

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.191/2005:

Jaipur, this the 12th day of September, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Kumari Anita Jain,
D/o Late Shri Gopal Lal Jain,
Aged about 24 years,
R/o Plot No.B-25, Tulsi Dasji Ki Bagichi,
Janta Colony,
Jaipur.

... Applicant.

None is present for the applicant.

Vs.

1. Union of India through
Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication,
New Delhi.
2. Sr. Supdt. Of Post offices,
Jaipur City,
Jaipur.
3. The Secretary to the Government of India,
Department of Personnel and Training,
Government of India,
New Delhi.
4. Assistant Postmaster General (S&V)
O/o Principal CPMG,
Rajasthan Circle,
Jaipur.
5. The Circle Relaxation Committee,
O/o Principal CPMG,
Rajasthan Circle,
Jaipur.

... Respondents.

By Advocate : Shri Gaurav Jain.

: O R D E R (ORAL) :

This is second round of litigation. Earlier the applicant has filed OA which was registered as OA No.213/2001, being aggrieved of the order dated 8.3.2001, whereby her request for appointment on compassionate ground was rejected. In that OA, the Tribunal quashed the impugned order and directed the respondents to consider the case of the applicant afresh after working out the vacancies and after comparative merit of the candidates, as according to this Tribunal, the case of the applicant was not considered in right perspective and the same was rejected solely on the ground that the financial condition of the family is not indigent and it was observed that it is not the case of the respondents in the OA that the case of the applicant was rejected based on the comparative merit of the eligible candidate. At this stage, it will be useful to quote Para 5.1 and 5.2 of the judgment, which thus reads as under :-

"5.1 At the outset, it may be stated that the learned counsel for the applicant has not pressed the relief regarding declaring provisions of Rule 7 (a), (b) and (e) of the compassionate appointment scheme Ann.A2 dated 9.10.98 as ultra vires, as such no finding is required on this point.

5.2 The only point which has been pressed by the learned counsel for the applicant is that the case of the applicant was rejected on the ground that the financial condition of the family did not appear to be indigent requiring immediate relief for the sole reason that the widow is getting family pension of Rs.2100/- +D.R. per month, the family got terminal benefits to the tune of Rs.1,95,886/- and also that the family is in possession of a residential house approximate cost of which is Rs.1,50,000. He submitted that as per the

established law, the respondents cannot come to the conclusion that the condition of the family is not indigent only for the reason that family received some terminal benefits and getting monthly family pension. He quoted the judgment of the Hon'ble Apex Court in Balbir Kaur vs. Steel Authority of India Ltd. [2000 SCC (L&S) 757] in support of his contention. He also submitted that the family received terminal benefits to the tune of Rs.1,95,886/- and this amount was spent on the treatment of her father, who was a heart patient. The house is so small that it does not and cannot render any income to the mother of the applicant and the said house was built by her father after taking loan from various persons and the said loan was repaid by the mother of the applicant out of the terminal benefits. It has been argued that the father of the applicant had taken loan from the GPO Credit Society to the tune of Rs.28,983/-, loan from Urban Cooperative Bank to the tune of Rs.27,378/- and loan from the private parties extending to Rs.15,000/-. Further, the applicant has to be married being major and for that purpose a considerable amount is required to be spent. As such the terminal benefits and the monthly pension so granted to the mother of the applicant is not sufficient to meet out the expenses and the family is in indigent condition and, therefore, her case ought to have been placed by the respondents before the CSC and the same could not have been rejected at the threshold coming to the conclusion that there is no indigency in the case of the applicant. The contention raised by the applicant cannot outrightly rejected.

5.2 Indeed, it is not the case of the respondents, as can be seen from the impugned order Ann.A1; that based on the comparative merit of the eligible candidates considered during the year and based on the merit so prepared and keeping in view limited vacancies of 5%, the applicant could not be selected. Had the case been rejected on this ground, it may not be possible for the Tribunal to interfere with the impugned order. But as already stated above, the case of the applicant was rejected solely on the ground that the financial condition of the family is not indigent for the reason that the family has received terminal benefits and the widow is getting family pension and also own a house valued Rs.1,50,000/- to live in. No comparative merit of the applicant vis-à-vis the selected candidate was ever prepared.

