

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Dated the Tuesday 12th day of December Two Thousand And Seventeen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A./310/00652/2014

M. Rahelamma,
W/o. (Late) M. Benjamin,
No.47, OSH Road,
Anjaneya Nagar,
Royapuram,
Chennai- 600 013

.....Applicant

(By Advocate : M/s. R. Malaichamy)

VS.

Union of India,
Rep. by the Senior Superintendant of Post Offices,
Chennai City, North Division,
Chennai- 600 008

...Respondents

(By Advocate: Mr. S. Navaneethakrishnan)

CAV On:29.11.2017

ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Applicant has filed this O.A. seeking the following reliefs:-

1. To call for the records of the Respondent pertaining to his order which is made in B2/Relxn/RRR dlgs/A3/12 dated 21.08.2012 and set aside the same, consequent to
2. direct the Respondent to appoint the applicant on compassionate grounds to anyone of the post on considering her education qualification, and
3. to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."
2. The case of the applicant is that her husband, Late M. Benjamin, while working as Group-D at Parktown Head Post Office, Chennai died in harness on 14.2.2003 leaving behind the applicant i.e. his wife and two minor daughters aged about 14 and 3 years. The applicant submitted a representation to consider her case for compassionate appointment due to indigent condition of her family. Although the applicant was engaged as 'GDS Outsider' in a purely temporary capacity by an order dated 19.07.2004, her case for a regular compassionate appointment was not considered. She was informed that there was no compassionate appointment from 2000-2009 as appointments had been made in excess of the available vacancies for compassionate appointment in the previous years which had to be adjusted against the future vacancies.
3. A new Scheme was framed on 20.01.2010 to consider cases of compassionate appointment pending since the year 2000, for vacancies of the years 2010-2011. As per the scheme a points system was followed to assess the financial condition of the families. The case of the applicant was considered accordingly and rejected by the respondents by an order dated 21.08.2012.
4. The grievance of the applicant is that the applicant should have been awarded 99 points keeping in view the financial condition of the family at the time of the death of her husband. However, merit points were awarded on

the basis of various criteria as on the date of consideration by the relevant committee and she was awarded lower merit points than she deserved. Had the financial condition of the family been assessed as on the date of death of her husband, she would have been awarded adequate merit points to be recommended for compassionate appointment. Aggrieved by non-consideration of her representation in this regard, she is before this Tribunal.

5. The respondents contest the claim of the applicant for compassionate appointment on the ground that her case was examined carefully but she could be awarded Relative Merit Points (RMP) of 84 only against RMP of 91 of the last selected candidate in MTS cadre. Hence, her case could not be recommended as there were more indigent families who had to be accommodated within the ceiling of 5% of direct recruitment vacancies in the said cadre.

6. The respondents further submit that the applicant's case was considered again by the Circle Relaxation Committee (CRC) on 28.07.2015. However, based on her financial condition, she was awarded RMP of 79 only against 85 awarded to the last selected candidate in the MTS cadre in the said year.

7. Heard learned counsel for the applicant as well as the respondents. Learned counsel for the applicant would submit that the applicant's elder daughter was unmarried and she was also a minor and dependent at the time of the death of her husband. Each of these criteria carried a merit point of 5. Thus the applicant had been under assessed by 15 points by not taking into consideration the family condition at the time of death of the applicant's husband. It is submitted that the points system had come into vogue much later in the year 2010 and the applicant would have been granted compassionate appointment if her case had been considered on the basis of the family's financial condition immediately after the death of her husband in the relevant year. It was not the applicant's fault that the respondents had granted excess appointment in the previous years and



decided to accommodate all such persons against the vacancies that arose in and after the year of death of the applicant's husband. The applicant's legitimate right to be considered for compassionate appointment could not be snatched away by the surplus appointees of the previous years. He would also point out that the applicant was only appointed against a GDS vacancy on purely temporary basis and the RMP of 'zero' granted to her because of income from such appointment was not in order. After all, the temporary employment was granted in lieu of compassionate appointment and it could not deprive the applicant of the points that she would have been awarded but for the appointment, it was argued.

8. Learned counsel for the applicant seeks to rely on the order passed by this Tribunal in O.A. No. 109/2016 wherein the relief sought by the applicant therein was granted on the basis of the following observations:-

"9. It is the respondents' contention that the CRC could not meet right from 2000 till 2011 on account of cases of compassionate appointment pending before the Hon'ble Supreme Court. It may not be anybody's fault, but it is certainly not applicant's fault that his case could not be considered any time after 2003 till 2012. The applicant was 16 years at the time of death of his father in 2003 and on attaining the majority in 2006, he immediately filed his application, on such application being favoured by the widow of the deceased employee. Hence, there was no delay on the part of the applicant in filing the application in time with reference to the date of death of the deceased employee. Therefore, we hold that the delay in conducting CRC can have no impact on the applicant's case. Accepting the respondents contention would mean that the date of assessment of dependency-based eligibility will shift according to the date convenient or feasible for respondents. There is no concept of any such shifting dates in the entire scheme. Only the date with reference to the death of the deceased employee is relevant for assessment of dependency based eligibility by applying parameters/weightage as per 2010 circular.

10. Hence the circular of 2010 and 2012 although rightly invoked by the respondents to consider the applicant's case, there was misapplication of circular of 2010 arising from a misinterpretation of '1998 compassionate appointment scheme' that relative merit points would be awarded on the basis of status of legal heir of the deceased employee in terms of

marriage of daughter at the time of examination of cases for the CRC.

