

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH, CHENNAI**

Original Application No.109 of 2016

Dated 26th day of September, Two Thousand and Seventeen

P R E S E N T

CORAM: HON'BLE SMT. B. BHAMATHI, MEMBER(A)

R. Vasanth,
S/o. (Late) R. Rajan,
Old No.96-B, New No.170,
Kodambakkam High Road,
Nungambakkam,
Chennai- 600 034.

.....**Applicant**

[by Advocate: M/s. R. Malaichamy]

Vs

1. Union of India,
Rep. By the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai- 600 002;
2. The Senior Superintendent of Posts,
Chennai City Central Division,
Chennai- 600 017.**Respondents**

[by Advocate: Ms. Shakila Anand]

Reserved on 14.9.2017

ORDER

((Pronounced by Hon'ble SMT. B. Bhamathi, Member (A))

The O.A. has been filed by the applicant under Section 19 of the Administrative Tribunal's Act 1985 seeking the following reliefs:-

"i.) To call for the records of the 2nd respondents pertaining to his order made in (1) No. B2/B3/RRR/Dlgs dated 25.06.2012 and (2) the order made in No.B2/B4/RRR/Dealings/2015 dated 01.09.2015 and set aside the same; consequent to
ii) direct the Respondents to appoint the applicant on compassionate grounds in any one of the vacant posts on considering his educational qualification; and
iii) to pass such further orders as this Hon'ble Tribunal may deem fit and proper."

♦

2. The factual matrix of the applicant's case is as follows:-

2.1 The applicant's father died in harness on 24.09.2003 leaving behind his wife, daughter and the applicant as legal heirs. At the time of death of his father, the applicant was a minor i.e. only 16 years of age. The mother of the applicant first sought compassionate appointment in favour of her daughter, who was 19 years, on the date of death of her husband and when the applicant was minor. However, on applicant's attaining majority, she made a representation dated 14.12.2006 stating that applicant's sister was going to be married and, therefore, requested for appointment to her son. Accordingly, his mother was directed to submit the claim in favour of her son with necessary documents. The same was complied with.



2.2. The respondents could consider the applicant's case for the first time when the Circle Relaxation Committee met during the year 2012 for the post of Postal Assistant and he was wrongly awarded only 63 merit points. The applicant submits that the points awarded as per the 2010 circular versus points to be awarded are as follows:-

“CATEGORY	POINTS TO BE ALLOTTED AS PER CIRCULAR	POINTS MAY BE AWARDED
a. Family Pension	20	16
b. Terminal Benefits	10	10
c. Monthly Income	05	05
d. Movable/immovable Property	10	10
e. No. of dependents	15	15
f. No of unmarried daughters	15	05
g. No. of minor children	15	05
h. Left over service	10	08
<hr/> Total	100	74

2.3 However, candidates who were awarded 69 relative merit points in the year 2012 and awarded 67 relative merit points in the year 2015 were appointed as Postal Assistant, but the applicant, who ought to have been awarded 74 points, was rejected for compassionate appointment twice in 2012 and 2015.

2.4 As per the letter and spirit of the scheme of compassionate appointment, the date of death of the deceased employee is to be taken into account to determine the penury condition of the applicant's family for which criteria/weightage has been laid down in the circular of 2010. Although the applicant's father died in 2003, his application could be submitted in the year



2006, on his attaining majority. There was no delay on his part. But the respondents took 10 years to consider the applicant's case on the ground that compassionate appointment cases of their Department were pending before the Hon'ble Supreme Court. All along the selection years of 2012 and 2015; the applicant was eligible for appointment.

2.5. At the time of oral hearing, the learned counsel for the applicant submits that his grievance is for non-grant of additional 5 points in the categories of "no. of dependents" and 5 points in the category of "no. of unmarried daughters".

