

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 451 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sri Laxmikant Sarangi, aged about 33 years, S/o Late Raghunath Sarangi, At: Itamati, P.o: Itamati, Via: Itamati, Dist: Nayagarh-752068.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist.- Khurda, PIN-751001.
3. Senior Superintendent of Post Offices, Puri Division, Puri-752001.
4. The Inspector of Post, Nayagarh (East), Nayagarh-752069.

.....Respondents.

For the applicant : Mr. D.K. Mohanty, counsel

For the respondents: Mr. B. Swain, counsel

Heard & reserved on : 03.09.2020 Order on : 23.09.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed the present OAs seeking the following reliefs:

- (i) To quash the order dt.05.05.2014 under Annexure-A/7;
- (ii) To direct the Respondents to consider the Applicants case for providing an employment under compassionate quota for the ends of justice;
- (iii) To pass any other order/order's as deemed fit and proper in this case.

2. The father of the applicant, while in service as a postman under the respondents expired on 25.4.2007. The applicant submitted a representation for compassionate appointment, which was forwarded to the Respondent No.2 vide letter dated 22.11.2007. Vide the letter dated 16.3.2011 (Annexure-A/4),

the applicant was asked by the respondents to submit additional information/documents, which were furnished by him. His case was considered by the Circle Relaxation Committee (in short CRC) on 14.1.2013 and it was rejected by the respondents vide order dated 5.5.2014 (Annexure-A/7), which is impugned in this OA.

3. The applicant has also filed the MA No. 484/2019 for condoning the delay in filing the OA. It is stated in the MA that a copy of the decision of the CRC meeting held on 14.1.2013 in which the case of the applicant was considered, was communicated to the applicant on 10.9.2018. It is stated that the order dated 5.5.2014 was not communicated to him and he knew about the rejection verbally and before he could take any step, he suffered from illness for which he was advised rest. After his recovery, he sought information under RTI Act in 2018. On receipt of the letter dated 10.9.2018 (Annexure-A/8 of the OA), he submitted a representation dated 3.1.2019 (Annexure-A/9) to the Respondent No.2, which is pending. It is further stated that the merit point system which was introduced in 2010, was not applicable to his case since applicant's father expired in 2007.

4. Respondents have filed Objection to the MA. Stating that the decision of the CRC in its meeting held on 14.1.2013 was communicated by the Respondent No.3 to the applicant vide letter dated 4.2.2013 (Annexure-R/1) and the applicant has approached after about six years. It is stated that in the MA the number of days of delay and the reason for such has not been mentioned, which is mandatory. The judgment in the case of Office of the Chief Postmaster General & Others vs. Living Media India Ltd & another by Hon'ble Apex Court has been cited by the respondents to oppose the MA.

5. Respondents have filed Counter opposing the OA on the main ground that the applicant had been given the merit point of 39 as per the details indicated at Annexure-R/3 of the Counter in accordance with the circular dated 20.1.2010 (Annexure-R/8 of the Counter). A copy of the proceeding of the CRC meeting held on 14.1.2013 has been enclosed at Annexure-R/2 of the Counter, which reveals that the last candidate recommended for compassionate appointment had the merit point of 84 and this was mentioned in the impugned order dated 5.5.2014 (Annexure-A/7).

6. In reply to the ground of less point, the applicant in the OA (para 4.9) avers that the merit point system came into force from the year 2010, where as the date of death of the applicant's father was 25.4.2007 and the CRC did not consider this aspect and arbitrarily rejected the case. The respondents opposed such averment in the Counter, stating that as on the date of consideration in

2013, the applicant did not have any liability and his case was assessed as per the circular dated 20.1.2010 (Annexure-R/8) on point system.

7. Heard learned counsel for the applicant and the respondents and perused the pleadings on record. Regarding MA, the applicant's counsel submitted that due to illness of the applicant, which is substantiated by the applicant by furnishing a medical certificate (at Annexure-A/9), there was delay in filing the OA. Learned counsel for the respondents opposed the MA.

8. It is necessary to consider the MA for condoning the delay before considering merit of the OA. It is seen that though the application for compassionate appointment was submitted by the applicant in 2007 after death of his father, but his case was not considered till 2011 and then on 2013 and the reason for such delay has not been explained by the respondents in the Counter. Applicant's contention that no order of rejection was communicated to him till 10.9.2018, has not been contradicted by the respondents.

9. Respondents have cited the judgment of Hon'ble Apex Court in the case of Living Media Ltd. (supra) to oppose the MA. In that case, the explanation of the appellant that the delay was due to processing of files without any specific reason, was not found to be sufficient. But in the present case, the reason of illness of the applicant has been mentioned for the delay. Hence, the cited judgment is factually distinguishable. In the circumstances, I am inclined to consider the ground of illness of the applicant furnished in the MA for delay in filing the OA to be sufficient. Accordingly, the MA is allowed and the delay in filing the OA is condoned.

10. On merit, the respondents have mentioned the reason for rejection of the applicant's case to be less merit point of 39 compared to the merit point of 84 for the last candidate whose case was approved for appointment on compassionate appointment. The applicant has challenged such contention on the ground that since death of his father occurred in 2007, the point system introduced in 2010, will not be applicable to his case. The respondents have resisted such contention. The question to be decided is whether the rules relating to compassionate appointment as prevalent on date of death of the deceased employee or the rules prevalent on the date of consideration will be applicable to a case.

11. In this regard, the law has been laid down by the judgment dated 4.03.2020 of 3-judge Bench of Hon'ble Supreme Court in the case of **N.C. Santosh vs. The State of Karnataka in Civil Appeal Nos. 9280-9281 of 2014** in

which the opposing views taken in the judgments in the case of Canara Bank & Anr. vs. M. Mahesh Kumar and in the case of MGB Gramin Bank vs. Chakrawarti Singh were finally decided. After reviewing the case laws on the issue in different cases, Hon'ble Supreme Court held in the case of N.C. Santosh (supra) as under:-

“Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

12. Applying the law decided in N.C. Santosh (supra) to the present case, the rules on compassionate appointment as on the date of consideration of the case will be applicable in deciding the matter and the applicant is not entitled to seek the benefit of the scheme as prevalent on the date of death. Since the case of the applicant was considered after 2010 and the applicant had not challenged the action of the respondents not to decide the case before 2010, the point system as per the circular dated 20.1.2010 (R/8) will be squarely applicable to the applicant's case and the contention of the applicant that the circular dated 20.1.2010 is not applicable to his case is not correct in view of the law laid down by Hon'ble Supreme Court.

13. The applicant has not disputed the point score as per the details at Annexure-R/3 of the Counter which reveals that his merit point was 39 compared to the merit point of 84 of the last candidate whose appointment on compassionate ground was approved as per the minutes of the CRC meeting held on 14.1.2013 (Annexure-R/2 of the Counter).

14. In the circumstances as discussed above, I am of the considered view that there is no infirmity in the decision taken by the respondents in the matter. The OA is, therefore, liable to be dismissed and hence, it is dismissed. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER(J)

(csk)