

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 25th day of February 2020.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00776/2016

Ramesh Chandra Yadav, aged about 23 years, S/o Late Bhola Nath Yadav, R/o Village Majhgawaon, Post Khamaria, District Bhadohi.

.....Applicant

By Advocate: Shri Ashok Kumar

Versus

1. Union of India through the Secretary, Posts & Telecommunication, Department, New Delhi.
2. Chief Post Master General, Uttar Pradesh Region, Lucknow 226001.
3. Assistant Director (Recruitment) through Chief Post Master General U.P. Region, Lucknow.
4. Post Master General, Allahabad Region, Allahabad 211001.
5. Postal Superintendent, Varanasi (Western) Region, Varanasi.

.....Respondents

By Advocate: Shri L.P Tiwari

ORDER

1. The present O.A. has been filed by applicant Ramesh Chandra Yadav seeking following reliefs:-

- "(i) That this Hon'ble Court may graciously be pleased to quash/aside aside the impugned order dated 30.7.2015 (Annexure No. A-4) passed by the respondent No.3.
- (ii) That this Hon'ble Court may be pleased to command the respondents to give appointment of applicant on compassionate ground under dying in harness rules in place of his father who had expired on 17.2.2009 during his service period in the respondents department.
- (iii) That this Hon'ble Court may graciously be pleased to direct the respondent No. 4 to decide the representation of the applicant dated 28.12.2015 (Annexure No. A-8) pending before him, made by the applicant for his appointment on compassionate ground under dying in harness rules, in place of his father who had expired on

17.2.2009 during his service period in the respondents department.

- (iv) That this Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of the case.
- (v) Award costs to the applicant".

2. Case of applicant Ramesh Chandra Yadav is that on death of his father Bhola Nath Yadav on 17.02.2009 while serving in respondent-department, mother of applicant filed an application/representation 25.11.2011 and 27.08.2012 seeking appointment on compassionate ground for her son (Applicant) which was rejected by way of impugned order dated 30.07.2015 (Annexure No. A4).

3. Applicant's further case as reflected in the O.A. is that:

"4.6 That the respondents department, thereafter have passed order on 30.7.2015 whereby it was informed that for year, 2014 as per quota for appointment on compassionate ground made, finalizing the name of candidates upto year 2013, in the meeting dated 17.7.2015 the consideration has been made and the highest merit point was fixed as 64 however only 40 points shown towards the candidature of applicant.

4.10 That the applicant thereafter has also made his representation on 28.12.2015 whereby it has been stated that the weightage point marks given to him are totally incorrect and the same has been calculated without any basis only on presumption, however, the applicant has already submitted the required documents for the said calculation and if the respondents will rightly calculate the marks the applicant certainly will get more than 70 marks, therefore, the impugned order passed by the respondent No. 3 is wholly illegal and not sustainable under the law.

4 (11) That by perusal of the impugned order dated 30.7.2015 passed by the respondent No.3, it is fully proved that the respondents have not define the weightage point marks specifically, in respect of family pension, terminal benefits, monthly income of earning member of the family, moveable

and immovable properties, number of dependents, unmarried daughters, number of minor children and left over service which are at least fixed by the Central Government In its orders issued from time to time".

4. Hence the applicant by way of this O.A. seeks a direction to the respondents to appoint him on compassionate grounds.
5. Respondents in paragraph No. 9 of their counter affidavit have set out the grounds for rejecting the case of applicant for appointment on compassionate grounds. Paragraph No. 9 reads as below:-

"9. That the contents of paragraph No. 4 (6) of the original application are not admitted as stated therein. In reply it is submitted that the case of the applicant for compassionate appointment was considered by the Circle Relaxation Committee U.P. Circle, Lucknow in its meeting held on 16th and 17th July 2015 taking into account the indigence of the family like total number of dependents, minor children, marriage of daughter, responsibility of aged parents, prolonged and major ailments, financial conditions and other relevant factors after inter-se-consideration of all the cases and because of limited number of vacancies due to ceiling of 5% of vacancies and highest merit point was fixed as 64, however, there were only 40 merit points against the candidature of applicant. As such, his case could not find place in the list of candidates approved for appointment on compassionate ground by the Circle Relaxation Committee, Lucknow vide order dated 30.07.2015 and the applicant was informed accordingly".

6. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
7. Case of applicant is that father of applicant Bhola Nath Yadav died on 17.2.2010 while working under the Administrative Control of respondents and the application filed by applicant for appointment of applicant on compassionate ground was rejected by the respondents vide impugned order dated 30.07.2015, which reads as under:-

"Mkd egkfuns kky;] ubz fnYyh ds i=kad 37&36@2004&, I ihch&1@I h fnukad 20-01-2010 ds funz kkuq kj esjV lokba/I ds vk/kkj ij vupEik ds vk/kkj ij fu; Dr grq o"kl 2014 dh fu/kkj jr fjfDr; ka, oa Mkd funs kky; dh vI tkrir vFkok vU; dkj.ks I s fjdR jg xbz o"kl 2013 dh ; Fkkof.kr fjfDr; ks dks ryukRed esjV ds vk/kkj ij Hkjus ds fy; s mDr izdjk I fgr I Hh izdjk.ka ij ifje. Myh; f'kFkyhdj.k I fefr ds }kjk fnukad 16 o 17-07-2015 dks I EiUu gqz cBd ea vH; Fkz dh 'ks{kd ; ka; rk rFkk I Ecf/kr i nks ij Hkrh fu; ekoyh dks /; ku ea j[krs gq s fopkj fd; k x; ka

