

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/01385/2016****Dated 29th, the 29th day of July, 2020****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

N. Kumaresan,
S/o late V.Natesan,
No. 36, Mukkarampakkam Post & Village,
Periyapalayam Via,
Gummidipoondi Taluk,
Thiruvallur District,
PIN – 601 102

....Applicant

(By Advocate M/s R.Malaichamy)

Vs

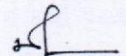
1. Union of India,
Rep by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai – 600 002.

2. The Superintendent of Post Offices,
Kanchipuram Division,
Kanchipuram – 631 501.

3. The Assistant Superintendent of Post Offices,
Thiruvallur Sub-Division,
Thiruvallur.

...Respondents

(By Advocate M/s S.Nagarajan)



ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

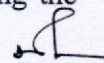
"i. To call for the records of the 2nd respondent pertaining to his order which is made in No. B2/OA- 1465/14/dlgs dated 19.07.2016 and set aside the same; consequent to,

ii. direct the respondents to appoint the applicant in any one of the vacant post of GDS on compassionate grounds on considering his educational qualification with all attendant benefits; and

ii. And pass such further or other orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case and thus render justice."

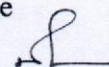
2. The brief facts of the case as submitted by the applicant are as follows:

The applicant father died in harness on 12.11.2012 while working as GDS MC in the 2nd respondent Division. They are in a penury condition and unable to meet both ends. The GDS are not entitled to any pensionary benefits. They are entitled to only payment of severance allowance (service benefits). Therefore, the ward of the deceased GDS is entitled to appointment on compassionate grounds for survival of the family. The entire amount of death cum service benefits received by the applicant's mother had been settled towards loans availed by the applicant's father during his life time and his family members for their livelihood. The balance amount of debt is still to be cleared. On considering the penury condition, the 3rd respondent permitted the applicant to work as GDS MD from 30.11.2012 and also the applicant's case has been recommended to the Screening Committee. Without considering the



above said fact, the 2nd respondent rejected the claim of the applicant stating that the married son is not eligible for compassionate appointment vide his order dated 17.03.2014 and also denied work to him from 01.03.2014. Aggrieved by the above, the applicant approached this Tribunal by filing OA No. 1465/2014 and it was disposed by order dated 09.06.2016 with a direction to reconsider his claim. As per the earlier scheme, appointments were given to the hard and deserving cases. The term "hard and deserving cases" denotes those cases over and above 50 merit points. As per the latest scheme dated 17.12.2015, the existing 51 points has been replaced by 36 points. But the 2nd respondent rejected the case of the applicant stating that he has not secured the minimum required Relative Merit Points for engagement as GDS on compassionate grounds. As per the scheme, he has to be awarded more than 36 points and entitled for appointment on compassionate grounds. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

- i. The applicant's father died in harness on 12.11.2012 while he was working as GDS MD in the 3rd respondent Sub-Division. They are in a penury condition and unable to meet both ends. Therefore, the 3rd respondent permitted the applicant to work as GDS MD at Mukkarampakkam BO. He has not been considered by the 2nd respondent, though his case was recommended to the Screening Committee. Hence, rejecting the case of the applicant is arbitrary and illegal and liable to set aside.
- ii. There is no source of income to run the family. They are compelled to get loans from neighbours for their livelihood. These



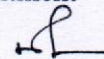
facts also have not been deeply gone into by the respondents.

iii. The terminal benefits received by the applicant's mother had been utilised for clearing some of the loans received by the applicant's father during his life time and his family members for their livelihood. The balance amount of debt is still to be cleared. Therefore, rejecting the case of the applicant for appointment on compassionate ground is arbitrary, illegal and also amounts to violation of principles of natural justice.

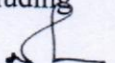
iv. As per the earlier scheme, appointments were given to the hard and deserving cases. They defined the term "hard and deserving cases" as the cases over and above 50 merit points. As per the latest scheme dated 17.12.2015, the existing 51 points has been replaced by 36 points. The 2nd respondent without considering this fact, again rejected his claim and also disengaged him from duty. This is unjustifiable and also amounts to violation of principles of natural justice.

v. There are several judgements that a marital status is not a bar for consideration of appointment on compassionate grounds. Therefore, denial of appointment to the applicant on this reason in the earlier occasion amounts to denial of public employment opportunity to the applicant.

