

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 17th day of October, 2006

ORIGINAL APPLICATION No. 280/2005

CORAM:

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

Kavita Keswani,
w/o late Shri Lakshman Das Keswani,
391, Ramnagar,
Shastri Nagar,
Jaipur.

.. Applicant

(By Advocate:)

Versus

1. Union of India through
the Secretary,
Department of Posts,
Ministry of Communication,
New Delhi.
2. Chief Postmaster General,
Rajasthan Circle,
Jaipur.
3. Superintendent of Post Office,
Beawar Division,
Beawar.
4. Smt. Maya Rathore through
Assistant Postmaster General (S&V)
Rajasthan Circle,
Office of Principal Chief Post Master General,
Jaipur.

.. Respondents

(By Advocate: Mr. B.N.Sandu)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) Impugned orders dated 31.5.2004 may kindly be quashed and set aside and respondents may further be directed to give appointment to the humble applicant on compassionate ground.
- ii) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- iii) Cost of the Original application be awarded in favour of the humble applicant."

2. Briefly stated, facts of the case are that the applicant is widow of late Shri Lakshman Das Keswani who while working as Postal Assistant with the respondent Department died in harness on 19.9.1995. The applicant applied for compassionate appointment which request was rejected by the respondents vide letter dated 11.2.2003. The said order was challenged by filing OA No.265/2003. This Tribunal directed the respondents to reconsider the matter again by passing a reasoned and speaking order. What prevail with the learned Member to give direction for reconsideration was that vide impugned order one of the ground mentioned for rejecting the application of the applicant was that "the family has received terminal benefits to the tune of Rs. 79,995/-, yet she states that out of the said amount, unfortunately a sum of

Rs. 63,934/- which had earlier been taken as loan by her late husband from the respondents, was to be repaid, and thus, the said amount was deposited with the Government thereby leaving a very paltry amount, which can hardly be termed to be sufficient to support the family of 3 persons. Besides this, a sum of Rs. 620/- per month i.e. family pension being disbursed to her also appears to be too less an amount in order to make their both ends meet to the family of three persons." Pursuant to the direction given by this Tribunal, the respondents have again reconsidered the matter and vide order dated 31.5.2004 request of the applicant for compassionate appointment was rejected by passing speaking and reasoned order. It is this order, which is under challenge in this OA.

3. Notice of this applicant was given to the respondents. The respondents have justified the impugned order. It is stated that the family of the deceased employee has received terminal benefits to the tune of Rs. 79,995/- and is getting family pension of Rs. 1275/- + 752/- + DP per month. The government dues on account of loans and advances taken by the deceased employee amounting to Rs. 63,936/- were recovered from the terminal benefits. It is further stated that the said amount is taken as loan from the department for construction of house and the same was meant to capitalize the property and in no way it can

be construed as liability. It is further stated that the case of the applicant was considered by the Circle Relaxation Committee (CRC) which did not find the case as more indigent in comparison to other cases. Hence, the case of the applicant was rejected due to non-availability of adequate vacancies under ceiling of 5% prescribed for appointment on compassionate grounds.

4. After filing of the reply, the matter was adjourned from time to time. On 23.5.2006, the applicant moved a Misc. Application NO.118/2006 thereby impleading Smt. Maya Rathore as respondent No.4 in the OA. It appears that Smt. Maya Rathore was prayed to be impleaded as respondent No.4 in the OA as in the impugned order dated 31.5.2004, the respondents have shown a comparative statement of those dependents who were given compassionate appointment as compared to the applicant. Since Smt. Maya Rathore and one more dependent were selected by the CRC in which name of the applicant was also considered, as such, the said MA was allowed and the applicant was directed to file amended OA within a period of two weeks and the matter was adjourned to 19.7.2006. On 19.7.2006, when the amended OA was not filed even after a lapse of about two months, a last opportunity was granted to the applicant to file amended OA in terms of order dated 23.5.2006 and the matter was adjourned to 12.9.2006. It was made clear in the order dated 19.7.2006 that no

further adjournment will be granted. Even on 12.9.2006 amended OA was not filed. Accordingly, this Tribunal passed the order that the matter be listed on 17.10.2006 and it was made clear that no further adjournment will be granted on that date. Even today, none is present on behalf of the applicant. I have heard the learned counsel for the respondents. In terms of Rule 15 of the CAT (Procedure) Rules, 1987 instead of dismissing the application in default, I have proceeded to hear the same on merit.

