Himangshu Paul & Ors.

... Applicants

-Versus-

Union of India & Ors.

.... Respondents

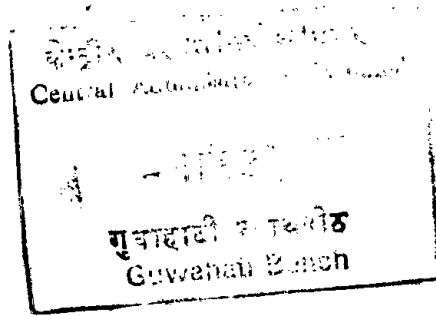
INDEX OF THE WRITTEN STATEMENT

<u>SL.NO.</u>	<u>PARTICULARS</u>	<u>PAGE NOS.</u>
1.	Written statement	1 - 8
2.	Verification	9
3.	Annexure-I(Letter No.14014/6/94-Estt(P)	10-21
4.	Annexure-II(Judgment of Supreme Court of India)	22-26
5.	Annexure-III(Letter No.24-1/01-SPB-1	27-29

dt. 6.7.2001)

Received with
in the above
case for Dr J.L. Sankar.
01/02/07

Filed by
Gourab Bora
50/253



Filed by
[Signature]
Minogh Gantam Bin Shy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 240 OF 2007

Sri Himangshu Paul & Ors.

...Applicants

-Versus-

Union of India & Ors.

....Respondents

The written statement on behalf of
the Respondents above named-

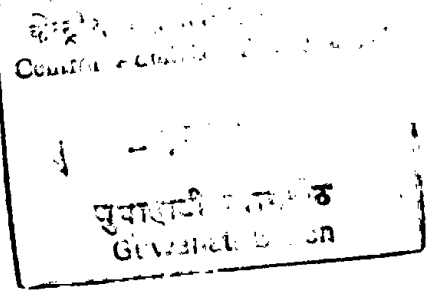
WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraph 1 of the instant application the Respondents beg to state that the allegation made by the applicants that the respondent has deliberately and willfully discharge the Hon ble High Court order are baseless and the same are denied. The respondent begs to state that the speaking order dated 20.4.06 was issued keeping in view, the order passed by the Hon ble High Court and the formulated guidelines issued by the Department of Personnel and Training, New Delhi.

In view of the above, the respondents beg to state before the Tribunal that the present Misc petition & original Application is not maintainable in the eye of law and the same is liable to be dismissed. The appointment on compassionate ground is intended to render

Contd...P/-



[2]

immediate service to the family of the Govt. Servant who dies in harness or retires on invalidation on medical grounds leaving his family in financial crisis. Such appointment can be made only to fill up 5% of vacancies that arise for direct recruitment. Thus only five persons of 100 vacant post will get the appointment. Moreover, the Apex court had also held that appointment on compassionate ground can be made only if a vacancy is available for that purpose. Hence the allegation made by the applicants that the respondents have most illegally refused to consider their cases is not tenable in the eye of law and the application is liable to be dismissed.

The copies of the scheme for compassionate appointment circulated by the postal Directorate letter No.14014/6/94-Estt(D) and important Supreme Court of India Judgment circulated by the Postal Directorate are annexed herewith as Annexure - I and II.

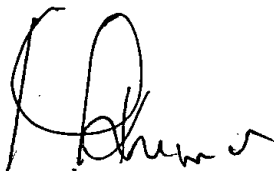
2. That with regard to the statement made in paragraph 2 and 3 of the instant application the Respondents beg to offer no comment.

3. That with regard to the statement made in paragraph 4.1 of the instant application the Respondents beg to offer no comment.

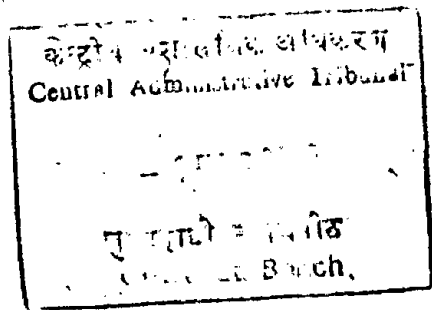
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4. That with regard to the statement made in paragraph 4.2 to 4.6 of the instant application the Respondents beg to state that averment made by the applicant is not correct. The applicants were engaged on short term duty purely on temporary basis with an idea to over come their economic hardship for time being as the respondent was unable to provide them in a Group-D/Group-C cadre against the vacancies meant for compassionate appointment. As per the compassionate appointment and the case of the applicants do not fall within the zone of consideration i.e. within 5% of the total vacancy.