3. In the reply to the O.A., the respondents have submitted that the Circle Relaxation Committee (CRC) was not held after 2000 as the matter was subjudice before the Hon'ble Supreme Court. Only in 2010, after the receipt of the judgment dated 30.07.2010 by the Hon'ble Supreme Court in SLP No.2976/2008 (CA No.7773/09) and 30 other SLPs, these cases could be considered. In the meantime, Circular 20.01.2010 was issued to allocate points based on various attributes, as mentioned in the policy of 1998 but codified in the letter dated 20.1.2010. On the basis of the 2010 circular, instructions were issued vide letter dated 11.08.2001 by Respondent No.1 to re-examine all the cases pending by applying the relative merit points (RMP) and to send all the cases afresh for consideration by CRC.

3.1 As per the said circular, the applicant received only 63 merit points, being as follows:-

Attributes	Details as per synopsis	Points
Family Pension (Basic plus DA)	Rs.3500/-	20

[Handwritten signature/initials]

Terminal benefits (DCRG, GPF, Encashment, commutation)	Leave Pension	Rs.1,12,347/-	10
Monthly Income	Nil	5 (Maximum)	
Immovable Property	Nil	10 (Maximum)	
No. of dependents	2(wife and son)	10	
No. of unmarried daughter	Nil*	0	
No of minor children	Nil*	0	
Left over service of the deceased	17 years 7 months 8	8	
Grace points if the applicant is widow	Nil		
			63 points

3.3 It is submitted that claim for compassionate appointment can be considered only as per extant provisions of the scheme existing at the time of processing. At the time of Circle Relaxation Committee meeting in 2012, the applicant's sister was already married in 2011 and she was living separately and hence nil points in her respect were allotted in both the category of 'no. of dependents' and 'no. of unmarried daughters'.

3.4 To support this contention, the respondents have relied upon the decision of the Hon'ble Principal Bench New Delhi in *O.A. No. 2775/2011 dated 08.08.2011 in the case of Smt. Somvati Vs. UOI* has held that "it is settled law that case for compassionate appointment has to be considered in terms of Policy decision, which is prevalent at the time of consideration."

3.5 The Hon'ble Supreme Court in the order dated 07.08.2013 in the case of *Civil Appeal No. 6348/2013 filed by MGB Gramin Bank Vs. Chakrawarti Singh* held that a candidate cannot claim that his case is to be considered as per the



scheme existing on the date of the death of the incumbent on the post and case has to be considered only under the new scheme.

3.6 Hence the applicant was justifiably awarded '10' points and 'Nil' under the category of 'No. of dependents' and 'No. Of unmarried daughter,' respectively. At the time of examining the case, as the applicant had attained majority, he was assigned 'nil' points in the category of minor children. Hence his claim for grant of additional 11 points over and above 63 merit points is without any basis.

3.7 Having secured only 63 RMP and the last cut off RMP in the PA/SA cadre being 69, PM cadre being 75 and MTS cadre being 91, his case was not recommended by the CRC -2012 as those with higher RMPs, being more indigent, were given appointment within the ceiling of 5% Direct Recruitment vacancy. The applicant was informed of the position on 25.6.2012 by the 2nd respondent.

3.8 Totally 876 cases were received up to 5.3.2012, against the 5% DR vacancies accrued and un-utilized vacancies after implementing the order of the Hon'ble Supreme Court. The CRC considered all the cases placed before the CRC and keeping in view that commitment was made to some of the applicants on their representations/RTI requests that their cases would be considered on merits after the judicial process is completed, the CRC finally took decision in the CRC meeting held from 14th – 16th March 2012 in which the applicant's case, having only 63 are RMPs was rejected as also on the ground of absence of vacancies within the ceiling of 5% D.R. Vacancies.

(Signature)

3.9 Again the CRC met in 2015 when the applicant's case was again considered. The CRC meeting of 2015 was held in the context of DOP&T O.M. dated 26.7.2012 within the time limit of three years directing to consider the cases of compassionate appointment which were rejected/not recommended. Hence it was decided to re-examine all the not recommended cases of CRC 2012 & 2013 in the ensuing CRC along with other cases, on merit, against 5% DR vacancies of subsequent years. In the CRC of 2015, the RMP for the last selected candidates in the PA/SA cadre awarded was 66, PM cadre was 73 and MTS cadre was 85. The applicant had only 63 RMP. Hence, his case was again not recommended on the same grounds.

