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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA**

**OA. 350/01621/2015**

**Date of Order: 22.09.2016  
Date of hearing: 23.08.2016**

**Present :Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

1. Mamata Dutta w/o late Amit  
Kumar Dutta @ Datta
2. Soumyadip Dutta, s/o late Amit  
Kumar Dutta @Datta

Both of village and P.O.- Kubajpur,  
P.S.Bhatar, Dist. Burdwan-  
713102.

.....Applicants

-versus-

1. The Union of India, through the  
Secretary, Department of Posts,  
Ministry of Communications and  
Information Technology, Dak  
Bhavan, New Delhi- 110001.
2. The Chief Post Master General,  
Department of Posts, India, West  
Bengal Circle, Kolkata – 700012.
3. The Senior Superintendent of Post  
Offices, Burdwan Division, Burdwan-  
713101.

.....Respondents.

**For the Applicant :Ms. M. Roy (Dey), Counsel**

**For the Respondents :Mr. MK Ghara, Counsel**

*(Signature)*

ORDER

Per Justice Shri Vishnu Chandra Gupta, JM:

1. By means of this original application the applicant No. 1, Mamata Dutta being the wife of late Amit Kumar Dutta, Ex-Postman died in harness and his son Soumyadip Dutta filed this original application with the following reliefs:

"8(i) Direct the respondent authorities, their men, agents and servants to immediately consider and/or sanction the prayer of the applicants for appointment on compassionate ground without any further delay whatsoever, and settle the matter in accordance with law forthwith;

(ii) An order granting leave to the applications under Rule 4(5)(a) of CAT (Procedure) Rule, to move the application jointly.

(iii) Direct the respondent authorities to compensate the applicants appropriately for such inordinate delay in consideration of the case for appointment on compassionate ground, which has caused immense hardship, pain and agony to the applicants over the years;

(iv) Direct the respondent authorities to produce the records of the case and after perusal of the same pass appropriate order(s);

(v) Give any other or further relief(s) to which the instant applicants are entitled to, as this Learned Tribunal deems fit and proper."

2. The brief facts of the case are that the husband of applicant No. 1, Late Amit Kumar Dutta was a Postman under Burdwan Head Quarter died in harness on 30.11.2003. Late Amit Kumar Dutta survived by his widow, the applicant No. 1 and his only son, the applicant No. 2. After sudden death,



the applicant No. 1 had applied for compassionate appointment of her only son (application undated) i.e. the applicant No. 2 in accordance with the rules. Some certificates of Gram Panchayat Prodhan were annexed with the application. When her request was not considered the applicants approached to the Hon'ble Minister of Information & Broadcasting, Government of India, Mr. P. R. Dasmunsi. Hon'ble Mr. P. R. Dasmunsi wrote a letter dated 03.10.2008 to Shri A. Raja, Minister of Communication & Information Technology, Govt. of India for providing some suitable employment to the applicant No.2 in Post Office.

3. On 18.02.2009 the applicant No. 1 received a letter issued by Asstt. Director of Postal Services (Rectt.) with regard to response of her letter dated 05.01.2009 addressed to the Director General, New Delhi (copy of letter dated 05.01.2009 not filed by applicant). By this letter it was informed to the applicant No.1 that the case will be placed before Circle Relaxation Committee (CRC) for consideration when vacancies of 2006 in direct recruitment quota will be cleared and approved by the Screening Committee. After that no response has been given.

4. The applicant thereafter, applied under Right to Information Act. On 29.06.2011 the respondents informed the applicant No. 1 that her application will be decided on merit by High Power Committee. The applicant again applied to know the status of her application under Right to Information Act. On 29.09.2014, the applicant was informed about the status of her application which is extracted herein below :

A handwritten signature in black ink, appearing to read "N. J. 16/1".

"To  
**Sri Soumyadip Dutta**  
**S/O Late Amit Kumar Dutta**  
**Vill+P.O. Kubajpur, Via- Nutanganj**  
**DT- Burdwan, Pin-713102.**