Further, there is nothing on the record to suggest that on what basis the CSC shortlisted the cases and came to the conclusion that there were more indigent cases as compared to the applicant and only those cases were kept for further screening as alleged in the reply. Such vague assertion in the reply without any supporting material cannot be accepted. I agree with the contention of the learned counsel for the applicant and hold that the respondents cannot come to the conclusion that the financial condition of the family is not indigent solely on account that the family received terminal benefits and is getting monthly family pension. Such decision could not have been taken without taking into account other relevant factors namely, the applicant is still unmarried and a considerable amount is required to be spent on her marriage and the terminal benefits so received by the family has been utilized on the treatment of the deceased employee who was a heart patient and the house value of which has been assessed as Rs.1,50,000/- was build by her father after taking loan from various persons and the said loan was paid by the mother of the applicant out of the terminal benefits. Not only this, the father of the applicant has taken loan from GPO Credit Society to the tune of Rs.28,983/-, loan from the Urban Cooperative Bank to the tune of Rs.27,378/-. These averments have not been controverted by the respondents in their reply. Thus rejecting the case of the applicant solely on the ground that the family has received terminal benefits and getting monthly pension and own a house to live, is not in order. This Tribunal in OA No.215/01, Jai Kishan Meena Vs. Union of India and ors. Decided on 6.5.03 pertaining to the Postal Department has held that till such time the respondent Department did not laid down norms in order to objective assessment in determining the comparative merit for compassionate appointment cases, they will follow the procedure/norms laid down by the M/o Defence in this regard vide their ID dated 9.03.02. The same procedure shall also be followed in the instant case."

2. Now the respondents have passed fresh order in the light of direction given by this Tribunal thereby rejecting the case of the applicant for compassionate on

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the ground that against two vacancies two deserving candidates were selected who were found to be more deserving for giving compassionate appointment vide impugned order dated 24.9.04 (Annexure A/1). It is this order which is under challenge in this OA. Substantially the ground taken by the applicant is that the impugned order Annexure A/1 has been passed contrary to provisions of Rule 7(e), according to which provision the Employment under the Scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Since the above point has not been considered by the other department the impugned order Annexure A/1 is liable to be quashed.

3. Notice of this application was given to the respondents. Respondents have filed reply in which it has been stated that as per Educational qualification, the applicant was eligible for the post of Postal Assistant/Sorting Assistant. The Circle Relaxation Committee met on 18.1.2001 and considered the case of the applicant along with other cases in the light of instructions on compassionate grounds contained in Department of Personnel and Training OM No.14014/23/99-Estt(D) dated 3.12.99 (Annexure R/2). It is stated that in the instant case, the deceased employee expired on 6.12.98, leaving behind his wife and one daughter (applicant). The widow is getting family pension of

Rs.2100/-+DR per month. The terminal benefits to the tune of Rs.1,95,886/- have been paid to the family. The family has own house to live in Jaipur City. The approximate cost of the house is Rs.1,50,000/-. It is further stated that 8 candidates for appointment on the post of Postal Assistant/Sorting Assistant were on waiting list on 18.7.2001 who were awaiting absorption since 1996 but they could not be given appointment due to want of vacancies under ceiling of 5% of direct recruitment of the year. The provision of maintaining waiting list of approved candidates for compassionate appointment has been discounted in pursuance of Department of Personnel and Training OM No.42012/4/2000-Estt(D) dated 24.11.2000. A copy of this OM has been placed on record as Annexure R/3. Respondents have stated that as per the decision rendered by the Apex court in number of judgments, the appointment on compassionate ground can be made only if vacancy is available for the purpose. It is further stated that when the case of the applicant was considered on 10.1.2001 by the Circle Relaxation Committee along with other cases against two vacancies available for appointment on compassionate grounds for the year 2000, the case of the applicant was not found most indigent in comparison to other cases. Hence the applicant was not recommended by the Circle Relaxation Committee for appointment on compassionate grounds. It is stated that pursuant to direction given by this Tribunal in OA