3. The respondents have filed a detailed reply statement. Shri. V.Natesan, GDS MD, Mukkurambakkam Branch Post office account with Periyapalayam SO in Kancheepuram Division expired on 12.11.2012. As per Postal Directorate, New Delhi letter No.17-115/2001-GDS dated 21.10.2002, in case whenever a GDS dies in harness, eligible dependent can be allowed to function on interim basis provided he fulfils the qualification applicable for the post and that such provisional appointment



will not entitle the dependent to a claim for the post unless his/her case for compassionate appointment is approved by the Circle Relaxation Committee. As per the above provisions of Directorate, the applicant was also given provisional engagement in the post held by his father. The compassionate appointment claim preferred by the applicant was processed and forwarded to the Office of the Chief Postmaster General, Tamil Nadu Circle viz 1st respondent, by the Postmaster General, Chennai City Region, for placing the same before the Circle Relaxation Committee. The 1st respondent, before placing the claim of the applicant before CRC, examined the same in the light of the instructions contained in the Directorate in Letter No.17-17/2010-GDS dated 09.10.2013, according to which a married son is not considered as a dependent of a deceased GDS. Since the applicant is married, the 1st respondent observed that his claim did not fall within the ambit of the Scheme for compassionate appointment and informed the Postmaster General that his case could not be entertained with directions to inform the applicant suitably. Accordingly, the observations of 1st respondent were communicated by the Postmaster General, Chennai City Region to the 2nd respondent and the same was informed to the applicant vide Letter No. B2/RRR/70/2013 dated 17.03.2014. Challenging the above order, the applicant has filed OA 1465/2014 before the Tribunal. During pendency of the OA, instructions were issued by the Postal Directorate in Letter No. 17-39/3/2012-GDS dated 14.01.2015 according to which a married son shall also be considered as one of the dependents of the GDS for the purpose of compassionate appointment, provided he possesses the required educational qualification including



computer knowledge. Based on the above, this Tribunal disposed of the OA vide dated 09.06.2016, directing the respondents to reconsider the case for compassionate appointment of the applicant on merits following due procedure and pass a reasoned and speaking order. Pursuant to the above, the claim of the applicant was reconsidered by the Circle Relaxation Committee in the light of merit point scheme for engagement as GDS on compassionate grounds as per Directorate's Letter No. 17-17/2010-GDS dated 17.12.2015 and found that the threshold for hard and deserving cases is over and above 36 points. Since the applicant has not secured the minimum relative merit points, his case was not considered by the Circle Relaxation Committee and rejected by the respondent vide letter no. B2/OA-1465/14/dlgs dated 19.07.2016. Hence the respondents pray for dismissal of the OA.

4. The respondents have relied on the following judgements in support of their contentions:-

a) Case of State of Jammu & Kashmire Vs. Sajad Ahmed Mir (2006 SCC (L&S) 1195;

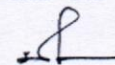
b) Case of Sushma Gosain Vs. UOI 1989(4) SCC 468;

c) Judgement dated 06.04.2011 in CA No. 1045/2006 in the case of Union of India Vs. B. Kishore 2012 (2) SCC (L&S);

d) Order dated 07.08.2013 in case of Civil Appeal No. 6348 of 2012 filed by MGB Gramin Bank Vs. Chakrawarti Singh.

e) The Hon'ble Supreme Court in the judgment dated 23.05.2012 in CA No. 6224 of 2008 in the case of UOI Vs. Shashank Goswami and another.

5. The applicant has filed rejoinder to the reply of the respondents and the



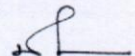
respondents have filed reply to the rejoinder as well, more or less reiterating the averments made in the respective affidavits.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Admittedly this is the third round of litigation before this Tribunal. Earlier the applicant had approached this Tribunal by filing OA.1465/2014 whereby and whereunder this Tribunal by order dated 09.10.2016 directed the respondents to reconsider the case of the applicant for compassionate appointment on merit after following due procedure and pass a reasoned and speaking order. Pursuant to the above, the case of the applicant was considered and rejected by the second respondent by order dated 19.07.2016 on the ground that the applicant did not secure the minimum required Relative Merit Points for engagement as GDS on compassionate ground. Thereafter the applicant had filed this OA.1385/2016 seeking the same relief by quashing of the impugned order dated 19.07.2016. The said OA was disposed of on 23.03.2018 with the following observations:-

“It is not in dispute that the applicant's case had been rejected by the competent authority in the year 2016 on the ground that the applicant had not obtained sufficient relative merit point to qualify for appointment. Now a revised scheme has come into operation with prospective effect which also provides that cases already settled shall not be reopened. Therefore, the question of respondents being directed to re-consider the 2016 rejection of the applicant's claim in terms of the revised scheme does not arise. However, the right of the applicant to be considered again in subsequent years is not taken away.....”.