**No. SFB/04/2008**

**Dated at Kol-12, the 29.09.2014**

**Subject: Supply of information under RTI Act, 2005**

**Ref: Your application dated 26.08.2014**

**Sir,**

**The information as sought for is appended below:**

1. **Yes, the case was placed in the Circle Relaxation Committee (CRC) meeting held on 28.01.2010 & 29.01.2010, 14.02.2011, 31.03.2011 and 22.07.2013 against the vacancies of 20.06.2007, 2008, 2009, 2010 and 2012.**
2. **The case could not be approved as the same did not come under the zone of consideration according to your indigence. You have earned 51 merit/indigence points and the last selected candidate in all these meetings earned higher merit points. The last candidate selected in the CRC meeting held on 22.07.2010 earned 62 merit points.**
3. **The appointment on compassionate ground is not a matter of right. As per existing Rules, the compassionate appointments are made based on the following criteria.**
  - (a) **The family is indigent and deserves immediate assistance for relief from financial destitution. (Para 5 of OM No. 14014/2/20. 2 Estt (D) dated 16.01.2013.**
  - (b) **Appointment on compassionate grounds should be made on regular basis and that too only if regular vacancies meant for that purpose are available i.e. 5% vacancies of Direct Recruitment quota. (Para 7 of OM No. 14014/2/2012- Estt (D) dated 16.01.2013.**

**As the number of cases to be considered for compassionate appointment is much higher than the vacancies available it is not possible to offer compassionate appointment to each and every case. In view of above the Department of Posts has introduced a formula to measure the indigence of a candidate by allocating points to the applicants based on various attributes of the deceased official viz. assets and liabilities of the family, ages of the children, their marital status, number of earning members etc. vide Postal date's Communication No. 37-26/2004/PB-I dated 20.01.2010.**



***As per recent guidelines, your case will be placed in the next CRC meeting, to be held for the vacancies of 2014."***

5. Thereafter, the applicant again caused to make a further enquiry about the status of his candidature by letter dated 12.05.2015 and by communication dated 20.05.2015, the respondents virtually refused to disclose anything on the matter in issue. Thereafter, the applicant filed this application with relief directing the authorities to consider immediately to grant the prayer of the applicants for appointment on compassionate ground without any further delay.

6. The counter affidavit in reply to the OA was filed by the respondents. It has not been denied that Late Amit Kumar Datta, ex-Postman a regular employee, died in harness on 30.11.2003, and applicant No. 2 applied for compassionate appointment. But proposal was send on 05.02.2008 and indexed under file No. SFB/V-04/ 2008 for consideration in PA/SA Cadre.

7. It has been alleged that appointment on compassionate ground is not a matter of right. As per existing rules for giving the appointment on compassionate ground criteria has been provided. It has been stated that the same could be given keeping in view of indigence of the family against the vacancies meant for the compassionate appointment, i.e. 5% vacancy of DR quota.

8. Case of applicant was put up before CRC in a meeting held on 22.07.2013 but his case was not recommended as the applicant earned only 51 merit points wherein last selected candidate earned 63 merit points.



Case of applicant No.2 was again placed for recommendation in meeting of CRC dated 10.04.2015 & 16.06.2015 for vacancies of 2013 & 2014 respectively. But again the case of applicant was not recommended by CRC as the last recommended candidate earned 61 merit points for vacancies of 2013 and 60 merit points for vacancies of 2014. It has been further stated that the case of applicant shall be placed again before CRC for vacancies of 2015-16 for reconsideration. The procedure for selection on the basis of merit points was introduced vide Postal Directorate letter No. 17-17/2010 GDS dated 14.12.2010 and came into effect from 01.01.2011. The same is extracted herein below:

"No. 17-17/2010 – GDS  
 Government of India  
 Ministry of Communications & IT  
 Department of Posts  
 (GDS Section)

Dak Bhawan, Sansad Marg,  
 New Delhi – 110116  
 Dated: 14 Dec. 2010

Chief Postmaster General  
 Postmasters General  
 General Managers (Finance)  
 Director of Accounts (Postal).

Subject:- SCHEME FOR ENGAGEMENT OF GDS ON COMPASSIONATE GROUNDS-MERIT POINTS AND PROCEDURE FOR SELECTION.

Sir/Madam,

To objective of the Scheme for engagement of Gramin Dak Sevaks on compassionate grounds is to engage dependent family member of a Gramin Dak Sevak dying in harness, thereby leaving his family in penury and without adequate means of livelihood.

2. Keeping in view the objective of the Scheme, the existing instructions relating to compassionate engagement have time and again been reviewed / modified / simplified so that the system finally derived at shall be more transparent, efficient and uniform in nature.

3. Currently there is no laid down transparent criteria for adjudging degree of indigence of the GDS family while considering their cases for compassionate engagement. Therefore, a need is felt to lay down transparent criteria for considering a request for engagement on compassionate grounds by a Committee. A balanced and objective assessment of the financial condition of the family has to be made taking into consideration of his/her assets and liabilities, and all other relevant factors such as



presence of an earning member, size of the family and the essential needs of the family including social obligations, etc. In order to assess the degree of indigence of all the applicants to be considered for compassionate engagement. The Department of Personnel & Training has provided for limiting compassionate appointment of wards of departmental employees to 5% of the total vacancies and no such stipulation has been made for this purpose in respect of GDS. This, however, does not mean that all applicants are to be engaged as GDS on compassionate grounds in relaxation of normal and only the exceptional and deserving cases are to be considered for compassionate engagement as the scheme stipulates that compassionate engagement is to be given only in indigent and deserving cases.