11. Keeping the above position of law and guidelines in view, as on the date of death of the deceased employee, there were three dependents i.e. Wife, one unmarried daughter and the applicant. The respondent should have been given 5 merit points against the category 'No. Of Dependents' in the light of para 4 (b) (e) of the circular of 20.1.2010. As regards unmarried daughter, the applicant's sister was 19 years of age at the time of death of the deceased employee. Since the minimum age of marriage as per law is 18 years, she fell in the category of unmarried daughter at the time of death of her father. Her marriage, which had to be conducted after applicant's father's death, is considered as a "liability" under the scheme for the purpose of assessment of penury/indigency. The marriage was eventually performed in 2011 after the death of the employee. The liability of marriage got disposed of only in 2011 by the surviving widow. Hence on the date of death of the employee, the applicant was eligible for award of 5 points in the column 'No. of unmarried daughters as on 2012' and not 'nil' points as contended by the respondents. Hence, if 5 more points in the category of 'no. of dependents' and 5 points in the category of 'no. of unmarried daughter' are to be awarded, total 10 points should have been awarded to the applicant, taking his grand total from 63 to 73 points.

12. The cut off marks for PA category in 2012 was 69. Since other candidates with merit points below 73 were given appointment up to the 5% direct recruitment ceiling, the applicant's case was eligible for being recommended by the Circle Relaxation Committee in 2012 itself. But he was erroneously rejected due to misinterpretation of the circular.

13. The respondents rightly considered the applicant's case again in 2015 in the light of the DoP&T OM dated 26.7.2012 but rejected his case again since the cut off point in the PA/SA cadre was 66. The applicant, in fact, had 73 merit points hence all those below 73 points up to the cut off point of 66 were less indigent than the applicant but were granted appointment while applicant's case was again erroneously rejected due to misinterpretation of the provisions of the scheme.

14. As per the letter dated 25.8.2015 of the Respondent No.1, which was communicated to applicant on 1.9.2015 by Respondent No.2, it was stated that all the not recommended cases of CRC 2015 will be placed before the next CRC and examined on merit, along with fresh cases received, subject to the availability of vacancies under DR quota. It is not known whether CRC met thereafter.

15. It is evident that had the applicant been awarded 10 more points by the CRC 2012, as against 63 points, he became eligible for appointment in 2012 itself. The cut off points for PA cadre being only 69, the applicant had 4 points more than the above cut off point. Hence he should have been considered against the vacancies which came up before the CRC 2012. The eligibility to get appointed get converted into a right to get appointment in 2012 itself against 5% ceiling of DR vacancies even though compassionate appointment, per se, is not a matter of right.

16. Hence, the question of not granting compassionate appointment does not arise. The question would be as to how to accommodate the applicant for compassionate appointment, since he was wrongly rejected at the relevant point of time by misinterpretation and misapplication of policy/circular /guidelines of government, for which act the applicant is not at fault."

9. Learned counsel for the respondents would, however, argue that the view taken by this Tribunal in the said case was not correct as compassionate appointment could not be claimed as a matter of right. Granting points on the basis of condition at the time of death would mean that families which were more indigent and in dire need of such appointment presently would be deprived of the benefit in favour of those who were in need in the past but had been able to tide over the crisis somehow and were presently not so indigent. As the underlying principle of compassionate appointment is not a vested legal right but compassion, indigence in the past at the time of death of the employee could not be a criterion. He would accordingly seek a review of the order of the Tribunal in the case cited supra by a Division Bench.

10. I have carefully considered the facts of the case and the arguments presented by the rival sides. It is not in dispute that no fresh compassionate appointments were made during the period 2000-2010 on the ground that appointments in excess of available vacancies for compassionate appointments had been made previously. The matter was considered by the Hon'ble Supreme Court in Civil Appeal No. 7773/2009 and by an order dated 30.07.2010, "appellants were directed to regularize the services of all the



202 respondents therein who were working in the department in the short term/leave vacancies with effect from their date of appointment." The direction was given after taking note of the willingness of the department to accommodate them as a one time measure against residual vacancies of the department.

11. Notwithstanding the above, it must be noted that the accommodation of excess number of persons in the previous years against the vacancies that arose in and after the year in which the applicant's husband died certainly deprived her of an opportunity to be granted compassionate appointment on the basis of the indigent condition of the family at the relevant time. Although compassionate appointment is not a matter of right, basic principles of justice, would seem to demand that the claims of families that suffered during the year 2000-2010 are not denied in an unfair manner and for reasons which had nothing to do with the claimant family. Had there been no excess appointments in the previous years, there is reason to believe that the applicant's claim would have been considered more sympathetically in terms of the relevant scheme. I am, therefore, inclined to agree with the views of the learned single member of this Tribunal in the case cited supra as the order is backed by sound reasoning for assessment of financial condition as on the date of death of the employee.

12. I also find considerable merit in the argument of the learned counsel for the applicant that assessment of financial condition could not include the income from a purely temporary job offered by the respondents in lieu of regular compassionate appointment. As the offer was temporary and not in accordance with any scheme, it was liable to be terminated any time. Further, if and when compassionate appointment is granted, the income from the temporary appointment would cease and, therefore, such income as an indicator or otherwise of financial distress of the family is misleading.

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13. In view of the above, the respondents are directed to arrange to reconvene the meeting of the CRC to consider the case of the applicant as on the date of death of the employee and award RMP accordingly. The income from the purely temporary job offered in lieu of compassionate appointment shall not be taken into account for the purpose of RMP. Accordingly, if the applicant is found to have obtained merit points **above the cut off**, she shall be considered for compassionate appointment to a **MTS** post.

14. The O.A. is disposed of with the above direction. No costs.