2- vupEik ds vk/kkj ij fu; Dr grq fu/kkj jr ekudks ; Fkk[i k j o k f j d i y'ku] I ok fuofRr fgr yHk vkfJrks dh I {; k py vpy I EifRr] cPPks dh f'k{kk} vfookfgr yMfd; ks dh I {; k o vo'ksk I ok vof/k dk I kku yrs gq s ekeys dk xgu ijh{k.k fd; k x; k} fdUrq I ffer fjfDr; ka dks mi yC/k gks ds dkj.k ifje. Myh; f'kFkyhdj.k I fefr }kjk Jh jesk pUnz ; kno i f Lo0 HkoyukFk ; kno dh fu; Dr grq I tkrir ugh dh tk I dh D; ksd mudsbl izdjk.ka eaek= 40 esjV lokba/ FkA

dik; k I Ecf/kr vH; Fkz@vH; fFkz dh dks mi jkDrkuq kj I fpr djA"

8. For the reasons mentioned below, the impugned order is to be set aside. In the impugned order, the candidature of applicant for compassionate appointment has been rejected on the ground that he got 40 merit points whereas the minimum requirement was 64 merit points (mentioned in para 9 of the counter affidavit) to be considered for compassionate appointment and also on the ground that there were limited vacancies for compassionate appointment. Undoubtedly how 40 merit points have been calculated, has not been reflected in the impugned order and so the order is unreasoned and non-speaking order.
9. During the hearing, the learned counsel for the applicant reiterated the contents of the O.A. He drew attention of the Court to the impugned order, demonstrating the cryptic manner in which it has been worded, being non-speaking and un-reasoned in nature.
10. The impugned order is terse and is an unreasoned order spelling out no reason for rejecting the plea for compassionate appointment. There is nothing in the impugned order to show how the case of applicant was considered and why it was rejected. Merely averring in the impugned order that applicant is not fit for compassionate

appointment on the ground of securing in sufficient merit points but not giving the reasons and calculation of the merit points makes the order open to challenge of being declared null and void. The impugned order is singularly lacking in giving the reasons as to how and in what manner the case of applicant was considered and rejected by the respondents. It is a settle principle that giving reasons is a hallmark of a fair administration so as to enable the effected person to know as to the manner in which his lis has been dealt with.

11. It is a settled law that the necessity for recording reasons in an order be it judicial or administrative cannot be dispensed with. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240** has held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

12. An identical question came to be decided by Hon'ble Apex Court in the case of **Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496**. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

"7. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

13. In the instant case, it was incumbent upon the respondents to pass a reasoned order observing the principles of natural justice, which are totally lacking in the present case. Learned counsel for the applicant had further argued that while considering the case of applicant for compassionate appointment, respondents have taken into consideration the retirement benefits etc. giving to the family of deceased employee which is impermissible under law and placed reliance upon **Govind Prakash Verma Vs. Life Insurance Corporation of India and others, 2006 (1) ATJ 234 and Smt. Anar Kali and another Vs. Union of India, 2001 (2) ATJ 387.**

14. However, whether the retirement benefits can be taken into consideration or not in respect of compassionate appointment

depends upon the nature of rules governing the facts of the present case and would be a matter to be considered by the respondents.

15. Therefore, thus, seen from any angle, the impugned order dated 30.07.2015 (Annexure A-4 to the OA) does not fulfill the legal requirements as laid down by the Hon'ble Apex Court and has no legs to stand in law. The respondents have not considered the facts and recorded cogent reasons while rejecting the prayer of applicant. Therefore, I hold that the respondents have not recorded cogent reasons and examined the matter in the right perspective.

16. After analyzing all the points raised by the applicant in this OA, I find that order dated 13.10.2018 (Annexure A-1 to the OA) passed by respondents is wholly cryptic, non-speaking and without application of mind and have been passed in most casual and perfunctory manner.

17. Accordingly, the O.A. is allowed and the impugned order dated 30.07.2015 (Annexure A-4 to the OA) passed by respondent No. 3 is hereby quashed and set aside. Respondent No. 3 is directed to supply the calculation sheet showing how the merit points of applicant were calculated within 10 days. Thereafter the applicant may file representation before respondent No.3 if aggrieved by the calculation sheet made by the respondents within 15 days along with certified copy of this order from the date of receipt of a certified copy of this order. In case the representation is filed by the applicant, the matter of compassionate appointment of applicant would be considered afresh by the respondents and disposed off the same by passing a reasoned and speaking order in accordance with law and scheme for compassionate appointment as applicable to the respondents department with intimation to the applicant within a period of 2 months from the date of receipt of representation of the applicant. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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