

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.56/2017

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

Manoj Kumar Sahoo, Aged about 32 years, S/o. Late Maheswar Sahoo, At. Azimabad, Jail Road, Ex-Post Master, Balasore Court, Postal Colony, Balasore-756001.

.....Applicant

VERSUS

1. Union of India represented through Secretary, Department of Posts Office Govt. of India, New Delhi.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. Superintendent of Post Office, Balasore Circle, Balasore.

.....Respondents.

For the applicant : Mrs. U.R. Padhi

For the respondents: Mr. M.R. Mohanti

Heard & reserved on : 25.01.2021

Order on : 24.02.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant with the following relief(s):-

- “ (i) To allow the Original Application and notice to show cause to the Respondents No.1 to 3 as to why the impugned order under Annexure-

A/12 shall not be waived as it directly violates the provision mentioned in the scheme for compassionate appointment Annexure-A/9.

(ii) And thereby to pass an appropriate order directing the Respondent No.3 to consider the case of the applicant keeping in view of the provision mentioned in the scheme for compassionate appointment under Annexure-A/9.

(iii) And thereby to pass an appropriate order(s) as may be deemed just and proper in the facts and circumstances of the case and to allow the original Application.”

2. The facts of the present O.A. are that while the applicant's father Late Maheswar Sahoo was working as Sub-Post Master, Balasore Court NDSTO office due to heavy work load Sri Sahoo became senseless at 5 P.M. on 16.04.2009 and was treated till his last breath on 27.04.2009 leaving behind his widow, son(the present applicant) and married daughter (who was burnt by her in-laws). Thereafter, on 30.10.2009 the applicant made an application to Respondent No.3 with a request to give him compassionate appointment in relaxing the Recruitment Rules. Thereafter, the Respondent No.3 vide Office letter dated 15.12.2010 (Annexure-A/4) replied as follows:-

“As per Instructions contained in Chief PMG, Orissa Circle, Bhubaneswar letter No.RE/CRC/2009 dated 07.12.2010, it is to inform you that, your case for compassionate appointment in relaxation of Normal Recruitment Rules was duly considered by the Circle Relaxation Committee and not approved due to want of vacancy”.

3. Thereafter, the applicant submitted representations dated 18.12.2013 and 10.04.2015 (Annexure-A/5 Series) annexing the Legal Heir Certificate, income certificate, OBC Certificate and residence certificate before Respondent No.2 for compassionate appointment, wherein the Respondent No.3 vide Office letter dated 25.04.2016 (Annexure-A/12) replied as follows:-

“As per Instructions contained in Chief PMG, Orissa Circle, Bhubaneswar letter No.CRC/Meeting-Departmental/2014 dated 21.04.2016, it is to inform you that, your case for compassionate appointment in relaxation of Normal Recruitment Rules has been considered by the Circle Relaxation Committee held on 11.04.2016 and could not be approved because as per the points obtained by you based on the norms of the department did not come within the zone of the vacancies earmarked for compassionate appointment of PA/SA, Postman and MTS Cadre.”

4. It is submitted that the widow mother of the applicant is facing lot of hurdles after death of her husband who was the only earning member, and the family members are now facing financial crisis. It is further submitted that during hospitalization of applicant's father (the deceased Govt. employee), his mother borrowed an amount of Rs.3 lakhs for treatment of her husband but all efforts went in vein as her husband could not survive. The Postal Department did not help at that crucial point of time and also has been denying to give appointment to his only son for compassionate appointment on two occasions. It is submitted that the widow mother is getting a small amount of pension of her late husband having no cultivable land to maintain the family consisting of the widow herself, the son(the present applicant) and one married daughter along with her son (who was burnt by her in-laws).

5. It is further submitted that, occasionally the applicant could earn an income which is a paltry amount of Rs.10,000/- to 12,000/- per annum which do not meet even their day-to-day expenses. A copy of the income certificate issued by the Tahasildar Balasore dated 17.08.2009 is annexed here with as Annexure-A/6. Hence, the whole family members are solely depending upon the small amount of family pension of his mother.

6. It is further submitted that although the applicant is a qualified person having passed MCA with 69.45% and in-spite of fulfilling all the criteria of the scheme for compassionate appointment is being harassed by the respondents ignoring the scheme for compassionate appointment, where as the applicability of the scheme for compassionate appointment (Annexure-A/9) clearly says as follows:-

“TO WHOM APPLICABLE

To a dependent family member-

(A) Of a Government servant who-

- (a) Dies while in service (including death by suicide); or
- (b) Is retired on medical ground under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or
- (c) Is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years of Group 'D' Government servants);

Note. I "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 or
- (e) Member of the Armed Forces referred to in (A) or (B) of this para,
 - Who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.
 - The scheme also says the post Group 'C' or Group 'D' post against the direct recruitment quota. Eligibility criteria has also mentioned as the family is indigent and deserves immediate assistance for relief from financial destitution.