The respondents further beg to state that vide Postal Directorate's letter No. 24-1/99-SPB.I dated 8.2.01, compassionate appointment of the waiting list candidates has been dispensed with. As this may cause hardship to all those who have been waiting for long period, the Postal Directorate decided vide Postal Directorate letter No. 37-16/01-SPB.I dated 25.7.01 to fill up the vacant post of Gramin Dak Sevak (GDS) by those candidates, if they are eligible and willing to work. In this connection, the applicants were also offered the proposal of joining the Gramin Dak Sevak (GDS) post. As they too were waiting and there was no vacancy for compassionate appointment and the offer was valid for 1(one) year only, the Senior Superintendent of Post Offices, Cachar Postal Division, Silchar by its



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[4]

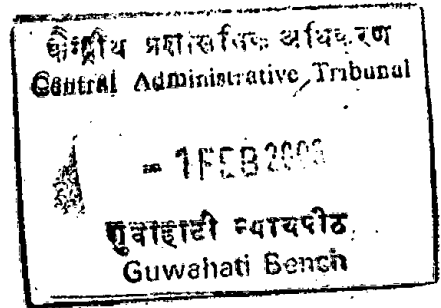
letter dated 24.8.01 offered them the post of Gramin Dak Sevak (GDS) with a condition that no further claim for appointment or any special consideration against regular departmental vacancy would be allowed and the applicant must fulfill all the required eligibility criteria. The respondent also submits that the formal allotment letter was also issued asking the applicants to join as EDDA/EDMC, under Silchar Postal Division, but the applicants refused to accept the offer.

~~A copy of the Postal Directorate's letter No. 24 I/99 SPB-I dated 8.2.01 is annexed here with as Annexure III.~~ *Edin*

5. That with regard to the statement made in paragraph 4.7 of the instant application the Respondents beg to state that the practice of circulating the names of candidates to other department was discontinued vide Department of Post & Telegraph OM No. 14014/18/2000-ESTT(D) dated 22.6.01 circulated by Directorate's letter No. 24-1/01-SPB-I dated 6.7.2001. Averment made by the petitioner is not correct.

A copy of the Postal Directorate's letter No. 24-1/01-SPB-I dated 6.7.2001 is annexed herewith as Annexure - X.11

Contd...P/-

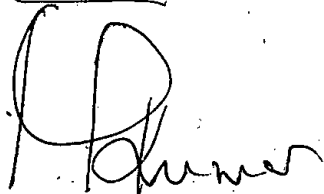


[5]

6. That with regard to the statement made in paragraph 4.8 of the instant application the Respondents beg to state that as stated in paragraph above the applicants were offered to join as GSD as per the Postal Directorate instruction. Hence the plea of the applicants are not acceptable.

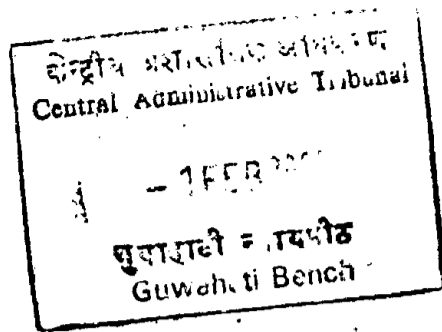
7. That with regard to the statement made in paragraph 4.9 of the instant application the Respondents beg to offer no comment as the orders were passed by the Hon'ble High Court and Tribunal.

8. That with regard to the statement made in paragraph 4.10 of the instant application the Respondents beg to state that after the receipt of the common judgment/order dated 27.9.05, passed by the Hon'ble Guwahati High Court, the respondent authorities had taken up the matter, keeping in view the guidelines and instructions issued by the Nodal Department i.e. the Department of Personnel and Training Ministry of Personnel, Public Grievances and Pension, Government of India. The respondent further states that a speaking order was also issued vide the office letter No. Vig/5/VIII/WP/05 dated 20.4.06 as per the Scheme for compassionate ap-
pointment.



Chief Postmaster General
Assam Circle, Guwahati-781001

Contd...P/-



[6]

9. That with regard to the statement made in paragraph 4.12 of the instant application the Respondents beg to state that due to limitation in the vacancy in such appointment, the applicants could not be appointed and the calculation for such appointment was made based on the rules and instructions framed for that purpose. Moreover, the respondent begs to submit that he *had* carried out the order of the Hon'ble High Court and there is no wilful and deliberate violation as the matter of the applicants was considered with utmost sympathy keeping in view the guidelines and policy framed on the Scheme for compassionate appointment. Further, it is also pertinent to mention here that the Hon'ble Court was pleased to direct the respondent to consider the case of the petitioner and accordingly, a speaking order was issued keeping in view the judgment of the Hon'ble Court and the order dated 20.4.06 can not be set aside.