No.213/2001, the case of the applicant was again considered by the Circle Relaxation Committee on 20.09.2004 along with other cases against two vacancies of Postal Assistant/Sorting Assistant for the year 2000 and the Circle Relaxation Committee did not found the case of the applicant indigent for appointment on compassionate grounds. The respondents have placed on record the copy of the minutes of Circle Relaxation Committee dated 20.09.2004 on record as Annexure R/4. It is further stated that the decision of the Circle Relaxation Committee was conveyed to the applicant vide order dated 24.9.04 (Annexure A/1). Thus, according to the respondents, the applicant has no case whatsoever.

4. The applicant despite repeated opportunities, has not filed rejoinder. As such, the matter was listed for final hearing on 13.7.2006 in which it was made clear that no further adjournment will be granted on the next date. However, on 13.7.2006 the matter was adjourned on the request of Proxy counsel for the parties, with the specific observation that no further adjournment will be granted on the next date of hearing which was fixed as 26.7.2006. Again on 26.7.2006, the matter was adjourned on the request of Learned Counsel for the applicant on the ground that he wants some time to cite some latest decisions. Accordingly, the matter was listed for final hearing on 14.8.2006 and it was made clear that no further adjournment will be granted. However, again on

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14.8.2006, the matter was adjourned to 12.09.2006 and it was made clear that no further adjournment will be granted on that date. This order was also passed in the presence of the parties counsel. Today when the matter was taken up for hearing, none has appeared on behalf of the applicant.

5. I have heard the Learned Counsel for the respondents and proceeded to decide the matter in the light of provisions contained in Section 15 of CAT (Procedure) Rules 1987.

6. As already stated above, the main case of the applicant is that the impugned order Annexure A/1 has been passed contrary to the provisions of Rule 7 (f) which stipulates that in case the vacancies are not available in the department the same can be considered against the vacancies of other department. Though, the applicant in the OA has also challenged the provisions of Para 7 (a), (b) and (e) of the Scheme dated 9.10.98 (Annexure A/2) as ultra vires which prescribes that the appointment can be made against the regular vacancies and the compassionate appointment can be made up to maximum of 5 % of vacancies and Para 7(e) stipulates that Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working and 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, but the applicant has not laid down any foundation and material as to how the said provisions or Schemes are ultra vires. Thus, the vague assertion made by the applicant for quashing Para 7 (a), (b) and (e) of the Scheme deserves outright rejection. Further the applicant is precluded to raise this contention in this OA in view of finding recorded in Para 5.1 of earlier OA as reproduced above where such contention was not pressed by the Learned Counsel for the applicant.

7. Even otherwise also, it has been held by the Apex Court in the case of Haryana, State Electricity Board vs. Krishna Devi, 2003 (L&S) 248, that the compassionate appointment cannot be claimed as a matter of right and against the guideline prescribed. Further the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment. This is because as a rule appointment in public service should be made strictly on the basis of open invitation of applications and no other mode of appointment nor any other consideration is permissible. However, to this general rule, which is to be followed strictly in all cases of public appointment, there are certain exceptions carried out in the interest of justice and to meet certain contingencies. One such exception is in favour

of the dependents of an employee died in harness and leaving his family in penury and without any means of livelihood. In such cases out of humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased employee, who may be eligible for such employment. So, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. Laying down the above principle in Umesh Chandra Nagpal vs. State of Haryana, (1994) 4 SCC 138; Jagdish Prasad vs. State of Bihar (1996) 1 SCC 301 and S. Mohan vs. Govt. of T.N. (1998) 9 SCC 485, the Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by the deceased employee.