EXEMPTIONS

Compassionate appointments are exempted from observance of the following requirements:-

- (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange.
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training.
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure)."

7. It is further submitted that determination/availability of vacancies is also prescribed in this scheme, where as it is categorically mentioned regarding SC/ST/OBC category. It is further mentioned that though the applicant belongs to OBC category and has submitted the OBC certificate before the authority, yet his case was not considered by the respondents. It is further submitted that the Annexure-A/4 and Annexure-A/12 are contradictory in nature though those two letters were issued by the same authority i.e., the respondent No.3. It clearly shows their whimsical behaviour and they are not in a mood to give compassionate appointment on the basis of provision made therein and under Annexure-A/9,

although the applicant is fulfilling all the criterion as per the scheme for compassionate appointment (Annexure-A/9). Hence, the applicant finding no other alternative remedies has filed the present O.A. with the prayer as mentioned above for compassionate appointment.

8. The respondents have filed their counter, wherein it is mentioned that the case of the applicant was considered in the CRC held on 24.11.2010(Annexure-R/2) along with 38 other cases against 10 posts (PA-6+Postman-4) available under compassionate quota in PA/SA & Postman/Mail Guard Cadres as per the parameters prescribed by the Directorate vide letter dated 20.01.2010 (Annexure-R/1). It is further submitted that the applicant secured 40 merit points, whereas, the last selected candidate secured 62 merit points. Therefore, compassionate appointment case of the applicant was rejected by the said CRC and was communicated by respondent No.3 to the applicant. Thereafter, the applicant represented on 10.04.2015 for consideration of his case after nearly five years. Accordingly, the case of the applicant was considered in the CRC meeting held on 11.04.2016 (Annexure-R/3) along with 30 other cases against 14 posts (PA-06+Postman-05+MTS-03) available under compassionate quota in PA/SA, Postman and MTS cadres as per the parameters prescribed by the Directorate letter dated 20.01.2010 and rejected as the applicant secured 40 merit points, where as the last selected candidate secured 58 points.

9. It is further submitted that as per the legal heir certificate issued by the Tahasildar, Balasore vide Misc. Certificate case No.65/2009, Ms. Madhusmita Sahoo, married daughter of the deceased official was alive as on date of death of the father of the applicant, who was stated to have been burnt by her in-laws.

10. It is submitted that as per the scheme contained in the Directorate letter dated 20.01.2010, a merit list of all such candidates is prepared according to the merit points secured by each candidate in the 100 point scale. The candidates who

secure more points are approved for appointment according to the vacancies earmarked under compassionate appointment quota i.e., 5% vacancy of direct recruitment quota. The applicant in the instant case does not qualify for approval due to less merit points secured by him in comparison to other approved candidates. The CRC cannot on any occasion go beyond the rules/instructions/guidelines invoked by Govt. of India and the vacancies earmarked for compassionate appointment quota and the respondent authority has also to act as per the recommendations of the CRC.

11. It is further submitted that the Hon'ble Supreme Court has held in their judgment dated 28.02.1995 in the case of the Life Insurance Corporation of India Vrs. Ms. Asha Ramchandra Ambekar and Others [JT 1994(2) SC 183] that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground. In view of the submissions made in the foregoing paragraphs this O.A. having no merit is liable to be dismissed with cost.

12. Heard learned counsels for both the sides and carefully gone through their pleadings, materials on records and citations relied by them. The case of the applicant was considered in the CRC meeting held on 24.11.2010 and subsequently re-considered by the CRC on 11.04.2016. The applicant was allotted 40 marks/points (check) on both the occasions out of 100 points. The said 40 points was less than cut off points fixed for that purpose. The marks obtained by the last candidate was 62 & 58 respectively. Accordingly his case was rejected as per circular vide Annexure R/1. Besides that on the first occasion the applicants case did not come within 5% of direct recruitment quota earmarked for compassionate appointment. The calculation sheet along with memo on 06.12.2019 by learned counsel for the respondents shows the detailed break up of points assigned to the applicant i.e 16 marks against the family pension, 0 marks against terminal

benefits, 4 marks against monthly income, 8 marks against movable/immovable property, 10 marks against number of dependents, 0 marks against unmarried daughter, 0 marks against minor child and 2 marks against left over service of the deceased employee.

13. Learned counsel for the applicant has filed one circular of DOPT dated 26th July 2012 along with written arguments wherein it has been mentioned in para 2 that decision to make appointment on compassionate ground in such type of cases is only to be taken at the level of Secretary to the department. Accordingly this Tribunal directs that the competent authority should consider the application of the applicant for compassionate appointment by placing the same in CRC so that it can consider as to whether the case of the applicant comes within the zone of consideration. Besides that thereafter the matter should also be placed before Secretary so that he can take final decision in the matter. Accordingly the matter is remanded back.

14. The OA is disposed of with above direction but in the circumstances without order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)