10. That with regard to the statement made in paragraph 4.13 of the instant application the Respondents beg to state that the Hon'ble High Court Guwahati, did not entertain the contempt cases and pleased to dismiss the contempt petitions considering that the order passed by the respondent Department was in compliance with the order of the Hon'ble High Court dated 27.9.05. Therefore the plea of the applicants to reconsider their case before the Hon'ble ^{Tribunal} does not arise.

Contd...P/-



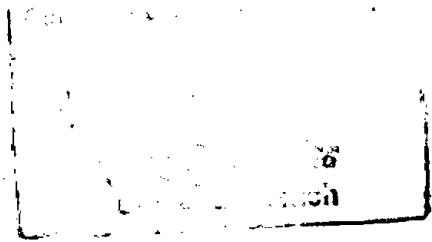
The respondents further beg to state that the Hon'ble Supreme Court had passed a number of judgments in various cases regarding appointment of dependent family of the deceased employee on compassionate ground which is circulated vide Postal Directorate letter No. 24-I/2004-SPB-I dated 19.4.04. The decision of the Hon'ble Supreme Court of India were also kept in view while considering the case of the applicants by the respondent.

11. That with regard to the statement made in paragraph 4.14 to 4.17 of the instant application the Respondents beg to state that as discussed the facts and circumstances and the relevant documents submitted above, the instant application of the applicants is not maintainable in the eye of law and the same is liable to be dismissed.

12. That with regard to the statement made in paragraph 5.1 to 5.8 of the instant application the Respondents beg to state that the grounds set forth by the applicants in the instant application are not good grounds and also not tenable in law as well as on facts and as such the instant application is liable to be dismissed.

13. That with regard to the statement made in paragraphs 6,7 and 8 of the instant application the Respondents have no comment.

Contd...P/-



13. That with regard to the statement made in paragraphs of the instant application the Respondents beg to state that the claim of the applicants is illegal and illfounded and far that the claimants are not entitled to get any interim relief.

15. That the Respondents submit that the instant original application has no merit and for that the same is liable to be dismissed.

Chief Postmaster General
Assam Circle, Guwahati-781001

47
 Central Administrative Tribunal
 = 1 FEB 2008
 গুৱাহাটী মহানগরী
 Guwahati Bench

VERIFICATION

I, .. *Manojit Kumar* s/o. *late R. K. Kumar* ...
 aged about *55* years, R/o *Guwahati*
 District *Kamrup* and competent officer of the
 answering respondents, do hereby verify that the state-
 ment made in paras *2 - 4, 6 - 15* are true
 to my knowledge and those made in paras *1 & 5*
 being matters of record are true to my information
 derived therefrom which I believe to be true and the
 rests are my humble submission before this Hon'ble
 Tribunal *and I have not suppressed any material*
fact And I sign this verification on this *3/rd* day
 of *JANUARY* 2008 at Guwahati.

[Handwritten Signature]

Signature

Chief Postmaster General
 Assam Circle, Guwahati-781001

- 10 - 10 -

No. 14014/6/94-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pension
(Department of Personnel and Training)

Central Administrative Tribunal
- 1 FEB 2000
गुवाहाटी ब्याचपीठ
Guwahati Bench

New Delhi 110001
October 9, 1998

OFFICE MEMORANDUM

Subject: Scheme for compassionate appointment under the
Central Government - Revised consolidated instructions -

The undersigned is directed to say that the existing instructions for making compassionate appointment under the Central Government have since been reviewed in the light of the various court judgements and other decisions including those taken on the various recommendations contained in the Fifth Central Pay Commission Report as well as the Study Reports of 1990 and 1994 prepared by the Department of Administrative Reforms and Public Grievances on the subject and they have accordingly been revised/simplified and consolidated as in the enclosed scheme which will supersede all the existing instructions on the subject. This may be brought to the notice of all concerned for information, guidance and necessary action.

(K.K. JHA)

Director (Establishment)

To: All Ministries/Departments of the Government of India

Copy to:-

1. The Comptroller and Auditor General of India
2. The Secretary, Union Public Service Commission
3. Rajya Sabha Secretariat
4. Lok Sabha Secretariat
5. All State Governments/Union Territories Administrations
6. All attached/subordinate offices under the Department of Personnel and Training/Ministry of Home Affairs
7. National Commission for SC/ST, New Delhi
8. National Commission for OBC, New Delhi
9. The Secretary, Staff Side, National Council
10. The Registrar General, The Supreme Court of India
11. The Department of Administrative Reforms and Public Grievances, Sardar Patel Bhavan, New Delhi 110001
12. All Offices/Sections of DOP&T
13. Establishment(D) Section (500 copies)

Attended
Bans
A. Arante

- (1) -

SCHEME FOR COMPASSIONATE APPOINTMENT

1. OBJECT

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.

