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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1453/2003

New Delhi, this the 21st day of January, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Bijender Rohilla,
S/o Late Shri Om Prakash,
R/o House No. 181,
Vill. & PO : Siraspur,
Delhi - 110 042

Through Shri S.K. Rungta &
R.S. Mahendra Advocates,
Chamber No. 137-A,
Lawyers Chamber Block,
Delhi High Court, New Delhi

..... Applicant
(By Advocate : Shri S.K. Rungta)

Versus

1. Union of India
Through Secretary,
Department of Communications,
Sanchar Bhavan, New Delhi
2. Chief Post Master,
GPO New Delhi

..... Respondents
(By Advocate : Shri R.P. Aggarwal)

O R D E R (ORAL)

The applicant has filed this OA against the orders of the respondents dated the 18th April, 2002 whereby he has been informed that his case for compassionate appointment does not come under the purview of the most deserving cases under the scheme for compassionate appointment under the Central Government against the 5% of vacancies falling under the direct recruitment quota and hence the Committee has not recommended his case.

2. The facts of the matter, briefly, are that the father of the applicant, namely, Shri Om Prakash Rohilla was employed in the Office of respondent No.2 in the year 1983 and that he served them with excellent and unblemished

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service record. He unfortunately died on 16.3.1998 due to cardiac arrest, leaving behind three minor sons including the applicant, his wife, his aged father and mother. The family of the applicant belongs to non-agriculture class and that the salary of the deceased father of the applicant was the only source of livelihood for the applicant and his entire family. The applicant himself is a college student and his other younger brothers are also students. His mother is a house wife and his grand father and grand mother are of old age. Finding no other financial support, the mother of the applicant represented the matter to the respondent No.2 vide her letter dated 23.9.1998 and prayed for appointment of her eldest son on compassionate ground. As he had not by then completed 18 years of age, the respondents informed her of their inability to consider her case. She was accordingly advised to submit her representation after the said son had attained the age of 18 years. The wife of the deceased Govt. servant accordingly represented to the Post Master, Gole Dak Khana, New Delhi on 21.10.2000 seeking appointment of her son on compassionate ground after he attained majority (Annexure A-4). They have also followed up the matter by regularly visiting the Office of the respondents and every time that they visited the office of the respondents they were told that the case was under consideration. However, finally the impugned communication was received.

3. The applicant has submitted that his case has been rejected without appreciating the true facts of the matter and hence this OA. He has stated that his financial status has not been enquired into nor has any opportunity been

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given to him to submit his position. Accordingly, he has pleaded that the impugned order is bad in law and is in violation of the rules and practices prescribed thereunder. he has accordingly prayed that the same may be set aside and the respondents directed to consider the case of the applicant.

4. The respondents, in their reply, have submitted that the scheme for compassionate appointment as contained in OM No.14014/6/94-Estt(D) dated 9.10.1998 provides for existing instructions on the subject as based on the review carried out in the light of the various Court judgements and other decisions including those taken on the various recommendations of the 5th Central Pay Commission as well as Study Reports of 1990-1994 as prepared by the Department of Administrative Reforms and Public Grievances. It makes a reference to such appointments being provided to a family member of a Govt. servant dying in harness or retiring on medical grounds, thereby leaving his family in penury and without means of livelihood. It also makes a reference to the need to take into account the assets and liabilities of the family of the applicant and other relevant factors such as presence of earning member in the family, size of the family, ages of the children, etc. It also makes a reference to the aspect of availability of vacancy for such appointment and that too within a year or within the ceiling of 5% under direct recruitment quota in Group 'C' & 'D' posts. Earlier, such case were also referred to other Departments for appointment of the candidates concerned against the vacancies available with them. However, the

Arvind Singh

DOP&T have now advised that such cases need not be referred to other Departments.

5. On perusal of the reply, it is observed that the respondents have applied their mind to the economic condition of the family of the applicant and have not found them in indigent condition and as such the case of the applicant was found to be outside the domain of financial indigency deserving consideration of the case on compassionate ground. They have given a break-up of the post retiral benefits given to the mother of the applicant and also the amount of family pension (Rs.2124/- plus DA per month) being received by his mother.

