

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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Date of order: 2.5.2016

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

No. O.A. 818 of 2011 ASISH DAS

VS.

UNION OF INDIA & ORS. (Posts)

No. O.A. 819 of 2011 GOPAL CH. BEJ

VS.

UNION OF INDIA & ORS. (Posts)

No. O.A. 820 of 2011 ARUN KR. ROY

VS.

UNION OF INDIA & ORS. (Posts)

For the Applicant : Mr. S. Banerjee, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel
Ms. R. Basu, Counsel

ORDER (Oral)

Justice Shri Vishnu Chandra Gupta, Judicial Member:

Heard Ld. Counsel for the applicants and Ld. Counsel for the respondents in all the three cases which are analogous, as similar question of law and fact are involved in these cases. These cases are thus, being disposed of by a common order.

2. In all the three cases the applicants sought appointment on compassionate ground on account of death of their father who are working in the Postal department in Gr. 'C' and 'D'. They died in harness in between 1996 to 1998. The applicants applied for compassionate appointment in place of their father. But they have not been given regular appointment for want of vacancies



and have offered the appointment as Gramin Dak Sevak (GDS) which is not a regular cadre post in the Postal department.

3. Reply has been filed by the respondents alleging that the applicants have been appointed as GDS for want of vacancies and in view of the appointment letter they have no right now to present this petition because in the appointment letter it has been categorically mentioned that they will not claim in future for any regular post.

4. During the course of hearing in pursuance of the instructions issued by this Tribunal an affidavit has been filed by the Postal department on 22.4.2016 wherein Govt. of India order dated 8.2.2001 passed by the Ministry of Communication, Department of Posts having No. 24,1.99-SPB.I and another letter of November, 2000 issued by the Ministry of Personnel, PG and Pensions, Department of Personnel & Training i.e. DOPT relating to compassionate appointment and Office Memorandum issued in pursuance thereof on 22.6.2001 were enclosed. All the three letters are reproduced hereinbelow for ready reference as they are the basis for granting the appointment to the applicant:

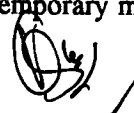
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F.No.42012/4/2000-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi

Dated the November, 2000

OFFICE MEMORANDUM

**Subject: -Compassionate Appointment proposal of Department
 Of Posts for relaxation of 5% limit.**

The undersigned is directed to refer to Department of Posts UO No. 24-1/99-SPB-I dt. 24.10.2000 on the above subject and to say that in U.K. Nagpal's case the Supreme Court has held that as a rule appointments in public service should be made strictly on the basis of open invitation of applications and merits and appointment on compassionate grounds is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say one or two per cent or maximum of live per cent and if it exceeds that it will no longer be an exception. Further, any relaxation of the 5% limit even as a temporary measure



will lead to bulk appointment on compassionate grounds which is bound to result in dilution of standards. As appointment on compassionate ground is not based on merit and it is also not through open competition it would, therefore, adversely affect the efficiency of the administration and hence would not be in public interest.

2. The scheme of compassionate appointment already provides for objective assessment of the financial conditions of the family. There is/was no provision for approving cases in the absence of vacancies for compassionate appointment and keeping them in the Waiting List. The Waiting List for compassionate appointment referred to in our OM dated 9.10.98 does not refer to cases already approved for such appointment but those waiting for consideration and accommodation for such appointment by the competent authority. The question of consideration and accommodation would arise only if there is vacancy for that purpose. In any case, it is the competent authority in the office where there is a vacancy to accommodate the applicant has to decide on the merits of the case. Hence, in the absence of vacancy no useful purpose would be served by consideration and approving and keeping the applicant's case in the Waiting List. Hence, the applicant has to be considered only when there is a vacancy to accommodate and that too by the competent authority in that office. It was, therefore, not correct on the part of the Department of Posts to have prepared a Waiting List of approved cases for appointment on compassionate grounds when there were not sufficient vacancies to accommodate them.

3. Any relaxation of 5% limit, even as a temporary measure for making appointment on compassionate grounds will have repercussions in other Ministries/Departments as it will lead to similar demands from them also and thus it will lead to bulk appointments on compassionate grounds in the Government of India at the cost of meritorious candidates who may also be equally deserving ones which will not be in the public interest.

4. Having regard to the above position, even on reconsideration, there is no scope for relaxing the ceiling of 5% even as a temporary measure for making appointments on compassionate grounds. It is, therefore, regretted that the proposal of Department of Posts for the same cannot be agreed to.

(K.K. Jha)
Director

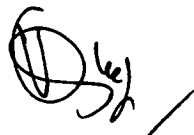
No. 37-16/2001-SPB-I
Government of India
Ministry of Communications
Department of Posts

Dak Bhavan, Sansad Marg,
New Delhi - 110 001

Dated: 25th July, 2001

To

All Pr. CPMG
All CPMsG



Subject: Compassionate appointment proposal of candidates approved for the same who have been kept in the wait list prior to this office letter No. 24-1/99-SPB-I dated 8.2.2001.