2. TO WHOM APPLICABLE

To a dependent family member —

(A) of a Government servant who —

- (a) dies while in service (including death by suicide); or
- (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules, 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or
- (c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(B) of a member of the Armed Forces who —

- (a) dies during service; or
- (b) is killed in action; or
- (c) is medically boarded out and is unfit for civil employment.

Note 1 "Dependent Family Member" means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 1 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 12 -

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal
- 1 FEB 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

- 2 -

- Note II "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis.
- Note III "Confirmed work-charged staff" will also be covered by the term 'Government servant' mentioned in Note III above.
- Note IV "Service" includes extension in service (but not re-employment) after attaining the normal age of retirement in a civil post.
- Note V "Re-employment" does not include employment of ex-serviceman before the normal age of retirement in a civil post.

3. AUTHORITY COMPETENT TO MAKE COMPASSIONATE APPOINTMENT

- (a) Joint Secretary in charge of administration in the Ministry/Department concerned.
- (b) Head of the Department under the Supplementary Rule 2(10) in the case of attached and subordinate offices.
- (c) Secretary in the Ministry/Department concerned in special types of cases.

4. POSTS TO WHICH SUCH APPOINTMENTS CAN BE MADE

Group 'C' & Group 'D' posts against the direct recruitment quota.

5. ELIGIBILITY

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

3/-

6. A. EXEMPTIONS

Compassionate appointments are exempted from observance of the following requirements:-

- (i) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange;
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training;
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure).

B. RELAXATIONS

- (a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment;

Note II Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

- (b) Secretary in the Ministry/Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules in the case of appointment at the lowest level e.g. Group 'D' or Lower Division Clerk post, in exceptional circumstances where the condition of the family is very hard provided there is no vacancy meant for compassionate appointment in a post for which the dependent family member in question is educationally qualified. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the person concerned, if still unqualified, are liable to be terminated.

Note In the case of an attached/subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose.

-14-

- (c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-
- (i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or
 - (ii) by the Establishment Division of the Department of Personnel and Training if the post is not included in the Central Secretariat Clerical Service.
- (d) Where a widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications.

L. Q.
Complaints to
C.A.T.

7. 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 upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back upto 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 dependent 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 utilising any other vacancy e.g. sports quota vacancy.
- (c) Employment under the scheme is not confined to the Ministry/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.
- (d) 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.

8. RELATED REQUESTS FOR COMPASSIONATE APPOINTMENT

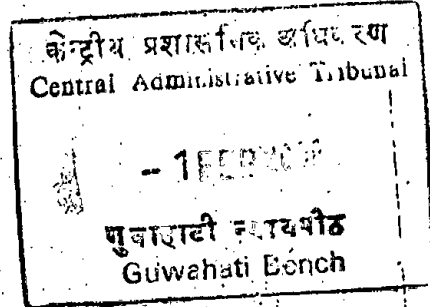
- (a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such related requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

- (b) Whether a request for compassionate appointment is related 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.

9. WIDOW APPOINTED ON COMPASSIONATE GROUNDS GETTING REMARRIED

A widow appointed on compassionate grounds will be allowed to continue in service even after re-marriage.

- 18 -



10. WHERE THERE IS AN EARNING MEMBER

- (a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned, who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.
- (b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

11. MISSING GOVERNMENT SERVANT

Cases of missing Government servants are also covered under the scheme for compassionate appointment subject to the following conditions:-

- (a) A request to grant the benefit of compassionate appointment can be considered only after a lapse of at least 2 years from the date from which the Government servant has been missing, provided that:
- (i) an FIR to this effect has been lodged with the Police,
 - (ii) the missing person is not traceable, and
 - (iii) the competent authority feels that the case is genuine;
- (b) This benefit will not be applicable to the case of a Government servant:-
- (i) who had less than two years to retire on the date from which he has been missing; or
 - (ii) who is suspected to have committed fraud, or suspected to have joined any terrorist organisation or suspected to have gone abroad.

10-02-77

.....77-

17-

- 1553/2008

गुवाहाटी न्यायपीठ
Guwahati Bench

- (c) Compassionate appointment in the case of a missing Government servant also would not be a matter of right as in the case of others and it will be subject to fulfillment of all the conditions, including the availability of vacancy, laid down for such appointment under the scheme;
- (d) While considering such a request, the results of the Police investigation should also be taken into account; and
- (e) A decision on any such request for compassionate appointment should be taken only at the level of the Secretary of the Ministry/Department concerned.

