

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 24th Day of February 2020)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00341 of 2019

(U/S 19, Administrative Tribunal Act, 1985)

Pawan Kumar Tiwari aged about 26 years, S/o Late Raj Kumar Tiwari, R/o Village and P.O Ram Nath Deoria, District Deoria.

..... Applicant

By Advocate: Shri K.K. Mishra

Versus

1. Union of India through Chief Post Master General, Department of Posts, India, U.P. Circle, Lucknow.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Superintendent of Post Office, Deoria Division, Deoria (U.P.).
4. Assistant Director (Recruitment), O/o Chief Post Master General, U.P. Circle, Lucknow.

..... Respondents

By Advocate: Shri S.K. Mishra (absent)

ORDER

1. Applicant Pawan Kumar Tiwari seeks the following reliefs in the present O.A.: -

- "(i) That this Hon'ble Court may graciously be pleased to quash and set aside the impugned order dated 13.10.2018 passed by respondent No. 4 (communicated on 30 Oct. 2018).
- (ii) That this Hon'ble Court may further be pleased to direct the respondents to consider the appointment of applicant on compassionate ground for the vacancy arose in 2017-18.
- (iii) 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.

(iv) Award costs to the applicant".

2. The case pertains to the relief regarding compassionate appointment sought by the applicant. On 30.01.2020 nobody appeared for the respondents and file was kept for appearance of respondents and hearing on 31.1.2020. Even on 31.1.2020 nobody appeared on behalf of respondents and therefore arguments were adduced by the learned counsel for the applicant.

3. Case of applicant is that his father Raj Kumar Tiwari died on 30.11.2016 while working under the Administrative Control of respondent No. 3 and the application filed by wife of deceased Raj Kumar Tiwari for appointment of applicant on compassionate ground was rejected by the respondents vide impugned order dated 13.10.2018, which reads as under:-

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ds idj.ks ij fopkj grq xfBr dh xbz ifje.Myh; f'kffkyhdj.k I fefr }kjk fnukd 27-09-2018 ,oa 28-09-2018
dks I EiU gbl cBd e; fo'k; xr idj.k ij ,oa vU; ,s s I Hh
idj.ks ij Mkd funsky; ubz fnYyh ds i=kd
37@36@2004&, I -i-h-ch &1@I h 20-01-2010] DOP&T No.
14014/2/2009-Estt (D) dated 03.04.2012 circulated vide
Directorate No. 37/34/2009-SPB-I/c dated 19.04.2012, DOP&T
No. 14014/2/2009-Estt (D) dated 11.12.2009 circulated vide
Directorate No. 37/34/2009-SPB-I/c dated 16.07.2010; DOP&T
No. 14014/02/2012-Estt (D) dated 16.01.2013 circulated vide
Dte's No. 37-4/2013-SPB-I/c dated 04.02.2013; DOP&T No.
14014/02/2012-Estt (D) dated 30.05.2013 circulated vide Dte's
No. 37/04/2013-SPB-I/c dated 12.06.2013; DOP&T No.
14014/02/2012-Estt (D) dated 25.02.2015 circulated vide
Directorate's letter No. 37-4/2013-SPB-I/c (Pt) dated 11.3.2015
and 37-4/2013-SPB-I/c dated 13.1.2016 es fofgr funks rFkk
Hkjh I jdkj ,oa Mkd fokhkh }kjk I e; I e; ij vupEik ds
vk/kkj ij fu; Dr grq tkjh fd;s x;s funks ds vUrXr] vH; FkZ dh 'ks{k d ;k; rk rFkk I a/s/kr inks ij Hkrh
fu; ekoyh dks /;ku ea j[krs gq;s fopkj fd;k x;kA ;g cBd
vupEik ds vk/kkj ij Hkrh ds fy, o'k 2016&2017 (01-01-
2016 Is 31-03-2017) dh fu/kkj r fjfDr;k dks Hkjus ds
fy, vk;kstr dh xbA**

**2- vupEik ds vk/kkj ij fu; Dr grq fu/kkj r ekudks ;Fkk
ikfjokfjd iku] I okfuofRr fgr ykk] ekfI d vk;] py vpy
I EifRr] vkfJrks dh I a/s/ks vfookfgr i;=;kA dh I a/s/ks
ukckfyx cPpks dh I a/s/ks vof/k dk I kku yss
gq rgyukRed esjV lokhV ds vk/kkj ij ekeys dk xgu
ijh(k.k fd;k x;kA ijUrq vupEik ds vk/kkj ij fu; Dr ds
fy, fu/kkj r I her fjfDr;k dks dkj.k ifje.Myh;
f'kffkyhdj.k I fefr }kjk Jh iou dekj frokjh i;= Lo0 Jh**

jkt d^ekj frokj^h H^o i^o Mkd l^gk; d^l n^ofj ; k e. My dh vupEik ds v^lk/k^j ij fu; fDr g^sq l^hr^r ugh dh tk l^hj D; k^od muds bl i^zd^j.k ea ek= 30 efjV lokb^h Fk^h ; g H^h l^hpr fd; k tkrk g^sfd vupEik ds v^lk/k^j ij fu; fDr ds fy, l^hr^r fd; s x; s v^llre v^llond ds ekeys ea 52 efjV lokb^h Fk^h

3- d^lk; k l^of/k^r v^lH; Fk^h@v^lH; fFk^h d^ls mijkDr i^gk 1 o i^gk 2 ea of.k^r rF; k^s ds l^lFk^h rnu^l kj l^hpr d^ls rFk^h v^llond dh ikoh y^ldj bl dk; k^hy; d^ls f^lj d^lMZ ea j[kus ds fy, H^hst^h”

4. I have heard and considered the arguments of learned counsel for the applicant and gone through the material in the shape of O.A., counter affidavit and rejoinder affidavit.
5. 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 30 merit points whereas the minimum requirement was 52 merit points to be considered for compassionate appointment and also on the ground that there were limited vacancies for compassionate appointment. Undoubtedly how 30 merit points have been calculated, has not been reflected in the impugned order and so the order is unreasoned and non-speaking order.
6. 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.
7. 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.

8. 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".

9. 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".

10. 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.***
11. 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.
12. Therefore, thus, seen from any angle, the impugned order dated 13.10.2018 (Annexure A-1 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.

13. 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.
14. Accordingly, the O.A. is allowed and the impugned order dated 13.10.2018 (Annexure A-1 to the OA) passed by respondent No. 4 is hereby quashed and set aside. Respondent No. 4 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.4 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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