8. Against the said order of this Tribunal, the respondent preferred a Writ Petition



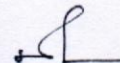
No.10982 of 2019 and the Hon'ble High Court by order dated 31.07.2019 held as follows:-

"The impugned order dated 23.3.2018 is set aside. The Original Application in OA.No.310/1385/2016 is restored to the file of the Madras Bench of the Central Administrative Tribunal. It is open to the parties to canvass their respective points before the Tribunal. The Tribunal shall consider the issue on merits and in accordance with the relevant scheme. In case, the Tribunal is of the view that marks were not awarded properly, there shall be a further direction to consider the issue in accordance with the revised scheme.

9. This OA has thus come before this Tribunal for consideration of the claim of the applicant.

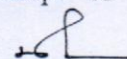
10. There is no dispute with regard to the service of the applicant. The applicant has been awarded 22 Relative Merit Points as against 51 Relative Merit Points as per the Scheme then in vogue. The grievance of the applicant is that his claim for appointment on compassionate ground had been rejected by the respondents by order dated 19.07.2016 on the ground that he did not secure sufficient Relative Merit Points to warrant an appointment. The Ministry of Communication & IT has issued a communication dated 17.12.2015 by which the threshold for hard and deserving cases was reduced to 36 points in place of the existing 51 points and that under the said Scheme, if his liabilities and dependency factors are considered he would become eligible for appointment on compassionate grounds.

11. For the sake of brevity and better appreciation of the facts, the details of the weightage points awarded to the applicant under each head are reproduced hereunder:-



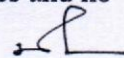
| Details | Points allotted | Points awarded |
|---|-----------------|----------------|
| No. of dependents:2 (applicant and his mother) Daughters of the deceased are married and living separately. | 15 | 10 |
| Education of dependent children: Nil | 25 | 0 |
| Marriage of minor daughters: Nil | 20 | 0 |
| Left over service of GDS:2 years 7 months and 18 days | 10 | 2 |
| Possession of agricultural land: Nil | 5 | 5 |
| Possession of house: Having house | 5 | 0 |
| Family earnings per month: Rs. 7600/-pm | 10 | 0 |
| Discharge benefits: Rs.1,84,522/- | 10 | 5 |
| Total | 100 | 22 |

12. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of



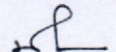
compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

13. For the said purpose, a balanced and objective assessment of the financial condition of the family is made by allocating points to the applicants based on various attributes like number of dependents, outstanding liabilities for education/marriage of dependent children, left over service for discharge, own agricultural land and house, family earnings of members of family per month discharge benefits ie., Ex-gratia Gratuity, severance amount, service discharge benefits and Group Insurance benefits received by by family, educational qualification of the applicant and all other relevant factors such as the essential needs of the family including social obligations etc., in order to assess the degree of indigence of the applicants to be considered for compassionate engagement. The Department of Personnel & Training has provided for limiting compassionate appointment of wards of departmental employees to 5% of the total vacancies and no



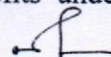
such stipulation has been made for the purpose in respect of GDS. This however, does not mean that all applicants are to be engaged as GDS on compassionate grounds in relaxation of normal and only the exceptional and deserving cases are to be considered for compassionate engagement as the scheme stipulates that compassionate engagement is to be given only in indigent and deserving cases. The above system of weightage not only brings more objectivity to the method but also ensures complete transparency and uniformity in the selection process. The above method is being introduced for considering cases of compassionate engagement to the dependents of GDS in the event of death of the breadwinner.

14. The contention of the applicant is that the applicant was not awarded proper relative merit points as per the scheme framed by the respondents vide revised scheme dated 17.12.2015. For number of dependents, the respondents awarded only 10 points, but it has to be awarded 15 since the applicant's deceased brother died and therefore, his elder brother's wife and children are fully depending on the applicant. For the marriage of minor daughters, the respondents have not awarded any points. In fact, the respondents have to award 20 points, since the marriage expenses and loan borrowed for marriage have to be considered as debt. Similarly, the respondents have to award 5 points towards the category of movable and immovable property. None in the applicant's family is employed in the Government sector, therefore, 10 points have to be awarded towards the category of earning member in the family. But the respondents had taken into account of coolie work done by the applicant to meet out his daily meal. The respondents have awarded 5 points with regard to the discharge



benefits given to the family of the deceased Govt. Employee. But in actual terminal benefit is Rs. 1 lakh (Rs. 60000 + Rs. 40000) and the rest of amount Rs. 84,522/- is the contribution made by the applicant's father. The insurance amount is not amounting to retirement service benefits. Therefore, as per the revised scheme dated 17.12.2015, the applicant is entitled to 62 relative merit points and comes under the zone of consideration for appointment on compassionate grounds.