12. PROCEDURE

- (a) The proforma as in Annexure may be used by Ministries/Departments/Offices for ascertaining necessary information and processing the cases of compassionate appointment.
- (b) The Welfare Officer in each Ministry/Department/Office should meet the members of the family of the Government servant in question 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.
- (c) An application for appointment on compassionate grounds should be considered in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject by a committee of officers consisting of three officers - one Chairman and two Members - of the rank of Deputy Secretary/Director in the Ministry/Department and officers of equivalent rank in the case of attached and subordinate offices. The Welfare Officer may also be made one of the Members/Chairman of the committee depending upon his rank. The committee may meet during the second week of every month to consider cases received during the previous month. The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case.
- (d) Recommendation of the committee should be placed before the competent authority for a decision. If the competent authority disagrees with the committee's recommendation, the case may be referred to the next higher authority for a decision.

13. UNDERTAKING

A person appointed on compassionate grounds under the scheme should give an undertaking in writing (as in Annexure) that he/she will maintain properly the other family members who were dependent on the Government servant/member of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith.

14. REQUEST FOR CHANGE IN POST/PERSON

When a person has been appointed on compassionate grounds to a particular post, the set of circumstances, which led to such appointment, should be deemed to have ceased to exist. Therefore, --

- (a) he/she should strive in his/her career like his/her colleagues for future advancement and any request for appointment to any higher post on considerations of compassion should invariably be rejected.
- (b) an appointment made on compassionate grounds cannot be transferred to any other person and any request for the same on considerations of compassion should invariably be rejected.

15. SENIORITY

- (a) The inter-se seniority of persons appointed on compassionate grounds may be fixed with reference to their date of appointment. Their interpolation with the direct recruits/promotees may also be made with reference to their dates of appointment without disturbing the inter-se seniority of direct recruits/promotees.
- (b) Date of joining by a person appointed on compassionate grounds shall be treated as the date of his/her regular appointment.

16. GENERAL

- (a) Appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.

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- (b) It is not the intention to restrict employment of a family member of the deceased or medically retired Group 'D' Government servant to a Group 'D' post only. As such, a family member of such Group 'D' Government servant can be appointed to a Group 'C' post for which he/she is educationally qualified, provided a vacancy in Group 'C' post exists for this purpose.
- (c) The Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.
- (d) Compassionate appointment should not be denied or delayed merely on the ground that there is reorganisation in the Ministry/Department/Office. It should be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the scheme.
- (e) Requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.
- (f) Compassionate appointment will have precedence over absorption of surplus employees and regularisation of daily wage/casual workers with/without temporary status.
- (g) Any request to increase the upper age-limit of 55 years for retirement on medical grounds prescribed in para 2(A) (b) and (c) above in respect of Group 'A/B/C' Government servants and to bring it at par with the upper age-limit of 57 years prescribed therein for Group 'D' Government servants on the ground that the age of retirement has recently (May, 1998) been raised from 58 years to 60 years for

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Group 'A/B/C' Government servants (which is at par with the age of retirement of 60 years applicable to Group 'D' Government servants) or on any other ground should invariably be rejected so as to ensure that the benefit of compassionate appointment available under the scheme is not misused by seeking retirement on medical grounds at the far end of one's career and also keeping in view the fact that the higher upper age-limit of 57 years has been prescribed therein for Group 'D' Government servants for the reason that they are low paid Government servants who get meagre invalid pension in comparison to others.

17. IMPORTANT COURT JUDGEMENTS

The ruling contained in the following judgements may also be kept in view while considering cases of compassionate appointment:-

- (a) The Supreme Court in its judgement dated April 8, 1993 in the case of Auditor General of India and others vs. G. Ananta Rajeswara Rao [(1994) 1 SCC 192] has held that appointment on grounds of descent clearly violates Article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable.
- (b) The Supreme Court's judgement dated May 4, 1994 in the case of Unesh Kumar Nagpal vs. State of Haryana and others [JT 1994(3) S.C. 525] has laid down the following important principles in this regard:
 - (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
 - (ii) The posts in Group 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e. in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.

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- (iii) 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 it get over the emergency.
 - (iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
 - (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.
 - (vi) 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.
 - (vii) Compassionate appointment cannot be offered by an individual functionary on an ad-hoc basis.
- (c) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambekar and others [JT 1994(2) S.C. 183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.
- (d) The Supreme Court has ruled in the cases of Himachal Road Transport Corporation vs. Dinesh Kumar [JT 1996 (5) S.C. 319] on May 7, 1996 and Hindustan Aeronautics Limited vs. Smt. A. Radhika Thirumalai [JT 1996 (9) S.C. 197] on October 9, 1996 that appointment on compassionate grounds can be made only if a vacancy is available for that purpose.
- (e) The Supreme Court has held in its judgement in the case of State of Haryana and others vs. Rani Devi and others [JT 1996(6) S.C. 646] on July 15, 1996 that if the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad-hoc employees including those who are working as Apprentices, then such scheme cannot be justified on Constitutional grounds.

