

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 12th day of March 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00880 of 2017

Surya Kumar S/o Late Rama Shankar Singh, R/o Village – Rasoolpur,
Post – Khajuroi, District – Mirzapur, U.P.

.....Applicant

By Adv: Shri O.P. Gupta

Versus

1. Union of India through the Secretary, Ministry of Tele Communication, Government of India, Department of Posts, Dak Bhawan, New Delhi.
2. Senior Superintendent of Railway Mail Service, 'A' Division, Allahabad, Department of Post, Allahabad.
3. Chief Post Master General, U.P. Circle , Lucknow

.....Respondents

By Adv. Shri R.N. Ojha

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

1. The present Original Application has been filed by the applicant seeking following reliefs:-

- “(i) to quash rejection order dated 5.7.2017 (A-5) and
- (ii) to direct the competent authority (Respondent No. -3) to consider the candidature of applicant for compassionate engagement as earliest in the light of Circular Dt. 17.12.2015 (A-6) and if he is found suitable, he may be offered compassionate engagement as earliest, as per his qualification so that he may be offered compassionate engagement as earliest, as per

his qualification so that he may be able to help the family of deceased father.”

2. The proceeding in the present case has disposed off in terms of Rule 16 of CAT (Procedural) Rules, 1983. On 15.02.2019, nobody was present on behalf of respondents and the case was listed for 26.02.2019 with direction that the case would be decided under Rule 15 or 16 of CAT (Procedural) Rules, 1983. On 26.02.2019, nobody appeared on behalf of respondent and case was heard as per C.A.T. (Procedural) Rules, 1987.
3. Brief facts of the case as projected by applicant Surya Kumar are that his father, Rama Shanker Singh died in a vehicular accident on 07.07.2009 while employed as Mailman casual labour in Varanasi Railway Mail Service (RMS) under the supervision of respondent No. 2. As per the applicant, the services of deceased were terminated but was reinstated by order of the Tribunal with 50% back wages vide order dated 02.01.2006 and since Rama Shanker died during this period he could not be physically reinstated. On the non-payment of back wages, applicant filed an execution application wherein direction was given to respondents to pay the back wages and also consider the application for compassionate appointment if applied for by the legal heirs of deceased, as per, Rules.
4. It is the further case of applicant that the application for compassionate appointment was rejected by the respondents vide

order dated 21.01.2016 on the ground that the dependents of casual labour are not entitled to compassionate appointment. In the O.A. filed against the rejection, the Tribunal vide order dated 02.05.2017 directed the respondents to re-consider the compassionate appointment application taking into account circular dated 17.12.2015 issued by Government of India for appointment of dependent of deceased casual employee compassionate ground and also observed that the respondents also keep in mind that order of reinstatement of Rama Shanker has attained finality. The representation dated 18.05.2017 was rejected by respondent No. 2 vide impugned order dated 05.07.2017 (Annexure- A5).

5. The admitted facts are that O.A. No. 633/1998 was allowed vide order dated 02.01.2006 with direction to reinstate deceased Rama Shanker in the same status as he was prior to his termination of his service w.e.f. 01.06.1998 and would be entitled to 50 % of the back wages of the period from 01.06.1998 till date of reinstatement.

6. The relevant part of the impugned order reads as follow:

“Please read para 2 of the above “it has been decided by the competent authority to allow compassionate engagement to one of the dependent family members of such casual labour engaged on or before 01.09.1998 only in case where one dies while at work due to furnish activity/dacoity/Robbery/Serious accident/Natural calamity like fire flood, earth quake etc. The above rule dt. 17.12.15 is crystal clear that the dependent of only those casual labours will be

engaged on compassionate grounds who are working in department (while at work). As such the matter of compassionate engagement is not being covered under above rule dt. 17.12.15 because on the date (07.07.2009) of death of your father i.e. Shri R. S. Singh, his services were dispensed and the order dt. 02.01.2006 of Hon'ble Tribunal could not be complied with due to the interim stay order passed by the Hon'ble High Court Allahabad in the year 2012 after his death, In this way neither your father was in working period in department nor the orders dt. 06.01.2006 of Hon'ble Tribunal was complied upto the death on dt. 07.07.2009. As such your case regarding the engagement on compassionate grounds is not covered under order 32 dt. 17.12.15 of Postal Department.

Therefore keeping in view of the directions of Hon'ble CAT Allahabad, your representation and the Departmental circular No. G.I Department of Posts letter No. 17-17/2010-GDS/1 dated 17.12.2015 your prayer with regards the compassionate appointment is not considerable and accordingly rejected."

7. Looking to the above quoted portion of the impugned order of rejection dated 05.07.2017, respondents aver therein that the order of reinstatement of Rama Shanker could not be implemented as when Rama Shanker died on 07.07.2009, the order dated 02.01.2006 of the Tribunal was in abeyance due to a stay order passed by Hon'ble High Court. However, respondents did not take into account that the Writ petition in which the interim stay order was passed stood abated by order dated 02.01.2012 of the Hon'ble

High Court and specifically mentions that interim order, if any, stands vacated.

8. It is also an admitted fact that 50 % of back wages was disbursed to the legal heirs of deceased Rama Shanker on 06.07.2016. That the respondents did not implement the order of reinstatement of deceased Rama Shanker but disbursed the back wages does not efface the order of reinstatement. The very disbursement of back wages would give rise to presumption that respondents accept the order of reinstatement of deceased Rama Singh without demur. It would be deemed that Rama Singh stood reinstated though not physically since he has died during the litigation, however formal order is yet to be passed, which the respondents are bound to do so.
9. Looking to the facts of the case, it is clear that the reasons given by the respondents in rejecting the application of the applicant Surya Kumar for compassionate appointment cannot stand the test of law. Accordingly, the impugned orders dated 05.07.2017 (Annexure A5) is set aside and respondents (Competent Authority) is directed to re-consider the application for compassionate appointment and dispose of the same strictly in accordance with the terms, intent and purpose of the Department circular No. G.I. Department of Posts Letter No. 17- 17/2010 – GDS dated 17.12.2015 and dispose of the same by way of a speaking and reasoned order within a

period of two months with intimation to the applicant. O.A. is accordingly disposed of. No order as to costs.

(Rakesh Sagar Jain)
Member (A)

/Shashi/