8. Mere death of an employee is not sufficient to entitle the dependent of the family for compassionate appointment. The Government or the public authority concerned has to examine the financial condition of the family, and it is only when it is satisfied that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The Supreme Court has cautioned that it must be remembered that as against the destitute family of the deceased, there are millions of

other families, which are equally, if not more destitute. It is, therefore, pointed out by the Supreme Court in Umesh Chandra Nagpal and Jagdish Prasad (supra); Director of Education (Secondary) vs. Pushpendra Kumar, (1998) 5 SCC 192 that an exception to the general rule that all appointments in public service shall be made strictly on the basis of open selection on merits, is made in favour of the family of the deceased employee in consideration of the services rendered by him and the legitimate expectations and changes in the status and affairs of the family engendered by erstwhile employment which are suddenly upturned. The Supreme Court also indicated that the compassionate appointment cannot be granted after a lapse of reasonable period if that be so, it must be specified in the rules and the object being to enable the family to tide over the financial crisis which it faces because of sudden death of the sole bread-earned, the compassionate appointment cannot be claimed and offered after long lapse of time moreso, when the crisis is over, it is because, the consideration of such employment is not the vested right which can be exercised at any time in future.

9. Thus, viewing the matter from the aforesaid principles of law settled by the Apex Court and more particularly, in view of the law laid down by the Apex Court in the case of Krishna Devi (supra) and also in view of finding recorded in earlier OA where such point

was not pressed, the challenge made to the guidelines is wholly misconceived and without any substance. Even on merit, the applicant has not made out a case for interference by this Tribunal. As can be seen from the fact as stated hereinabove, admittedly the deceased employee has left behind two persons in family namely wife and one daughter (applicant). The widow is getting regular family pension amounting to Rs.2100+DR per month. The terminal benefits to the tune of Rs.1,95,886/- have been paid to the family. The family has own house to live in. Can it be said that the family consisting of two members and drawing a monthly pension of Rs.2100+DR, approximately Rs.3000/- per month is living in indigent circumstances? According to me, answer to this question is in negative. If it is so, it was not incumbent upon the respondents to keep the name of the applicant in waiting list and to take up the matter with other department in case the vacancy was not available in terms of Para 7(f) of the Scheme. As can be seen from Para 5.2 of the judgment passed in OA No.213/2001, the relevant portion of which has been extracted above, the case was remitted to the Committee for consideration as it was observed that the case of the applicant was rejected on the ground of financial condition and as can be seen from impugned order Annexure A/1 that the same was not rejected on the basis of comparative merit of the eligible candidate considered during the year and based on the merit so prepared and keeping in view the limited

vacancies of 5%. It was further observed that, Had the case been rejected on this ground, it may not be possible to the Tribunal to interfere with the impugned order. Accordingly, the direction was given to reconsider the matter and decide the case by following procedure/guidelines as laid down by the Ministry of Defence in this regard vide their ID dated 9.3.2002. Now the respondents have reconsidered the matter in the light of direction given by this Tribunal. At this stage, it will be useful to quote relevant portion of the decision taken by the Circle Relaxation Committee pursuant to the direction given by this Tribunal which thus reads as under :-

"No.Rectt/4-36/99
24.9.2004

Dated at Jaipur the

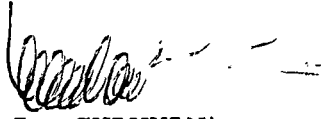
.....

The Committee observed that the Ex-employee Shri Gopal Lal Jain Postman, Jaipur City expired on 6.12.1998 leaving behind widow and one daughter i.e. applicant. The family of the deceased received terminal benefits to the tune of Rs.1,95,886/-. Besides, this, the widow is being paid family pension of Rs.2100/-+DR per month and leaving own house in Jaipur City valuing of Rs.1,50,000/-. Kumari Anita Jain applied for her appointment on compassionate grounds. She has qualification of 10+2 and is eligible for appointment on the post of Postal Assistant/Sorting Assistant.

As per instructions contained in Department of Personnel and Training OM No.218/2001-DIC dated 16.5.2001, direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the cadre of the Department. The remaining vacancies meant for direct recruitment which are not cleared by the screening committee will not be filled up by promotion or otherwise and those posts will stand abolished. The DOP&T further stipulated in para 2-4 of the said OM that vacancies finally cleared by the screening committee will be filled up duly applying

(7) SCC 271, has held that retirement benefits and other sources of income have also to be considered while deciding the case of compassionate appointment. To this extent there is also provision made in the Compassionate Scheme as is evident from Para 16 (c) (Annexure A/2).

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


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./