Government of India,
Ministry of communications,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi-110001

केन्द्रीय प्रशासकीय न्यायालय
Central Administrative Tribunal

- 1 FEB 2005

गुवाहाटी न्यायपीठ
Guwahati Bench

No. 24-1/2004-SPB-1

Dated 19-04-2004

To
All Heads of Circles.

Subject: Important Supreme Court Judgements on compassionate appointments circulation of.

I am directed to circulate the important court judgements passed by the Hon'ble Supreme Court in various cases regarding appointments of dependents family members of the deceased employee on compassionate ground.

(a) The Supreme Court in its judgement dated April 8 1993 in the case of Auditor General of India and Others Vs. G. Ananta Rajeswar Rao [(1994) 1 SCC. 192] has held that appointment on grounds of descent clearly violates Article 16(2) of the Constitution: but if the appointment is confined to the son or daughter or widow of the Govt. Servant who died in harness and who needs immediate appointment on ground of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relief the economy distress of the member of the family, it is unexceptionable.

(b) The Supreme court's judgement dated May 4 1994, in the case of Umesh Kumar Nagpal Vs State of Haryana and others [(JT 1994) (3) SC525] has laid down the following important principles in this regard..

- (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- (ii) The Post in group C and D (formerly class III and IV) are the lowest post in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e in the group A or Group B category is expected or require to be given for this purpose as it is legally impermissible.
- (iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relief the family of the deceased from financial destitution and to help it get over the emergency.

Attended
By
Advocate

Central Administrative Tribunal
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- (iv) Offering compassionate appointment as a matter of course irrespective of financial condition of the family of the deceased or medically retired Govt. servant is legally impermissible.
- (v) Neither the qualification of the applicant(dependent family member) nor the post held by the deceased or medically retired Govt. Servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.
- (vi) Compassionate appointment can not be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.
- (vii) Compassionate appointment can not be offered by an individual functionary on an adhoc basis.
- (viii) Appointments in public service should be made strictly on the basis of open invitation of application and merit and appointment of compassionate grounds is an exception to the rule. Any such exception should therefore be made to the minimum possible extent say one or two percent or maximum of five percent and if it exceeds that it will no longer be an exception. Further any relaxation of the 5% limit even as a temporary measures will lead to bulk appointment on compassionate grounds which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it is also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

(c) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs Mrs. Asha Ramchandra Ambekar and others [JT 1994(2) S.C 183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

(d) The Supreme Court has ruled in the cases of Himachal Road Transport Corporation Vs Dinesh Kumar [JT 1996 (5) S.C: 319] on May 7 1996 and Hindustan Aeronautics Limited Vs Smt. A. Radhika Thirumalai [JT 1996 (9) S.C. 197] on October 9 1996 that appointment on compassionate grounds can be made only if a vacancy is available for that purpose.

(e) The Supreme Court has held in its judgement in the cases of state of Haryana and others Vs. Rani Devi and Others [JT 1996 (6) S.C. 646] on July 15 1996 that if the scheme regarding appointment on compassionate ground is extended to all sorts of casual adhoc employees including those who are working as Apprentices, then such scheme can not be justified on constitutional ground.

Recently in two cases (I) case of Sri Arun Kumar Awasthi and (II) case of Sri Debi Prasad Mohanty. Hon'ble Supreme Court is pleased to grant interim stay against the operation of impugned order. Details of these two cases are mentioned below. All heads

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पुणे न्यायपीठ
Chandigarh Bench

of circles are requested to take advantage of these interim stay and bring it to the notice of the Hon'ble Courts while pursuing the case,

(i) Compassionate appointment case of Sri Arun Kumar Awasthi:- Sri Arun Kumar Awasthi, son of late Bishan Das applied for compassionate appointment and the case was considered by Circle Selection Committee of H.P circle and rejected as there was no element of indigent circumstances which required immediate relief by way of appointment on compassionate grounds. Aggrieved by the by the circle's decision Sri Arun Kumar filed O.A no. 586/HP/99 in the Hon'ble CAT, Chandigarh bench who observed in their order dated 17-08-2000 that compassionate appointments are provided in cases where the family of the deceased Govt. employee is found to be in financial distress due to the sudden demise of the sole bread-winner and there is no other earning hand. Compassionate appointment is not a hereditary right but only a concession to the dependents/wards to mitigate the immediate hardship and the OA was dismissed by the Hon'ble CAT Chandigarh bench.