4. The existing procedure has been reviewed in this Directorate and it has been decided by the competent authority that to achieve the objective of the scheme of the compassionate engagement and to ensure complete transparency, merits of the cases can be conveniently indicated by allocating points to the applicants based on various attributes. Accordingly, the Department has worked out a system of allocation of points to various attributes based on a hundred point scale as indicated in the tables below:-

1. NO. OF DEPENDANTS:

Ser	Points	Proposed slabs for GDS Dependents
1	10	3 & above
2	7	2
3	3	1

2. OUTSTANDING LIABILITIES FOR EDUCATION/MARRIAGE OF DEPENDANT CHILDREN:

Ser	Points	Criteria
1	10	For Education of minor children
2	15	For Marriage of daughters

3. LEFT OVER SERVICE FOR DISCHARGE

Ser	Points	Proposed slabs for left over service in context to maximum age for discharge
1	10	Over 20 years
2	8	Over 15 & up to 20 years
3	6	Over 10 & up to 15 years
4	4	Over 5 & up to 10 years
5	2	0-5 years

4. OWN AGRICULTURAL LAND AND HOUSE

Ser	Points	Criteria
1	10	No house and land
2	5	Own house only or land
3	0	Own house and land

5. FAMILY EARNINGS OF MEMBERS OF FAMILY PER MONTH

Ser	Points	Proposed slabs for family earning
1	10	No Income
2	8	2500 or less per month
3	6	2501 to 3500 per month
4	4	3501 to 4500 per month
5	2	4501 to 5500 per month
6	0	5501 & above per month



6. DISCHARGE BENEFITS i.e. EX-GRITIA GRATUITY, SERVERANCE AMOUNT, SERVICE DISCHARGE BENEFITS UNDER NPS LITE AND GROUP INSURANCE BENEFITS RECEIVED BY FAMILY.

Ser	Points	Proposed slabs for benefits on discharge
1	10	Below Rs. 25000
2	8	25000 to 50000
3	6	50001 to 75000
4	4	75001 to 10000
5	0	Above 10000

7. EDUCATIONAL QUALIFICATION OF APPLICANT:

Ser	Points	Proposed slab on education of applicant
1	25	Graduate
2	20	10+2
3	2	Below 10+2

5. The above system of weightage not only brings more objectivity to the method but also ensures compete transparency and uniformity in the selection process. The above method is being introduced for considering cases of compassionate engagement to the dependents of the GDS in the event of death of the bread winner. The cases which are more than five years old of having an earning members (s) in the family shall continue to be referred to this Directorate as hitherto before.

6. Shri RS Nataraja Murti Committee had recommended in Para 17.20.2 as under:- "Keeping the spirit of compassionate appointments as enunciated by the Nodal Ministry and also the ruling of the Hon'ble Supreme Court, there is need to provide compassionate appointment to the dependents of GDS in hard and deserving cases. The purpose would be served if the engagement of GDS on the division in a year. The vacancies may be computed separately for GDS BPM and other categories. The period of consideration of deserving cases may be kept as three years. While considering the cases there need not be any relaxation in educational qualification for the post of BPM. In hard and deserving cases requiring relaxations of educational qualification, the engagement may be offered in other categories of GDS subject to the condition that the incumbent can satisfactorily discharge the duties assigned". While the intention behind the scheme of engagement of GDS on compassionate ground is to allow engagement of GDS on compassionate ground in hard and deserving cases only and not in all cases, the recommended percentage is twice the percentage prescribed for regular Government employees. The above recommendations have been examined in this Directorate and it has been decided to accept the same. However, in view of the Department's plan to computerize the Branch Officers and to use hand held devices etc. besides the requirement of combination of duties in various circumstance, it all categories of Gramin Dak Sevak including GDS BPM.

7. The number of vacancies and ceiling of 10% now being proposed may be calculated in the following manner:-

(a) The vacancies occurring in a calendar year age to be computed separately for the GDS BPM and other categories of GDS by their appointing authorities for each division well in advance. The appointing authorities while calculating the same shall take into account the vacancies that are likely to occur due to discharge of Gramin Dak Sevaks on attaining the age of 65 years for this purpose during the ensuing calendar year. However, the vacancies arisen due to absorption of Gramin Dak Sevaks in regular departmental posts and due to death occurring during the currency of the calendar year will be added to the vacancies occurring in the next calendar year for computation. The requisite information therefore needs to be compiled at all levels and finally sent to the Head of the Circle concerned by 30<sup>th</sup> Nov in advance along with cases complete in all respect.