3.10 The 1st respondent vide letter dated 25.08.2015 intimated that all the not recommended cases of CRC 2015 will be placed before the next CRC and examined on merits, along with the fresh cases received, subject to the availability of vacancies under DR quota was communicated to the applicant by letter dated 1.9.2015, which is challenged now.

4. Heard the rival contentions of the learned counsel for the applicant and learned counsel for the respondents and perused the documents and rulings relied upon.

5 The limited issue for consideration in this O.A. is whether the applicant is eligible for award of 5 points each in the category of "No. of dependents" and "No. of unmarried daughter", respectively which would raise the total in each of the category to 15 and 5 respectively and render him eligible for appointment. Secondly, whether in the two criteria cited above, weightage points should be assigned and eligibility assessed with reference to the date on which the



applicant's case was examined for consideration of CRC or with reference to the date of death of the employee. Thirdly, whether the ~~circulars~~ relied upon to reject the case of the applicant amounted to applicant's case being considered under a new scheme or whether it was a continuation of the original scheme of compassionate appointment of 1998.

6. On the issue whether dependency/eligibility would be determined with reference to the date of death of the deceased employee, this Tribunal at para 7 to para 10 of the order in O.A. 1055/2015 (relied upon by the applicant) held as follows:-

7. As per the DOPT, O.M. dated 09.10.1998, as per clause (B) Note 1, "Definition of the Dependent Family Member" is extracted as under:-

"Note 1 "Dependent Family Member" means;
(a) Spouse; or
(b) Son (including adopted son) or;
(c) Daughter (including adopted daughter); or
(d) Brother or sister in the case of unmarried Government servant

8. It is the contention of the respondents that as per the 1998 DOPT OM, the eligibility will be determined with reference to the applicant's age at the time of submission of application and not the age at the time of death of the deceased employee. The OM of 1998 does not state anywhere that status of dependency for award of merit points will not be with reference to the date of death of employee nor does it state that it will be in accordance with the date of submission of application. There is also nothing in the OM, therefore, to state or conclude that on attaining majority, applicant could stake his claim only by foregoing merit points on



dependency and minority status. The applicant could have applied only on attaining majority which he did in 2005 when he became 19 years without any delay with reference to the date of death of his father. This was done on receiving the consent of both his mother and elder sister, as per laid down procedure. Further, applicant was not all at fault whatever be the prevailing circumstances stated in the reply (regarding pendency of court cases) that his application of 2005 could be considered only in 2012. If respondents' argument has to be given any credence, it would amount to saying that delay can happen only on the part of the applicants (whereas the facts in the present case are to the contrary) and not by respondents further, if there is delay due to circumstances beyond control, the applicant would get penalized while the benefit of delay would go to respondents. The stand taken by the respondents to not grant him merit points on dependency and minority from wrong interpretation of the DOPT OM of 1998 and then reject his case is completely untenable.

9. On the issue of what the date of consideration of application should be, for award of merit points, the applicant has rightly relied upon the order of this Tribunal in OA No.1389/2015 dated 07.06.2016 wherein this Tribunal has held as follows:

"6.....Accordingly, the prayer for compassionate appointment should be considered taking into consideration, the then existed scheme for compassionate appointment as on the date of the death of the employee. But, in this case there is nothing to indicate and exemplify that such a consideration took place at the hands of the respondent authority. The stand of the respondent authority that the terminal benefits at the hands of the family of the deceased was sufficient in my opinion, is not correct. It has been a trite proposition of law that while considering the



candidature of the applicant for compassionate appointment, the terminal benefits in the hands of the deceased family, should be the deciding factor. The applicant also contends that the deceased employee died leaving behind his widow and three children, of which two are unmarried daughters at the time of his death. Hence all these factors were not considered by the respondent authorities. Accordingly, the OA is disposed of with the following direction:

