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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 2307/2003

New Delhi, this the ^{16th} day of December, 2004

HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

1. **Smt. Omwati W/o Late Hira Lal,**
R/o Mohalla Qureshi, Bhim Nagar,
Amroha (U.P.)
2. **Surender Kumar S/o Late Hira Lal,**
R/o Mohalla Qureshi, Bhim Nagar,
Amroha (U.P.)

... **Applicants**

(By Advocate: Shri R.K. Shukla)

Versus

Union of India through –

1. The Secretary,
Ministry of Telecommunication,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi – 110 001
2. The Sr. Superintendent of Post Offices,
Moradabad Division,
Moradabad (UP); and
3. The Chief Post Master General,
Uttar Pradesh, Sub-Division,
Lucknow – 226 001

... **Respondents**

(By Advocate: Shri M.M. Sudan)

ORDER

HON'BLE MR. S.K. MALHOTRA :

The applicants in this OA have prayed that the respondents may be directed to offer the post of Dak Assistant to applicant No.2 on compassionate ground as already approved vide order dated 28.7.199 (Annexure A/1).

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2. The facts of the case, briefly, are that the father of the applicant No.2, who was working as Dak Assistant in the Moradabad Division, died on 7.7.1998 leaving behind his wife and six children. The applicants approached the department for compassionate appointment of applicant No.2 as Dak Assistant. The respondents' department, after considering his case, agreed to offer him the post of Dak Assistant on compassionate ground and an order to this effect was issued on 28.7.1999 (Annexure A/1). This was, however, subject to the condition that the appointment letter would be issued only on availability of a vacancy. It has been contended that the applicant has been waiting for the appointment letter during this period and had been approaching the department from time to time, but no appointment letter was issued. However, on 23.10.2001 the respondents issued a letter to him asking for his willingness to accept the post of Gramin Dak Sewak (G.D.S). It is stated that it is a temporary post and there is no possibility of its regularization. Moreover, this post carries a salary of Rs.2,200/- per month only without any allowance. The applicant is ready to accept this post provided the respondents give him an assurance in writing to offer him the post of Postal Assistant as and when a vacancy is available as has already been agreed to in principle vide order at Annexure A/1. The applicant has further stated that while he has not been offered the post of Postal Assistant, one Shri Radhey Shyam has been given appointment on compassionate ground to the post of Postal Assistant on 28.7.2003, in which case, his father had died on 3.1.2001 while in the case of the applicant, his father had died in 1998. His claim as a senior person in the waiting list has been ignored while a person junior to him has been given the post. This action on the part of the respondents is discriminatory.

3. The respondents have filed their written reply in which they have conceded that approval for granting compassionate appointment to applicant No.2 to the post of Postal Assistant was accorded vide order dated 28.7.1999. However, since no vacancy under 5% quota for compassionate appointment was available, the applicant could not be appointed to the post of Postal Assistant. He, however, has been approaching the authorities for appointment on the ground of poor financial condition, but since the vacancy was not available, he could not be given the post of Postal Assistant. However, taking a sympathetic view, the respondents vide letter dated 23.10.2001 offered him the post of G.D.S. which he

has not accepted. They cannot give any assurance to the applicant that the post of Postal Assistant would be given to him.

4. I have heard the learned counsel for both the parties and have also gone through the pleadings and the materials placed on record.

5. During the course of discussion, the main point raised by the learned counsel for the applicant is that once it has been accepted in principle to offer him the post of Postal Assistant vide order dated 28.7.1999, he should have been considered for issuance of appointment letter as and when any vacancy was available. However, the respondents, ignoring his claim, has offered the post to one Shri Radhey Shyam who was much junior to him as his father had died in 2001 while the offer of this post was made to the applicant in 1999. He is not in a position to accept the post of G.D.S. as this post carries a very meagre salary of Rs.2,200/- and is also a temporary one. He is, however, ready to accept the post provided he is given an assurance that if any vacancy of the post of Postal Assistant becomes available in the near future, it would be given to him. On the other hand, the learned counsel for the respondents stated that the applicant was entitled to be considered for appointment on compassionate ground against the 5% quota of vacancies available during the period the offer was made to him, i.e., in the year 1999-2000. He had no claim over the vacancies, which became available thereafter. Shri Radhey Shyam was appointed against the 5% quota of vacancy available at the relevant period in 2003-2004. They have offered him the post of G.D.S., considering the financial condition of the family, but they are not in a position to give any assurance to give him the post of Postal Assistant, as he has no right over a vacancy, which will become available hereafter.

6. After considering the rival contentions of both the parties, it is apparent that the applicant No.2 was approved for appointment to the post of Postal Assistant on compassionate ground vide order dated 28.7.1999. But this offer was conditional to the effect that the offer will be made subject to availability of a vacancy. The applicant has been waiting for four years to get the appointment letter. Since the vacancy was not available within the 5% quota, as contended by the respondents, it was their duty to inform the applicant that the post cannot be offered to him for want of vacancy. No such decision was conveyed to the

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applicant. It was only in 2003 that they offered him the post of G.D.S. An inference can be drawn that they have kept his name in the waiting list, during the period 1999 to 2003 and since, according to them, no vacancy was available, they offered him the post of G.D.S. vide order dated 20.5.2003 (Annexure A/3). It is observed that while this applicant has been offered the post of G.D.S., another candidate Shri Radhey Shyam has been appointed to the post of Postal Assistant on 28.7.2003 in whose case his father had died in 2001. It only shows that in 2003 a post of Postal Assistant was available within the 5% quota for compassionate appointment. It is not understood as to why this post of Postal Assistant that was available in 2003 was not offered to the applicant and instead it was given to Shri Radhey Shyam. In all fairness, after keeping the applicant waiting for four long years, this post should have been given to him before considering the claim of Shri Radhy Shyam. The learned counsel for the applicant has also brought to my notice the contents of para 2 of the order dated 28.7.1999 in which it is clearly stated that the compassionate appointment has been approved and would be valid even after the expiry of five years from the date of the death of the deceased employee and for this, the required relaxation has been granted. In my considered opinion, after having issued such a letter, it was incumbent upon the respondents to offer the post of Postal Assistant to the applicant against the vacancy, which became available in 2003 before considering the case of Shri Radhey Shyam.

7. The learned counsel for the applicant also stated that for the post of G.D.S. one of the conditions to be fulfilled is that the concerned employee should be residing in the same village where he has to work as G.D.S. and he should have an alternate source of income. These conditions are not fulfilled in the case of the applicant as the post has been offered to him at a far off place and he does not have any alternate source of income. According to him, even if the applicant accepts the post of G.D.S. in principle, he is likely to be declared ineligible in view of the rules. In any case, he is still willing to accept this post provided that an assurance is given that the next available vacancy for the post of Postal Assistant would be given to him, against the quota for compassionate appointment.

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8. Taking into consideration the facts and circumstances of the case, the OA is allowed to the extent that the respondents will consider applicant No.2 for appointment to the post of Postal Assistant on compassionate ground against any existing vacancy or against the first available vacancy under 5% quota within six months from the date of receipt of a copy of this order.

No costs.


(S.K. Malhotra)
Member (A)

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