(b) Circle Relaxation Committee shall consider all cases and approve the same subject to guidelines on the subject and ceiling of 10% of the vacancies calculated separately for GDS BPM and other categories of GDS strictly on application of the Point System for determining the indigence. Cases prescribed to be sent to the Directorate more than 5 years old and cases in which one or more member is earning shall continue to be recommended as per existing provisions subject to this overall 10% limit to be applied on divisional basis.

(c) In units where on application of the ceiling percentage, the number of vacancies for consideration of cases for compassionate engagement works out less than 1 (not zero), one vacancy may be earmarked in that division/unit for compassionate engagement.

(d) This percentage of 10% shall only apply to cover cases of wards of deceased GDS and not to GDS acquiring disability during service defined in the Persons with Disabilities Act, 1995. Section 47 of the Persons with Disabilities Act, 1995 provides that a establishment shall dispense with or reduce in rank an employee who acquires a disability during his service as also no promotion shall be denied to a person merely on the ground of his disability. In case a GDS acquires a disability during his service and is considered to be unsuitable for the GDS post he was holding, could be shifted to some other post with the same TRCA.

(e) Period of consideration of deserving cases is prescribed as three years i.e. in case where it is not possible to offer engagement of GDS on compassionate grounds due to the application of prescribed ceiling, the case may be considered by the CRC in the subsequent CRC meetings of the next two years to the maximum.

(f) No relaxation in educational qualification for the post of GDS BPM or any other category of GDS would be permissible.

The above instructions will be applicable for all the compassionate engagement case to be considered on or after 01.01.2011. These issues with the approval of Secretary Posts.

These instructions may be communicated to all concerned.

Yours faithfully,  
(Surender Kumar)  
Asst. Director General (GDS)

S.S. Mahadevaiah  
General Secretary  
All India Postal Extra Departmental Employees Union  
Posted by RURAL POSTAL EMPLOYEES at 9:14 AM"

9. The rejoinder affidavit was also filed by the applicants relying upon the provision of OM No.-14014/6/94-Estt (D) dated 9<sup>th</sup> Oct, 1998 which according to applicant provide that appointment on compassionate ground should not be confined to department in which the deceased employee had been working and such appointment can be given anywhere.



10. Heard the learned counsel for the applicant Mrs. Malabika Roy (Dey) and counsel for respondents Mr. M.K. Ghara and perused the record.

11. Learned counsel for applicant after relying upon a judgment of Calcutta High Court rendered in **W.P.C.T 339 of 2013, Saraswati Datta & Anr. Vs. Union of India & Ors., decided on 19.08.2013** has contended that in view of Office Memorandum issued by Govt. of India dated 09.10.1998, wherein it has been specifically mentioned that employment on compassionate ground should not be confined to the Department in which the deceased employee had been working and as such appointment can be given anywhere under the Government of India depending on the availability of suitable vacancies meant for the purpose of compassionate appointment. It has also been observed that in view of the said memorandum the competent authority should take up the matter with the Ministry/Department/Offices of the Government of India for providing an early appointment to the candidate concerned on compassionate ground. The Hon'ble High Court has also extracted the relevant portion of the Office Memorandum dated 09.10.1998, which reads as under:

**7. Determination/Availability of Vacancies**

(a) .....

(b) .....

(c) .....

(d) .....

(e) *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.*



*(f) 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/Department/Office of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."*

12. On this score the learned Counsel for respondent would submit that Government of India vide Office Memorandum No. 14014/18/2000-Estt.(D), dated 22.06.2001 amended Clause (e) and substituted the same by following Clause (e) of guidelines No. 7 of OM dated 09.10.1998, which reads as under:

*"(e) The Committee constituted for considering a request for appointment on compassionate grounds 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 Group 'C' post.(O.M. No. 14014/18/2000-Estt.(D), dated 22.06.2001)."*

Clause (f) which has been quoted in the judgment of Calcutta High Court was also changed and substituted by new clause by Office Memorandum No. 14014/24/1999-Estt. (D), dated 28.12.1999, which is also, extracted herein below:

*"(f) Calculation of vacancies by grouping of posts for small offices/ cadres- Grouping of posts in small Offices/Cadres for the purpose of calculation of vacancies for appointment on compassionate grounds is allowed. Consequently, Group 'C' posts in which there are less than 20 direct recruitment vacancies in a recruitment year may be grouped together and out of the total number of vacancies 5% may be filled on compassionate grounds subject to the condition that appointment on compassionate grounds in any such post should not exceed one. For the purpose of calculation of vacancies for compassionate appointment, fraction of a vacancy either half or exceeding half but less than one may be taken as one vacancy. (Para 2 and 3 of O.M. No. 14014/24/1999-Estt.(D), dated 28.12.1999)." *

13. According to the present Clause (f) it has been provided that grouping of post in small Offices/Cadres for the purpose of calculation of vacancies for appointment on compassionate ground may be allowed to accommodate the candidates seeking appointment on compassionate ground as early as possible. By Office Memorandum No. 14014/3/2005-Estt. (D), dated 09.10.2006, a provision has been made for liberalization method of calculation of vacancies of small Ministries/Department providing that 3 years vacancies may be considered for allocating 5% quota to the vacancies of compassionate appointment.

So far as, time limit of considering applications for compassionate appointment, guideline 8 of relevant extracts scheme in OM dated 09.10.1998 amended from time to time is reproduced herein below:

*"Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M. No. 14014/3/2011-Estt. (D), dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time-limit and decision taken on merit in each case."*

According to this provision the appointment will be made on compassionate ground subject to availability of vacancy and the instruction issue to the Departments as amended from time to time.

14. The perusal of scheme as provided in OM Dt.09.10.1998, amemded from time to time, makes it clear that any application for compassionate appointment has to be considered without any time limit and decision be taken based on merit. By Office Memorandum dated 05.05.2003 a

*(Signature)*

provision was made for consideration of the application 3 times but subsequently in view of the decision rendered by the Allahabad High Court in Civil Miscellaneous Writ Petition No. 13102/2010, **Union of India Vs. Smt Asha Mishra and Anr**, decided on 07.05.2010, the time limit provided by Office Memorandum dated 05.05.2003 was lifted and provision has been made to consider the application for numbers of times.

15. The Department of Posts and Telecommunications vide letter No. 24/157/78-SPB-I dated 14<sup>th</sup> July, 1978, delegated powers to form a committee in postal department for providing compassionate appointment, which is extracted herein below:

*"(1) Delegation of powers and constitution of committees.- In pursuance of the revised policy, it has been decided to further delegate powers to make compassionate appointments( in the grade of Clerks or any other Group 'C' post of comparable rank of Group 'D' post in which there is direct recruitment) of widows/sons/daughters of P&T employees who die in harness and leave the family in indigent circumstances to Heads of Circle, etc., declared as Heads of Department under SR 2 (10) if more than five years have not elapsed between the date of application for employment and the date of death of the employee. For this purpose in each Circle (except in Delhi Postal Circle and J&K Circle), a Committee consisting of the Heads of Circle, etc., and two senior Directors should be constituted. In Delhi Postal Circle, the Committee will consist of PMG and DPS and in J&K Circle; it will consist of PMG/GMT and APMG/AG. The Committee should scrutinize all such cases and decide them keeping in view guidelines provided by the Department of Personnel and AR. Such appointments must conform to the provisions as regards eligibility, etc., of the relevant Recruitment Rules except the condition of merit and nomination by Employment Exchange. The cases requiring relaxation of educational qualification and age-limits and in which there is already one earning member in the family if recommended by the Committee will continue to be referred to the Directorate as at present. Similarly, the cases in which more than five years have elapsed between the date of death and the date of application will, if recommended by the Committee, be also referred to the Directorate. But in so doing, it should be borne in mind that the*



*main objective of such compassionate appointments is largely related to the need for immediate assistance to the bereaved family. If more than five years had passed between the date of death and the date of application for appointment, it would appear that the family had some other means of subsistence and was in a position to tide over the crisis resulting from the death of the earning member. In such cases, it should be enquired as to why the widow failed to apply for employment in time and whether all children were minors at the time of death of the employee. Enquiries should also be made as to how the family sustained itself during the interim period."*

16. Therefore, from the perusal of aforesaid instructions it appears that the postal department adopted the Government of India instructions for appointment on compassionate ground but certain guidelines has been issued to implement the same keeping in view the object of scheme . The guide lines now have been adopted. However, it is not in disputed that the instructions contained OM issued by Govt. of India of Dated 09.10.1998, which has been amended from time to time, has to be adhered to for providing the compassionate appointment in the postal department with certain modifications.