5. I have perused the material placed on record and I am of the view that the applicant is not entitled to any relief for the reasons stated hereinunder. It is not in dispute that the case of the applicant was again reconsidered by the CRC in its meeting held on 17.5.2004 pursuant to the decision dated 10.2.2004 rendered by this Tribunal in OA No.265/2003. The Committee has passed a detailed order, as can be seen from the communication dated 31.5.2004 (Ann.A1), which thus reads as under:-

“The Committee observed that the Ex-employee Shri Laxman Das Keshwani, PA SDCO expired on 19.9.1995 leaving behind widow and two minor sons. The family of the deceased received terminal benefit to the tune of Rs. 79,995/-. Besides, this the widow was paid family pension @ of Rs. 620+ Dearness relief per month which stand revised and she is presently getting monthly family pension to the tune of Rs. 1275+DP 638 +DR 210 = 2123. Smt. Kavita Keshwani applied for her appointment on compassionate grounds. She is qualified up to 10+2 and was eligible for appointment on the post of Postal Asstt. The case was put up before the Circle Relaxation Committee on 18.1.2001. The Committee keeping in view the liability of two minor sons short listed the case and kept on wait list for giving appointment on availability of vacancy. As per the scheme for compassionate appointments, immediate assistance it to be given to

the family of the government servant who dies in harness leaving behind the family in pecuniary hardship and without any means of livelihood, but such requests are to be considered on availability of vacancies and that too within the ceiling of 5% of the vacancies falling under the direct recruitment quota within the period of one year. Such appointment can only be given to really deserving cases after comparative assessment of each case being considered against the available vacancy under the ceiling of 5% in the year. During the year 2001, 45 posts of Postal Assistants for direct recruitment quota were approved by the Screening Committee and thus two vacancies i.e. 5% of the total number of the vacancies, were earmarked for appointment under compassionate grounds. Accordingly, the case of the applicant along with other candidates was considered against the said two vacancies for such appointment and after drawing the comparative and objective assessment two more deserving indigent cases were recommended by the Circle Relaxation Committee held from 28.1.2002 to 29.1.2002. the case of the applicant was not found more indigent hence the same was rejected. The chart showing comparative assessment of those cases with the case of the applicant is given below:-

Name of Applicant	Date of death	Date of superannuation	Family pension	Terminal benefits	Property	Liability
Smt. Maya Rathore	5.7.97	31.3.2002	2200/-	2,95,721/-	Nil	One minor son and one minor daughter
Smt. Gayatri Sharma	7.5.96	30.4.2019	1620/-	2,20,732/-	Nil	Three minor daughters
Smt. Kavita Keshwani	19.9.95	30.5.2020	620/- (Pre-revised) (1275+ DP 638+DR 210=2123	79,995/-	Own house	Two minor sons

Keeping in view the above chart, it is clear that the applicant has own house to live in and no liability of daughters in comparison to the selected candidates. Thus the case is not indigent. The CRC after reconsideration in the light of the CAT directions as well as DOP&T OM dated 9.10.98 followed by clarifications vide OM dated 3.12.99, 20.12.99, 28.12.99, 21.11.2000 does not recommend the case of the applicant for appointment for compassionate grounds."

6. Thus, from the portion as quoted above, it is clear that the Committee has examined the matter in extenso and has come to the conclusion that the case

of the applicant is not more deserving in comparison to two selected candidates namely Smt. Maya Rathore and Smt. Gayatri Sharma. In the case of Smt. Gayatri Sharma, the family is drawing pension of Rs. 1620/- and there is no property and the family has liability of three minor daughters. The applicant has no grievance regarding giving appointment on compassionate grounds to Smt. Gayatri Sharma. However, her grievance appears to be the selection of Smt. Maya Rathore, as such the applicant has moved Misc. Application for impleading Smt. Maya Rathore as respondent No.4 in the OA. The said application was allowed by the Tribunal vide order dated 23.5.2006 and the learned counsel for the applicant was directed to file amended OA within a period of two weeks. However, no such amended OA has been filed till date, despite the facts that last opportunity was granted to the applicant to file amended OA. Accordingly, the matter was considered on the basis of the material placed on record.