6. They have mentioned that the case of the applicant was considered by the Circle Relaxation Committee which met on the 7th and 8th February, 2002 to consider the cases of dependents of Govt. servants who died in harness or retired on medical grounds or were reported missing. The Committee considered and examined 131 cases as listed in Annexure 'A', 'B', 'C' and 'D' against 5% vacancies for the year 2001 under direct recruitment quota. They have arrived at a figure of 8 posts which could have been offered to the candidates for appointment on compassionate ground within one year. Focussing on the aspect of indigency and need for immediate assistance to a family to which the deceased employee belonged, they have referred to the decisions of the Hon'ble Supreme Court dated 8.4.1993 in the case of Auditor General of India & Others vs. G. Ananta Rajeswara Rao (1994) 1 SCC 1921 in which it has been held that the son or daughter or widow of the Govt. servant who died in

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harness and who needed immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable. The judgement of the Hon'ble Supreme Court dated the 4th May, 1994, in the case of Umesh Kumar Nagpal v. State of Haryana & Others {JT 1994 (3) S.C. 525 } also makes a reference to the fact that dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood can be appointed on compassionate ground. By citing the two cases, the respondents have endeavoured to highlight the fact that the whole object of giving appointment on compassionate ground is to enable the family of the deceased employee to tide over the sudden crisis and to relieve the family of financial destitution and to help it to get over the emergency. Offering such appointment, as a matter of course, irrespective of the financial condition of the family of the deceased, as submitted by the respondents, is legally impermissible.

7. The respondents have also referred to the decision of the Supreme Court dated 28.2.1995 in the case of the Life Insurance Corporation of India v. Mrs. Asha Ramachandra Ambedkar & Others {JT 1994 (2) S.C. 183} in which it has been held that the High Court and the Administrative Tribunals cannot give direction for appointment of a person on compassionate ground, but can only direct consideration of the claim of the applicant. Reference is also made to the decision of the Hon'ble Supreme Court in the case of

Umesh Kumar Nagpal

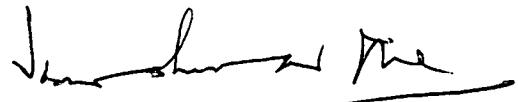
Himachal Road Transport Corporation v. Dinesh Kumar {JT 1996 (5) S.C. 319) wherein it has been held that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. This view has also been held in four other cases also, namely, Hindustan Aeronautics Limited v. Smt. A. Radhika Thirumalai JT 1996 (9) SC 197, Orissa SEB v. Raj Kumar 1999 SCC (L&S) 729, APSRTC v. Dannina Rajeshwari 1999 SCC (L&S) 1162 and BSEB v. Krishna Devi 2002 (3) Judgements Today 485.

8. It is observed that the case of the applicant has been given consideration by the respondents keeping in view the instructions relating to the financial condition of the family of the deceased employee and other relevant factors in this regard including the ceiling of 5% of posts under Direct Recruitment quota in Group 'C' and 'D' categories earmarked for the purpose and the same has not been found permissible mainly on account of the fact that the case of the applicant which was considered along with other 130 cases was not found covered within the 5% vacancies of Direct Recruitment quota for this purpose. It is observed that the financial condition of the family of the applicant received due consideration by the respondents/Central Relaxation Committee as it transpires from the details of the terminal benefits which have been received by the widow of the deceased employee and the monthly pension that she is drawing as indicated by the respondents. While the amount received by the widow of the deceased employee by way of terminal benefits and monthly pension including DA may not be sufficient for the family of the applicant keeping in view the fact that there is no other earning member in the

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family nor is the total amount of terminal benefits large enough to take care of the requirement of the family in which there are school going children only, it is presumed that the respondents did not find the case of the applicant fit to be accepted in relation to other cases also which might have been found to be more deserving. So, while the financial hardship being faced by the applicant and the family due to the reasons given in the OA can hardly be disputed beyond a point, it also remains a fact that the case has to be considered in relativity with other cases. We also do not see any reason to disbelieve the fact that the respondents have considered all the aspects of the matter and have not shown any lack of concern for the applicant while considering his case. However, keeping in view the fact that the case was not covered under the 5% vacancies as available for the purpose and also that there could have been more deserving cases, we find it extremely difficult to allow the OA.

9. Thus, having regard to the facts and submissions of the learned counsel for the parties in which reference has also been made to the observations of the Central Relaxation Committee, I find that the OA does not have the necessary merit and it has to fail, and the same is accordingly dismissed. No costs.



(SARWESHWAR JHA)
MEMBER (A)

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