17. The Government of India by Office Memorandum No. 14014/3/2011 – Estt. (D), dated 26.07.2012 in the light of the judgment rendered by the Apex Court in Civil Appeal No.2206 of 2006 filed by **Local Administration Department v. M. Selvanayagam @ Kumaravelu** and decided on 05.04.2011 provides that an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in



conflict with Articles 14 & 16 of the Constitution. The concerned authorities were directed and advised by DoPT by issuing OM No.14014/3/2011-Estt(D) dated 26.07.2012 to advise to deal with the application for compassionate appointment the directions contained in the aforesaid judgment of Apex Court should be kept in mind. The aforesaid judgment and OM dated 26.07.2012 virtually affirms the stand of Postal department, which are contained in its letter dated 14<sup>th</sup> July 1978.

18. After considering the submissions of both the side we are of the view that now due to non-existence of Clause (e) & (f) as mentioned in the aforesaid judgment of Calcutta High Court the application ought to have been disposed of on the basis of existing policy which has now been amended and will govern the applicant's case as held by the Apex Court in ***Union of India & Anr. Vs. Shashank Goswami & Anr, 2012 SCPL (Web) 320 SC, National Institute of Technology Vs. Neeraj Kumar Singh, (2007) 2 SCC 481 & in Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra & Ors., (2008) 11 SCC 384.***

19. In this case the undisputed facts are;

- 19.1. Amit Kumar Dutta @ Dutta, Ex-postman died in harness on 31.11.2003
- 19.2. He left behind only two dependents, namely Mumta Dutta, the wife (Applicant No.1) and Saumyadip Dutta, the son (Applicant No.2).
- 19.3. The claim for compassionate appointment of applicant No.2 was first indexed on the basis of application for the same dated 05.01.2009 (as contained in letter dated 18.02.2009 issued by respondent to the applicant)



19.4. The claim of the applicant was first considered in CRC meeting held on 22.7.2013, but the name of the applicant No.2 was not recommended for the reason that applicant secure only 51 merit point but last recommended candidate earned 63 merit points.

19.5. The claim of the applicant was considered in CRC meeting held on 10.04.2015 for the second time against the vacancies of year 2013, but the name of the applicant No.2 was not recommended for the reason that applicant secure only 51 merit point but last recommended candidate earned 61 merit points.

19.6. The claim of the applicant was considered for the third time against the vacancies of 2014 in CRC meeting held on 16.6.2015, but the name of the applicant No.2 was not recommended for the reason that applicant secure only 51 merit point but last recommended candidate earned 60 merit points.

19.7. Thereafter the name was considered by CRC in subsequent meeting or not is not placed on record by the respondents.

19.8. The 51merit points earned by the applicant determined for the first time in 2009 and the same were never considered during 2009 to 2016 on the ground whether any changes were occurred in the circumstances or in financial status of applicant and his family.

19.9. The name of applicant in the panel of candidates seeking compassionate appointment is still continuing without considering the changes of status of family of deceased employee, the sources of income of the family during last about 13 years.

19.10. No policy has been brought on record by the respondents for determining the merit points for granting compassionate appointment to the dependants of regular employee died in harness. The policy of determining the merit points for compassionate appointment for the dependants of Gramin Dak Sevaks (GDS)(earlier known as Extra Departmental Agents 'EDA') died in harness has been placed on record. Admittedly the GDS are not the regular employees of the department and are merely part time workers and are not categorized as civil servants and necessarily have independent source of income in terms of Rule 3-A of GDS (Conduct and Engagement) Rules amended from time to time.

20. As discussed herein above that the scheme for granting compassionate appointment for Central Government employees was introduced to provide immediate financial help to the family in need



thereof. In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138** their Lordship held as follows:

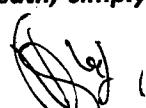
*"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for provision of employment, the family will not be able to meet the crisis that a job is to be offered to eligible member of the family."*

It was further held that;

*"For these reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not the vested right which can be exercised at any time in future. The object being enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over"*

21. The ratio propounded in **Umesh Kumar Nagpal's case** still holds good. The Hon'ble Supreme Court in its judgment in **Local Administrative Department and Another Vs. M. Selvanayagam (2011) 13 Supreme Court Cases page 42** ruled that a person being the dependent of the deceased employee alone would not make him entitled to be appointed on compassionate ground without viewing the financial status of the family of the deceased employee and that to after many years from the death of the employee. Para 11 and 12 of the aforesaid judgment are extracted herein below:

11. *It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the*



*claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.*

*12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme."*

22. In *National Institute of Technology Vs Neeraj Kumar Singh (2007) 2 SCC 481*, their Lordship held that compassionate appointment can be

granted only under a scheme and should not be considered after a long lapse of time.