7. At the outset, it may be stated that filing of the ^{a amended} OA thereby challenging appointment of Smt. Maya Rathore will not materially effect ultimate decision of this case. As can be seen from the portion quoted above, on the basis of comparative assessment of the applicant vis-à-vis other candidates and more particularly with Smt. Maya Rathore, the CRC has

specifically recorded in last para of the order that the applicant has own house to live in and there is no liability of daughters in comparison to the selected candidates, thus, the case is not indigent. Thus, from the conclusion as drawn above, it is clear that though dependent on the family in the case of Smt. Maya Rathore and in the case of the applicant are three i.e. the widow and two minor children, but in the case of applicant the family consist of two minor sons whereas in the case of Smt. Maya Rathore, ^{out of} ~~in~~ two minors there is one son and one daughter. The fact that there is no liability of daughter in the case of the applicant as against the selected candidates where the liability in the nature of minor daughter in the case of Smt. Gayatri Sharma is three whereas in the case of Smt. Maya Rathroe is one, it cannot be said that the decision arrived at by the CRC is arbitrary, perverse or illegal. Another fact which ^{is weighed} ~~is~~ with the CRC to hold that case of the applicant is not more indigent as compared to the selected candidates is that the applicant has her own house whereas in the case of Smt. Maya Rathore and Smt. Gayatri Sharma they do not possess their own house and property is Nil. The CRC has also taken into consideration the family pension as well as terminal benefits received by the selected candidates and the applicant and it is after taking ~~into~~ overall factors into account has arrived at a decision that case of the applicant is not more

deserving than two selected candidates and there were only two vacancies against which two names have to be recommended. Thus, the applicant could not be given appointment for want of vacancy.

8. Now the question which requires my consideration is that whether the applicant has made out a case for judicial review. The power of judicial review is now well defined in series of decisions rendered by the Hon'ble Apex Court. The Apex Court has held that there should be judicial restraint while making judicial review in administrative matters. At this stage, it will be useful to quote para 6 of the judgment rendered in the case of Union of India and others vs. Flight Cadet Ashish Rai, 2006 SCC (L&S) 312, which thus reads:-

“There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached or (f) abuse its powers. Administrative action is subject to control by judicial review in the following manner:

- (i) Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.”

Further, in the case of State of U.P. and Anr. Vs. Johri Mal, 2004 (2) SC SLJ 115, the Apex Court has observed as under:-

“20. In Council of Civil Services Unions vs. Minister of Civil Service the power of judicial review was restricted ordinarily to illegality, irrationality and impropriety stating:

“If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous such exercise of power will stand vitiated.”

The scope and extent of power of judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of order, the relevant statute as also other relevant factors including the nature of power exercised by the public authorities, namely whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of Omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decision and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are:

- i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies:
- ii) A petition for a judicial review would lie only on certain well-defined grounds.
- iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- iv) A mere wrong decision without anything more is not enough to attract the power of judicial review the supervisory jurisdiction conferred on a court is limited to seeing that tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
- v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State.

by

Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies (See *Ira Munn vs. State of Illinois*, 1976 (94) USW (Supreme Reports)."

9. Thus viewing the matter from the law laid down by the Apex Court as reproduced above, it is clear that scope of judicial review is very limited. The courts while exercising judicial review in administrative matters should confine it - (a) to the question of illegality (b) to decide whether the decision making authority exceeds its powers, (c) committed an error of law, (d) committed breach of the rules of natural justice and (e) reached a decision which should not be reached or abused its powers. The applicant has not made out a case within the four corners of the above principle. It is yet further settled that while exercising power of judicial review the court is more concerned with the decision making process than the merit of decision itself. The applicant has failed to show that the decision so taken suffers from illegality, irrationality or procedural impropriety or that it has not taken into consideration the factors which were relevant. It is also well settled that power of judicial review vested to the Tribunal is akin to the powers vested to the High Court or Civil Court. In the case of Beant Singh vs. Union of India, AIR 1977 SC 388, it was held that High Court does not sit as a Court of appeal to substitute its own judgment while exercising the jurisdiction to which

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the authorities given their decision. The High Court may correct errors apparent on the face of record. Since the applicant has not been able to show any infirmity in the decision making process and the applicant has been fairly treated alongwith other dependents who have been given appointment on compassionate grounds and that on account of limited vacancies, only two most deserving indigent cases were recommended by the CRC, I find no infirmity in the impugned order. It is not legally permissible for the Tribunal to substitute the decision so arrived by the CRC.

10. For the foregoing reasons, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)

Judicial Member

R/