Shri Arun Kumar challenged the CAT's order dated 17-08-2000 by filing a civil writ petition before High Court of HP Shimla vide CWP No. 222/2002. The Hon'ble High Court Shimla vide its judgement dated 26-06-02 allowed the writ petition and as a consequence of it while quashing the decision of the CAT in OA No. 586/HP/99 dated 17-08-2000 directed the petitioners to re-examine the case in accordance with the scheme. The office of Chief PMG Shimla vide its order re-examine the case iteralin holding that there was no social liability of the family and that there was no vacancy available and thus respondent cannot be offered appointment on compassionate ground.

On receipt of the order Sri Arun Kumar has filed a CP no. 16/03 in CWP No. 222/02 in HP High Court who observed that in the judgement dated 26-02-2002 it was ordered to re-examine the case of the petitioner, and the department was to offer appointment to the petitioner and as per discussion in the judgement dated 26-02-2002 the scheme vis a vis law has been discussed in detail and as such there is hardly any scope for deptt. to reject the claim of the petitioner but to grant admissible relief.

The Ministry of Law was consulted who opined that the order of High Court is against the provisions laid down by the Supreme Court. Therefore there is substantial question of law of general importance involved in the matter. Therefore a special leave petition was filed before Hon'ble Supreme Court of India against the order of Hon'ble High Court of Shimla on the ground that Hon'ble High Court has erroneously directed the petitioners to re-examine the case of the respondent for appointment on compassionate grounds in accordance with the scheme. The Hon'ble High Court failed to appreciate the purpose of giving appointment on compassionate ground is to ensure that in the event of death of the bread winner of the family immediate relief is provided to the family, but such appointment cannot be claimed as a matter of right. The Hon'ble High Court failed to appreciate that for seeking appointment on compassionate ground one has to come under the purview of the scheme, but the respondent herein is not covered under the scheme taking into account pecuniary condition of the family and thus petitioners ought not to have been directed to consider the appointment of the respondent on the

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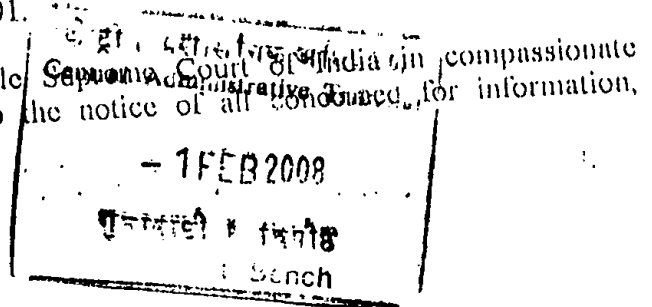
compassionate grounds. The Hon'ble Supreme Court is pleased to grant the interim stay against the operation of High Court order dated 26-02-2002 in C.W.P 222/02.

(ii) Compassionate appointment case of Sri Debi Prasad Mohanty:- Sri Debi Prasad Mohanty, son of late Sri Ramesh Chandra Mohanty applied for appointment on compassionate grounds. The case was considered by Circle Selection Committee of Orissa Circle and approved the applicant for the post of Postal Assistant subject to availability of vacancy in compassionate appointment quota. His name was placed at appropriate place in the waiting list maintained by the circle. The applicant being aggrieved with the delay in his appointment filed an OA No. 135/2000 before the Hon'ble CAT Cuttack bench. The Hon'ble CAT Cuttack Bench in its order dated 7-03-2001 allowed the application of the respondent directing the petitioner to provide employment to the respondent on compassionate grounds as against an existing vacancy and in its absence against the next available vacancy. It was noticed that six candidates ranking senior to the applicant were in the waiting list of approved candidates. Therefore, the applicant could not be given appointment ignoring the interest of other six senior approved candidates who were already in the waiting list.

An O.J.C petition No. 11184/2001 was therefore filed by the Department before the High Court of Orissa as the judgement was against the policy in the matter of compassionate appointment in terms of which such appointments are not only subject to an over-all ceiling of 5% of the vacancies in Group C and D posts but also to a time limit of one year. The High Court of Orissa by its impugned order dated 11-02-2003 dismissed the writ petition filed by the Deptt. herein holding that there is no ground for the interference with the order of the Tribunal.