Sir/Madam,

I am directed to attract your attention to this office letter No. 24-1/99-SPB-I dated 8.2.2001 on the above subject in which instructions were issued regarding discontinuation of waiting list of candidates approved from compassionate appointment in consultation with Department of Personnel & Training. It was mentioned in the above letter that as per the clarification given by the Department of Personnel & Training in their O.M. dated 24.11.2000, maintenance of the waiting list of approved candidates for compassionate appointment was to be discontinued immediately if not already discontinued and that the candidates whose names are already in the wait list for appointment on compassionate ground but who could not be appointed due to want of vacancies within 5% limit may be asked to express their willingness for consideration by other Ministries and their names should be circulated to other Ministries subject to their willingness.

2. The Department of Personnel & Training in their O.M. No. "14014/18/2001-SPB-I dated 6.7.2001 has directed that in future the Committee for considering request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should limit its recommendations to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under DR quota in any Group 'C' or 'D' post prescribed in this regard. The practice of circulating names of the deserving applicants to other Ministries/Departments has been discontinued.

3. Since wait listing of candidates for compassionate appointment has been dispensed with chance of absorption of the approved candidates kept in the waiting list against vacancies available within 5% ceiling of direct recruitment quota in this Department or elsewhere is remote. This may cause hardship to the approved candidates who have been waiting for some time. In consideration of these aspects, it has been now decided to consider such wait listed candidates for the vacant posts of Gramin Dak Sewaks if they are willing and eligible for the post. Therefore, you are requested to offer GDS vacancies to the dependents of regular employees (Group 'C' or Group 'D') who are already approved for appointment on compassionate ground and are still waiting absorption for want of regular departmental vacancies as on 8.2.2001. Such approved required conditions of recruitment like educational qualifications, etc. It will have to be made clear to the approved applicants that with their acceptance of the GDS posts, they would have no further claim for appointment on any special consideration against regular departmental vacancies and that they would have to take their turn as per present departmental vacancies. An undertaking in this regard may be obtained from these candidates before giving any appointment.

4. Action may be taken to ascertain the willingness and choice of stations, if any, from the approved and wait listed candidates for consideration of their appointment against GDS posts and necessary follow up action may be taken as



per the above instructions. However, wherever recruitment action to fill up GDS posts is already in progress, that action may continue and these posts may not be offered to waitlisted candidates.

5. Offer of GDS posts to waitlisted candidates will be valid for one year and the scheme will be reviewed after one year. In the meantime, action taken report indicating number of GDS posts offered to wait listed candidates and the particulars of beneficiaries may be reported quarterly to this Directorate beginning with quarter ending 30.9.2001.

Yours faithfully,

(A.K. Dash)
Director (Staff)"

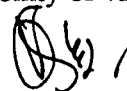
F.No.14014/18/2000-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi 110001
June 22, 2001

OFFICE MEMORANDUM

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

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



appointment and it should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under DR quota in any Group 'c' or 'D' post prescribed in this regard in para 7(b) of Office Memorandum dated October 9, 1998 referred to above.

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

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

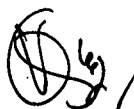
5. Hindi version will follow.

(K. K. JHA)
DIRECTOR(Establishment)"

Perusal of this circular clearly depicts that the appointment on compassionate ground would be made on regular vacancies available in the department in terms of the office memorandum but if vacancies are not available the offer shall be made to the candidates seeking appointment on compassionate ground for appointment as GDS and if they accept the offer and opt. they may be appointed as GDS without having any claim in future on regular post.

5. The applicants were given appointment in 2003 as GDS in pursuance of the aforesaid circulars and letters and the present petitions were filed in 2011. Our attention has been drawn by the Ld. Counsel for the applicant that they had applied under RTI to know about the existing vacancies available in the relevant year and according to him there were vacancies. However, we are not inclined to go back more than a decade to search out the way as suggested by the Counsel for applicants. In the affidavit filed by the Ld. Counsel on behalf of the respondents it is clearly mentioned that after 15 years or more the vacancy statement cannot be readily traceable due to expiry of preservation period.

6. Therefore, we are of the view that this petition should not remain pending and should be disposed of finally.



7. Hence, we are deciding this case in the following manner:-

That the appointment given to the applicant as GDS shall be deemed to be in accordance with law unless it is demonstrated by them that in relevant year the vacancies were available and those vacancies may be filled by way of compassionate appointment in terms of the aforesaid letters of the Govt. of India issued both by DOP&T as well as the Postal authority. In case vacancies in terms of aforesaid letter referred hereinabove would be available at the relevant year ¹⁹⁵⁴ be filled by candidates seeking appointment on compassionate ground their claim may be considered for regular post.

8. In terms of the aforesaid direction all the three O.A.s are disposed of.
There shall be no order as to costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

SP