"The respondent authority, in the light of the observations *supra*, shall reconsider the candidature of the applicant for compassionate appointment taking into consideration the then existed scheme for compassionate appointment which prevailed as on the date of the death of the applicant's father and pass a speaking order within a period of three months from the date of receipt of a copy of this order and communicate the result to the applicant." (emphasis added)

10. The said order dated 07.06.2016 was challenged before the Hon'ble High Court of Madras in WP No.28196/2016 wherein the Hon'ble High Court, vide its order dated 11.11.2016 held as follows:

• "10. The learned counsel for the petitioner would submit that the weightage point system introduced in the year 2007 is only an extension of the guidelines issued by the DOP&T and it cannot be termed as a new scheme. In this connection, he relied on a judgment of a Full Bench of the Kerala High Court in O.P.(CAT)No.458 of 2010 dated 19.01.2015. The Full Bench has observed thus: "the provision for weightage point system has been introduced as a procedure for processing the case of compassionate appointment and it will not affect any substantive right of the applicant since the object is to find out the most eligible person or family having the indigent condition requiring an appointment under the scheme." It has also held that the scheme as on the date of consideration of the application for compassionate appointment will be the relevant one.

11. Subsequent to the said judgment, the Supreme Court in the decision dated 15.05.2015 in CANARA BANK AND ANOTHER Vs. M.MAHESH KUMAR [(2015) 7 SCC 412], held that the claim for compassionate ground appointment must be considered as per the scheme which was in vogue at the time of death of the employee concerned. It has also been held that administrative or executive order cannot have retrospective effect, so as to take away the right accrued to the dependent of a deceased employee. As per this decision, the first respondent's request for compassionate appointment must be considered strictly in

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accordance with the governing scheme, which was in force at the time of death of the employee. We are bound by the judgment of the Hon'ble Supreme Court. Following the dictum laid down by the Supreme Court in the said case, the Central Administrative Tribunal directed the writ petitioner to reconsider the case as per the old scheme existed as on the date of death of first respondent's father (05.10.2005). Therefore, we of the view that the Central Administrative Tribunal is justified in giving the directions as aforesaid."

7. On the other hand, the respondents have relied on the judgment of the *Hon'ble Supreme Court in MGB Gramin Bank Vs. Chakrawarthy Singh (Supra)*. It is clearly evident that the scheme formulated in 1998 continued in 2010 and was the same, but the manner in which it would be operated was spelt out in the 2010 circular by elaborating the weight-age points to be accorded to the each of the laid down criteria for award of such points. Hence, the said judgment cannot cover applicant's case.

8. Again with reference to the decision of the Principal Bench of the Tribunal in case of the '*Smt. Somvati Vs. UOI*' (*supra*), it is wrong to interpret that there was a separate policy decision in 2010 in deviation from the decision which existed when the scheme was first notified in the year 1998. The definition of dependent family member as per clause B Note 1 of the Scheme of 1998 shows daughter to be a dependent member. Even though she was major being 19 years of age at the time of applicant's father's death, her dependency continued till she got married in 2011 after the circular of 2010 came into effect giving specific weightage to unmarried daughter. Hence the decision of the Principal Bench does not apply to the present OA

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.

17. Accordingly, Respondent No.1 is directed to re-convene CRC or have the CRC reconvened to consider accommodating the applicant against any vacant post whether PA/SA cadre, PM cadre or M.TS. Cadre, wherever vacancy is

available and wherever he is found eligible, keeping in view the educational qualification of the applicant or other eligibility criteria in mind. Thereafter, Respondent No.1 shall pass a reasoned and speaking order within a period of two months from the date of receipt of certified copy of this order.

18. In view of the above, the impugned order dated 25.06.2012 and 1.9.2015 is liable to be quashed and set aside and the O.A. is liable to be allowed.

19. Accordingly the O.A. Is allowed. No costs.