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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.3173-A /2003

This the 6th day of October, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

1. Dinesh Kumar S/O late Om Prakash,
R/O Ghas Mandi, Patti Mehar,
Barout-250611,
Distt. Baghpat (UP).
 2. Chander Kaur W/O late Om Prakash,
R/O Ghas Mandi, Patti Mehar,
Barout-250611,
Distt. Baghpat (UP).
- ... Applicants

(By Shri M. K. Bhardwaj, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communication
Posts, Dak Bhawan, New Delhi.
 2. Post Master General,
Meerut Division, Meerut (UP).
 3. Sr. Superintendent of Post Office,
Baraut (Meerut), Meerut.
 4. Asstt. Supdt. of Post Offices,
Baraut (Meerut Division).
- ... Respondents

(By Shri M.M.Sudan through Shri Y.S.Chauhan, Advocates)

ORDER

Shri Om Prakash, father of applicant No.1, was working as a Group 'D' employee with the respondents. He died on 4.9.1996. After his death applicant No.1 applied for appointment on compassionate ground on 9.5.1997. Since he was a minor at that

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time, he was informed by respondent No.3 that since he had not attained the age of 18 years, which is the minimum age for recruitment in government service, his case could not be considered. Applicant No.1 produced the birth certificate supplied by the Health Department of UP indicating that his date of birth was 12.7.1976 and not 11.2.1981. As such his case was prepared for consideration for appointment on compassionate ground and submitted to the Chief Post Master General, UP.

2. Applicant had earlier on approached the Tribunal against non-consideration of his claim through OA No.1716/2002 which was decided on 23.7.2003 with the following observations/directions to the respondents :

“9. I have carefully considered the rival contentions. As has been clearly settled by the various judicial pronouncements, supporting with the cases of Umesh Kumar Nagpal v/s. State of Haryana & Others (supra), the compassionate appointment is not a matter of right but a welfare measure adopted by the Government to help the dependant members of an employee who dies in harness or who is invalidated on medical ground, leaving the family in indigent circumstances, tide over their destitution, the same subject to the availability of vacancies, limited to 5% of those arising in Group ‘C’ and ‘D’ posts in every year and other conditions. While examining the case of any individual for compassionate appointment the respondents should consider the comparative merit of the case, the immediacy of the requirement, the availability of the resources of the family and other factors. The authorities should also consider whether the family had been able to tide over their difficulties for quite some time, which would show that compassionate appointment is not a must in such a case. It is the plea of respondents in this OA that they

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had kept all the factors in consideration while examining the case of the applicant. However, it appears from the examination of the material placed before me that what has gone against the applicant is the fact that the family has house and that an amount of Rs.1,04,170/- had been released to the applicant. This per se is not a justification for denial of the compassionate appointment. More so as the applicant has insisted that the amount released to the family was only Rs.70,000/- and not Rs.1,04,170/- and that major portion of the said amount was spent in the marriage of the daughter of the deceased. It is also worth mentioning that the applicant had been advised that his case would be considered after he attained the age of 18 years which was not followed up. Keeping the above in mind it would appear that the applicants' case would merit a second consideration.

10. In the above view of the matter the application succeeds and is accordingly allowed. The respondents are directed to consider the claim of the applicant once again in accordance with the rules and instructions on the subject and financial condition of the applicant and the observations made above. They may also give him a hearing before the decision is taken. This exercise shall be completed within three months on receipt of copy of this order. No costs."

3. Vide impugned order Annexure A-1 dated 17.11.2003, respondents have rejected applicant's claim once again stating, "he has not stated any new facts". It has also been stated that appointment on compassionate ground can be provided only to fill up 5% vacancies that arise for direct recruitment within a year. It is further stated that his case was re-considered by the Circle Relaxation Committee keeping in view the various instructions on the subject but he could not be approved for compassionate appointment.

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4. Arguments were heard in the case on 28.9.2004 and the case was closed for orders directing the respondents to produce records relating to the personal hearing granted to the applicant as also the proceedings of the Circle Relaxation Committee, by 1.10.2004. Respondents have failed to produce the relevant records. As such, it could not be ascertained what was the ^{lb}number of vacancies to be filled on compassionate ground, when and how was applicant's claim re-considered by the Circle Relaxation Committee. As such Annexure A-1 dated 17.11.2003 is found to be extremely sketchy which does not disclose the facts and factors taken into consideration by the Circle Relaxation Committee while rejecting applicant's claim. This is nothing but arbitrary exercise of executive power. Respondents should not have done so in the teeth of observations and directions made on 23.7.2003 in applicant's earlier OA.

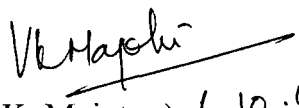
5. In the present OA, applicant has enclosed at page 29 the proof of marriage of one of the daughters of the deceased government employee which took place on 12.7.1997, i.e., after the death of the Government employee on 4.9.1996. It is specifically stated on behalf of the applicant that applicant had no source of income but liabilities of marriageable aged sister and younger brother and impending marriage of another sister, which took place in 1997, i.e., after the death of the deceased Government employee. These averments have not specifically been denied on behalf of the respondents. ^{lb}These material averments indicating indigent

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circumstances of the family having remained unrebutted and relevant record of re-consideration of applicant's case by the Circle Relaxation Committee having not been produced before the Tribunal despite its directions lead to the inescapable adverse inference in the case that applicant's case was rejected not on merit but arbitrarily in violation of observations and directions to the respondents in the earlier OA as stated above.

6. In the light of the above discussion, impugned order dated 17.11.2003 is quashed and set aside. Respondents are directed to consider the applicant for appointment on compassionate ground on the basis of the above observations and factors discussed above against the next available vacancy under the 5% quota for compassionate appointment.

7. The OA is allowed in the above terms.


(V. K. Majotra) 6.10.04
Vice-Chairman (A)

/as/