23. In view of the above judgments it is crystal clear that the question of delay is related to making of the application and not on account of the pendency of the application. Where a member of the family of the deceased employee seeking compassionate appointment has applied within a reasonable time but the competent authority has failed to decide the matter for any reason not attributable to the applicant for long, the appointment on compassionate ground cannot be denied due to such delay.

For example, if an application has been made within a reasonable time and the competent authority is of view that the family of the deceased employee still continuing under poverty and the appointment could not be given on account of non availability of the vacancies or existence of long panel of the candidates seeking appointment on compassionate ground,



such delay cannot be a ground for rejecting the application. On the contrary, if the member of the family of the deceased employee is himself guilty of moving the application with unusual delay then that delays shall be against the main objective behind the scheme of compassionate appointment.

24. Delay in moving the application by the applicant on one hand and non-consideration of his application for further long time without revisiting the financial status of the family of the deceased employee, repeated consideration without granting compassionate appointment on the same parameters which were fixed at the time of first instance of consideration would also violate of the object behind the scheme for compassionate appointment.

25. The burden to prove that the dependents of the deceased employee are living in penurious condition or not, is on the employer. It will not be practically possible that for the considerable long time and that too for more than 10-15 years, the status of the family will remain unchanged. By lapse of time the family members to meet both the ends of livelihood shall certainly try to augment their income by other alternative means and shall not depend only on pension. However in some of the cases the dependents may suffer from any physical ailment or due to change in circumstances during pendency of application could not be able to augment their income due to enhancement of certain liabilities, in such situation the condition of the family of the deceased employee and his dependents will certainly deteriorate. In any case the weightage points are bound to change. In such

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circumstances consideration of application on the criteria fix at the very beginning shall defeat the objective of the Scheme.

26. Some of the departments to access the financial status evolved system of weightage point like in the present case. Some of the departments made a cut-off of weight-age points for eligibility for consideration and if the dependent of the deceased employee secure fewer points than the minimum cut off of points he/she would not be placed under the category of eligible candidates. In some of the departments a list of all the candidates seeking compassionate appointment is prepared on the basis of weight-age points. All the names after granting weightage marks placed in the list of eligible candidate and then decide the candidate for appointment who has earned the maximum weightage point. As and when vacancy arises under compassionate appointment quota the department carry out the same exercise. In such situation it often happens that the person securing fewer points, though, repeatedly considered but new persons having more weight-age points gets the appointment irrespective of the fact that they inducted in the panel after several persons like in the present case.

27. The applicant in the present case earned 51 merit points when he moved the application on 05.01.2009. He was considered thrice i.e. on 22.07.2013, 10.04.2015 and 16.06.2015 but every time he could not able to compete other empanelled candidates waiting for their turn for compassionate appointment. As is evident from the record, in the first

A handwritten signature in black ink, appearing to read 'S. S. J.' or a similar variation.

consideration the name of applicant was not recommended for the reasons that the last candidate earned 63 merit point and the applicant hardly secured 51 points. When he was again considered on second time against the vacancies of the year 2013 on 10.04.2015 his name was not recommended because last recommended candidate was having 61 merit points. Again on third occasion, the name of the applicant could not be recommended as the last recommended candidate was having 60 merit points. Thereafter, there is nothing on record that candidature of the applicant was ever considered by CRC. It is also not brought on record by the respondents that revision in the weightage/merit points was ever done after considering the changed circumstances, if any, during the pendency of his application which is admittedly pending since 2009.

28. In the circumstances, it is to be considered by the Tribunal whether keeping the application pending from last 13 years from the date of death of the employee would be in accordance with the object of the scheme of granting compassionate appointment?

29. It is the case of the respondents that application of the applicant is still under consideration. The applicant has not been granted compassionate appointment till date. The deceased employee in this case died on 30.11.2003 and now about 13 years have already been lapsed. During this period the possibility cannot be ruled out that the applicant has already searched out some alternative source of income to meet both the ends of his family and the family conditions have changed and the applicant ceases

to be in such a financial condition where compassionate appointment would be necessary. On the other hand, the possibility of this fact may also be there that for the verity of reasons the status of the family of the deceased employee further deteriorates.

23. While considering the applicant's candidature for compassionate appointment the financial condition of the family would be most important and paramount consideration, which in our opinion is not being followed by the respondents in the present case.

31. In this case, there is nothing on record to show that the application for compassionate appointment has been given by the applicant within reasonable time rather the record reveals that the application for compassionate appointment is given after more than 5 years i.e. on 05.01.2009 which was indexed in the department on 18.02.2009. Thereafter since 2009 till 2016 i.e. about seven years his claim for compassionate appointment was considered but has not been finally decided. Department has not revisited the financial status of the family of the applicant during this tenure and still continue to consider his application on the merit points earned when his application was first considered by CRC.