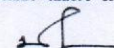
15. The contention of the respondents is that as per rulings on the subject, spouse, unmarried daughter, son are only considered as dependent family members of the deceased. Married or widowed daughters will also be considered as dependent family members provided they should depend on the deceased at the time of death. In case of unmarried GDS, brother or sister wholly dependent on the GDS are considered as family members. In the case of the applicant merit points were awarded as per rulings on the subject. Further the deceased GDS has no minor daughters to be married no points has been awarded. The averment of the applicant that 20 points have to be awarded for the marriage expenses and loan borrowed for marriage and 5 points to be given towards the category of movable and immovable property are not correct. As there is no such slab/category mentioned in Directorate in letter no. 17-17/2010-GDS dated 17.12.2015. Further it is submitted that earning members of the family means not only by employing in Government sector as stated by the applicant which included by performing any other work. It is further submitted that as per Directorate instructions in letter no. 17-17/2010-GDS dated 17.12.2015, Discharge benefits includes Ex-gratia Gratuity, Severance amount, Service discharge Benefits under



NPS Lite and Group Insurance Benefits received by the family. Therefore the relative merit points are given accordingly.

16. It could be seen on perusal of the records that all the three daughters of the deceased employee are married and the applicant is presently aged 36 years and is also married as per the Legal Heir Certificate issued in 2012. As such, there is no liability left after 8 years of death of the deceased employee and there is also no minor daughter or son of the deceased employee left as dependents of the applicant to be looked after. In the case of applicant, merit points were arrived as per rulings on the subject, duly taking into account the dependent family members of the deceased. The averment of the applicant that wife of his late brother should also be considered as dependents is not tenable. As per the synopsis submitted by the applicant, the family earns Rs. 92,000/- p.a. through agriculture. The family also owns a house. The loans borrowed has no relevance to the claim for compassionate appointment.

17. For assessment of weightage point under Terminal benefits, as per the weightage point system, the total terminal benefit (without adjustment) based on the status of ex-official is only to be taken into account. The commitments/ expenditure/ repayments of dues incurred from the terminal benefits are not to be taken into account. The relative merit points were awarded correctly to this case, as per the guidelines prevailing at the time of consideration of claim viz., Directorate's letter no. 17-17/2010-GDS dated 17.12.2015. The claim of the applicant for appointment on compassionate ground was considered objectively by the respondent by awarding due merit points which the applicant was entitled. The contention of the applicant that as

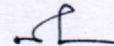


per the revised scheme dated 17.12.2015, the applicant is entitled 62 relative merit points and comes under the zone of consideration for appointment on compassionate grounds is untenable. Hence, the applicant is not entitled for appointment under compassionate ground and the order dated 19.07.2016 is valid and maintainable as per law.

18. In the earlier two rounds, the indulgence of the Tribunal was on the background that the case could be reconsidered and if within stipulated rules and regulations, the case of the applicant qualifies to be considered for compassionate appointment, he be given appointment. It was on account of the same that the department has also referred the matter to the Circle Relaxation Committee. The case was reconsidered and even as per Directorate's letter no. 17-17/2010-GDS dated 17.12.2015, the applicant has not secured the minimum required relative merit points. As per Directorate instructions *ibid*, the threshold for hard and deserving cases is 36 points. Since the applicant has not secured the minimum relative merit points, his case could not fructify for compassionate appointment and suitable reply was given by the 2nd respondent vide letter no. B2/OA-1464/14/dlgs dated 19.07.2016.

19. The Tribunal is bound by the rules on the subject and decisions of the higher courts which are the judicial precedents. As laid down by the Hon'ble Supreme Court in the case of *State Bank of India & Anr. v. Raj Kumar*, reported in 2011 (1) SCC (L&S) 150, the fact remains that :

"the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the



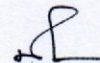
eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

.....

Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable."

20. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 had held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."



21. Telescoping the ratio of the various judgements and considering the fact that the applicant did not come within the zone of consideration as per the relative merit points secured, his claim is not entertained and the letter No. B2/OA-1465/14/dlgs dated 19.07.2016 by the 2nd respondent is in order. There is also no procedural infirmity in the order rejecting the request of the applicant for appointment on compassionate ground.

22. Having regard to the above facts and circumstances of the case, the Judgements of the Hon'ble Supreme Court and the observations made herein-above, the OA lacks merit and is liable to be dismissed and is accordingly dismissed. No costs.