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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2901-2003

NEW DELHI THIS 19th DAY OF AUGUST 2004

HON'BLE SHRI S.A. SINGH, MEMBER (A)

Smt. Gayatri Devi W/o Late Bhajan Lal
Ex-Gramin Dak Sevak Delivery Agent (GDS-Delivery Agent)
And Offg. GDS Branch Postmaster,
Post Office Karahara Via- Bichpuri-Agra.

R/o Vill and Post – Karahara
Via Bichpuri,
Distt: Agra (UP)

.....Applicant

(By Shri D P Sharma, Advocate)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Communication and I.T.
Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General
UP Circle - Lucknow
3. The Sr. Supdt. Post Offices,
Agra Division – Agra

.....Respondents

(By Shri S.M. Arif, Advocate)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

Applicant who is legal heir of late Shri Bhajan Lal Ex.Gramin Dak Sevak Delivery Agent (GDS-Delivery Agent) had applied for compassionate appointment. This had been earlier rejected vide order dated 5.9.2002 on the ground that the transfer certificate produced by the applicant i.e. widow of the deceased government servant was found to be bogus.

2. Against this order the applicant filed OA 3401/2002 which had been disposed of, in absence of the applicant, by order dated 2.1.2003 directing the respondents to treat the OA as a representation of the applicant and review the

case of compassionate appointment in the light of instructions within a period of two months .

3. In compliance to these directions the case of the applicant was re-considered and the appointment was not recommended vide impugned order dated 3.9.2003 for the following reasons:-

"The above case has been considered by CRE in its meeting held on 31.7.2003 and the case was not recommended for appointment on compassionate grounds because -

As per DG(P) letter No. dtd, 15.2.01 services of Ex. Official should be satisfactory prior to death but services of the ex. Official was not satisfactory because disciplinary case under rule-10 of GDS (Conduct) employment Rule-2001 was pending at the time of death."

4. It is the case of the applicant that she is eligible for compassionate appointment as her case falls within the ambit of compassionate appointment. Her candidature should not have been rejected on the grounds that the conduct of the deceased employee was not satisfactory because of the institution of disciplinary proceedings before his death. These proceedings abated on his expiry. Hence adverse conclusion cannot be drawn. A disciplinary case under Rule 10 of GDS (C&E) Rules 2001 merely posses proposed allegations and not guilt. Further FR 54(b) clearly states that notwithstanding any thing contained in Rule 53 where a Government Servant under suspension dies before the disciplinary or the court proceeding instituted against him are concluded the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid. Hence as per FR 54 (b) Rule in absence of any other proof like CENSURE or any other punishment during his service period merely institution of disciplinary proceedings cannot be considered as unsatisfactory conduct. Moreover, with his death the proceeding abated .

5. The applicant also pleaded that her condition is such that she is ~~need~~ of compassionate appointment being below poverty line and has to support 2 minor

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daughters and 1 minor son without any source of income and moreover in the earlier OA No 3401/2002 applicant has not been heard in merit as orders have been passed ex parte, therefore her case should be re-considered .

6. Needless to say that this was strongly contested by the respondents who pleaded that the principle laid down by the apex court in the judgement dated 4.5.1994 in **Umesh Kumar Nagpal Vs. State of Haryana and Others (JT 1994 (3) SC 525)** that only dependent of an employee dying in harness leaving his family in penury and without means of livelihood can be appointed on compassionate grounds. Further the Hon'ble Supreme Court held in its judgment dated 28.2.1995 in the case of **LIC Vs. Asha Ramchandra Ambedkar and Others (JT.1994(2) SC 83)** that High Courts and Administrative Tribunal cannot give directions for appointment of a person on compassionate ground but can merely direct consideration of the claim for such appointment and in this case the respondents have done so twice. The conduct of the deceased employee was not considered to be good and reasonable as disciplinary proceedings were based on a complaint, which was enquired by SDI(P) North and the PE report found the allegation proved against late Shri Bhajan Lal . Shri Bhajan Lal was placed under suspension and Charge Sheet under Rule 10 GDS(C&E) was issued on 5.9.2001 . He expired on 17.4.2002 leaving behind one son and two daughters . Terminal benefits amounting to Rs. 47,600/- has been paid and the deceased family having a pucca house . Moreover, the educational certificate submitted by the applicant for compassionate appointment was found to be forged.

7. FR 54(b) is not applicable to EDP employees and as such this rule is not relevant in this case. Moreover the applicant cannot challenge the impugned order as it has been passed in terms of DG(P) letter No. 17-9/2001 ED & Trg. Dated 15.2.2001 and this letter has not been challenged by the applicant. Therefore, the OA having no merit needs to be dismissed.

8. In rejoinder the applicant stated that there is no need to challenge the DG(P)'s letter as the conduct of the applicant was not unsatisfactory.

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9. I have heard the counsel for the parties and gone through the documents brought on record. The case of the applicant is that rejection of the claim of the applicant i.e. legal heir of the deceased for appointment could not be rejected on the ground of unsatisfactory conduct as there was nothing to show that his conduct had been found unsatisfactory during the period of his service. He had not been punished or any penalty imposed during service. Only departmental proceedings were initiated which abated on expiry of the employee. It is not correct to draw adverse conclusion merely because of the presence of departmental enquiry before his death. Even on merits the applicant has a strong case for compassionate appointment.

10. The respondents have contested the above arguments stating that the departmental proceedings initiated are based on a complaint which had been enquired into by SDI(P) North and allegations had been proved in that enquiry against late Bhajan Lal. Hence prima facie evidence of unsatisfactory conduct exists. As per law laid down by the Supreme Court in the cases cited above it is not for the Tribunal to issue direction for appointment but the Tribunal can only direct consideration for appointment, which has already been done by the respondents. Hence the present OA needs to be dismissed.

11. The applicant has not pleaded that there has been any infirmity in consideration of the case for compassionate appointment except that mere presence of departmental enquiry was not sufficient to consider the conduct of the deceased employee as unsatisfactory and hence rejection of the claim of the applicant on this ground for compassionate appointment is wrong. FR 54(b) deals with the Govt. servant under suspension for purposes of determining the pay and allowances for the period he is under suspension and if he dies before the disciplinary proceeding is concluded. The present is a case of compassionate appointment, hence distinguishable and in any case the rule is not applicable to the applicant.

11. The respondents have placed before me the case of LIC Vs. Asha Ramchandra Ambedkar and Others (supra) wherein it has been held that High Court and Tribunal cannot give directions for appointment of a person on

compassionate ground but can merely direct consideration of the claim for such appointment. In the present case the respondents have considered the claim of the applicant twice and the applicant has not been able to show any violation of rules, regulations or law while making this consideration. I cannot agree with the assertion of the applicant that unsatisfactory conduct of the deceased employee is not established from his past record of service and that mere presence of disciplinary proceedings is not sufficient for concluding that service was not satisfactory. It is established law that the Tribunal cannot substitute its own judgment over that of the Administrative Authority if some material is available to the administrative authority for coming to the conclusion that it has.

12. It is not contested that here was a complaint against the deceased employee which was got investigated through SDI(P) North and the conclusion of the enquiry was that the allegations are proved. Therefore, it is not the case of no evidence before the administrative authorities concerning the assessment of unsatisfactory conduct of the deceased employee. I therefore see no reasons or grounds for interfering in the orders passed by the respondents.

13. In view of the above the OA fails and is accordingly dismissed. No orders as to cost.



(S.A. Singh)
Member (A)

Patwal/