32. Therefore, we are of the view that the weightage system in all the cases will not operate fairly. It is true that to make appointment on compassionate ground where number of applicants are more than the available vacancies for the same, a transparent system providing



weightage/merit points to empanel the persons seeking compassionate appointment may be good but at the same time considering the application time and again without considering the change in circumstances affecting financial status of the family of deceased employee would be violative of the scheme for granting compassionate appointment as well as against the objects behind the same.

33. We have also noticed that the weightage points determined in respect of applicant of this case are based on the scheme meant for providing compassionate appointment to the Gramin Dak Sevak (GDS). It is not in dispute that the applicant is one of the dependent of the deceased employee who was working as a Postman and was a regular employee of the Postal Department.

34. It is worth notice that GDS are not the regular appointees of the Department, they are part time workers. Rule 3(A) of the GDS Conduct and Engagement Rules 2011 provides that while making engagement of GDS (*earlier known as Extra Departmental Agents "EDA"*), their independent income would be a prime consideration and if they have not any other source of income sufficient to meet their family needs, they cannot be engaged as GDS.

35. Thus, the scheme framed for granting compassionate appointment on the ground of death of GDS cannot be applied in the cases of death of regular employee dies in harness and the dependent of a regular deceased



employee of postal department cannot be treated at par with those who are not equally placed under the legal provisions.

36. So far as the applicant is concerned, the respondents have not pleaded nor established that in the empanelled candidates seeking compassionate appointment along with applicant are only the dependents of regular working staff died in harness of Post and Telegraph Department and not of the GDS. It is also not stated anywhere that there is a separate weightage point system for the dependents of regular employees died in harness. Hence, in absence thereof, the criteria fixed for empanelment and of the appointment based thereon made applicable to the present applicant would not be fair and shall cause great injustice as well as substantial prejudice to him. Therefore, we are of the firm view that weightage system adopted by the respondents would not apply to the present applicant and his empanelment with other dependants of the deceased GDS would be discriminatory

37. Resultantly, we are of the view that this petition deserves to be allowed with certain direction to the respondents.

38. The O.A. is allowed. The respondents /Competent Authority are directed as under:-

- 38.1. That the respondents/ competent authority/ Committee meant for consideration of compassionate appointment will consider the case of the applicant keeping in view the present financial condition of the family and not on the basis of merit points earned at the time of his first consideration.
- 38.2. The authority before consideration for appointment of the applicant will also investigate whether financial condition of the family of the applicant still continues to be so penurious that the applicant still be entitled to for compassionate appointment?



38.3. If there is no system in operation for empanelment of the dependents of regular staff died in harness of postal department for granting compassionate appointment the Competent Authority shall prepare a separate scheme for them within a period of three months from the date of communication of this order.

38.4. While preparing the list of eligible candidates under the scheme criteria should also be fixed to shortlist those dependents who would not be entitled to get compassionate appointment considering their financial status and attending circumstances so that trauma of uncertainties should not be suffered by all the applicants waiting for their turn.

38.5. In absence of any procedure as mentioned in direction No.3 and 4 or in case of failure to prepare the Scheme as contained in direction No.3 and 4 within the stipulated period, the application of the applicant for compassionate appointment shall be disposed of without considering the weightage /merit point earned by the applicant and shall be decided keeping in view the direction No.1 and 2 strictly in terms of the scheme for compassionate appointment as contained in O.M. No. 14014/6/1994-Estt(D) dated 09.10.1998 as amended from time to time by the Competent Government, against the vacancies meant for compassionate appointment to the dependents of regular staff/employees of Postal Department, if any, within a period of four (4)months from the date of communication of this order.

38.6. In case of failure to prepare the Scheme as contained in direction No.3 and 4 within the stipulated period, till new Scheme is prepared and enforced by the Postal Department, all other applications of the dependents similarly situated seeking compassionate appointment shall be disposed of without considering the weightage /merit point earned by those applicants and shall be decided keeping in view the direction No.1 and 2 strictly in terms of the scheme for compassionate appointment as contained in O.M. No. 14014/6/1994-Estt(D) dated 09.10.1998 as amended from time to time by the Competent Government, against the vacancies meant for compassionate appointment to the dependents of regular staff/employees of Postal Department, if any.

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 (Jaya Das Gupta)  
 Member (A)

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 (Vishnu Chandra Gupta)  
 Member (J)

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