The Ministry of Law was consulted who opined that the impugned order of the High Court of Orissa is absolutely against the Policy of Government of India. It is the policy of the Government that the compassionate appointment will be up to the extent of 5% of the vacancies available in the current order. The Apex Court has held that the policy decision of the Government shall not be interfered and no Tribunal or Court can compel the Government to change its policy. Thus a special leave petition was filed before the Supreme Court of India against the final order of High Court of Orissa on the ground as the Court has failed to appreciate the said circumstances and therefore it is necessary in the interest of justice to stay on the operation of the impugned order passed by High Court of Orissa. The Court failed to see that the respondent is to be considered only when there is a vacancy within the given parameter to accommodate within 5% of the direct recruitment of the year. The mere fact that someone has recommended for appointment on compassionate grounds does not entitle him to be appointed. Further fresh cases of indigency would get precedence over past cases. Further the applicant is not availing the option of GDS posting in view of want of regular vacancy in compassionate quota and therefore it is construed that he has no necessity for means of sustenance. The Supreme Court is pleased to grant the interim stay against the operation of the CAT's Judgement dated 07-03-2001.

The above decisions of Hon'ble Supreme Court of India in compassionate appointment cases may be brought to the notice of all concerned for information.



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guidance and necessary action. These facts may also be brought to the notice of Hon'ble High Courts & Central Administrative Tribunals and promptly highlighted while filing the counter reply.

केन्द्रीय प्रशासनिक न्यायालय Central Administrative Tribunal मुख्य कार्यालय New Delhi
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Yours faithfully,
 SD/-
 (V. K. Tiwary)
 Director(Staff)

No. 24-1/2001-SPB-I
Government of India
Ministry of Communications
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi-110 001

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal
मुवाहाटी न्यायपीठ
C. W. T. Bench

Dated: 6/7/2001
06

To

- All Heads of Postal Circles
- All Postmaster General.
- General Manager, P.L.I. Chanakyapuri, New Delhi.
- General Manager, Business Development, Malcha Marg, New Delhi
- Controller, Foreign Mails Mumbai
- Director, Postal Staff College, Ghaziabad, U.P.
- All Principals Postal Staff Centres.

Subject : Compassionate Appointment - Recommendation by Committee limited to availability of vacancy.

Sir,

I am directed to forward herewith a copy of Department of Personnel & Training O.M. No. 14014/18/2000-Estt (D) dated 22.6.2001 for guidance and necessary action.

Yours faithfully,

*Amalendu
Bans
A. Amete*

(S.K. Gupta)
Section Officer, (SPB-I)

F.No.14014/18/2000-Estt.(D)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

New Delhi 110001

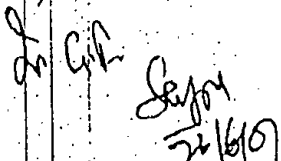
June 22, 2001

OFFICE MEMORANDUM

Subject:- Compassionate Appointment - Recommendation by the Committee limited to availability of vacancy.

The undersigned is directed to refer to paragraph 7(l) of the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.14014/6/94-Estt(D) dated October 9, 1998 read with O.M.No.14014/23/99-Estt(D) dated December 3, 1999 on the above subject and to say that the matter has been further examined. Generally it is seen that in view of the 5% ceiling prescribed for compassionate appointment under the extant instructions, there are not enough vacancies to accommodate even requests for compassionate appointment from family members of Government servants belonging to the same Ministry/Department/Office. Consequently, there are no spare vacancies left to accommodate requests from other Ministries/Departments/Offices for such appointment. Therefore, while no useful purpose is being served by taking up the matter with other Ministries/Departments/Offices of the Government of India to consider such other cases received by them from other Ministries/Departments/Offices for compassionate appointment, it on the other hand only gives false hope to the applicants as grant of such appointment by other Ministries, etc. cannot be guaranteed. It has, therefore, been decided that in future the Committee prescribed in paragraph 12 of Office Memorandum dated October 9, 1998 for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it 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 DR quota in any Group 'C' or 'D' post prescribed in this regard in para 7(b) of Office Memorandum dated October 9, 1998 referred to above.

.....2/-



 22/6/01

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3. The instructions contained in the Office Memoranda referred to above stand modified to the extent mentioned above.

4. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

5. Hindi version will follow.

Sigs

(K. K. JHA)
DIRECTOR (Establishment)

To

All Ministries/Departments of the Government of India.

Copy to:-

1. The Comptroller and Auditor General of India.
2. The Secretary, Union Public Service Commission.
3. Rajya Sabha Secretariat
4. Lok Sabha Secretariat
5. All State Governments/Union Territory Administrations
6. All attached/subordinate offices under the Department of Personnel and Training/Ministry of Home Affairs
7. National Commission for SCs/STs, New Delhi
8. National Commission for OBCs, New Delhi.
9. The Secretary, Staff Side, National Council
10. The Registrar General, The Supreme Court of India
11. The Department of Administrative Reforms and Public Grievances, Sardar Patel Bhavan, New Delhi-110001
12. All Officers/Sections of DoP&T
13. Facilitation Centre, DoP&T - 20 spare copies
14. Establishment (D) Section (500 copies)