

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 457 of 2019

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

Nilakantha Singh aged about 37 years, S/o Late Jahan Singh, At-Khakimatha, Nuasahi, PO- Puri-2, Dist. Puri-752002

.....Applicant

VERSUS

1. Union of India, represented through Director General of Posts, Dak Bhawan, Parliament Street, New Delhi-110001.
2. The Chief Post Master General, Odisha Circle, At/Po- Bhubaneswar, Dist- Khurda-751001.
3. The Senior Superintendent of Post Offices, Puri Division, At/PO/Dist. Puri-752001.

.....Respondents.

For the applicant : Mr. B.S. Tripathy, Counsel

For the respondents: Ms. S.B. Das, Counsel

Order reserved on: 21.09.2020

Order on: 07.10.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has sought for the following reliefs in this OA:-

“(a) To pass appropriate orders quashing the impugned order vide letter dtd. 21.6.2019 in annexure-A/4;

(b) To pass appropriate orders directing the Respondents-authorities to provide the applicant an employment assistance on compassionate ground within a stipulated period; and

(c) To pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost.”

2. The applicant is aggrieved by the decision of the respondents to reject his application for compassionate appointment vide order dated 21.6.2019 (Annexure-A/4) passed by the respondent no.3. The applicant's father, while working as a casual labourer under the respondent no.3 has been conferred temporary status w.e.f. 29.11.1989 and without being regularized he continues in service as such till his death on 8.10.2001. The applicant's mother

approached the Tribunal for regularization of her late husband in service and grant of family pension and the OAs filed were rejected. The order of Tribunal was challenged before Hon'ble High Court in writ petitions which were allowed with direction to the respondents to consider regularization of the late father of the applicant. When the case was rejected by the authorities, the decision was challenged before Tribunal and vide order dated 12.11.2017 (Annexure- A/1 & A/2), the respondents were directed to regularize the service of the applicant's father from the date on which his junior was regularized and grant pensionary benefit. Direction was also given to consider the case of the present applicant for compassionate appointment.

3. The respondent no. 3 has accordingly considered the case of the applicant for compassionate appointment and rejected the claim vide the impugned order dated 21.6.2019 (A/4). Following grounds are mentioned in the OA to challenge the said order of rejection:-

(i) Applicant's case has been rejected without considering it in proper perspective and the order of rejection was a non-speaking order, for which, it is illegal and arbitrary.

(ii) It was the duty of the respondents to consider the applicant's case as per the guidelines during the year 2001, as his father's death was on 8.10.2001. Applicant's case should have been considered retrospectively.

(iii) Unless the case is considered as per the guidelines as on the year 2001, the applicant will be highly prejudiced since due to illegal action of the respondents, the applicant has been harassed and he has suffered a lot.

(iv) After death of his father, condition of his family has become indigent with no source of income.

3. Counter filed by the respondents with the following averments and grounds to oppose the OA:-

(i) As per the direction of the Tribunal in CP No. 33/2018, a special CRC meeting was held on 11.2.2019 to consider the case of the applicant for compassionate appointment. The applicant could not be accommodated as against 3 posts available to be filled up through compassionate appointment the applicant was at serial number 42 on the basis of his merit points vis-avis other candidates. Copy of the CRC proceeding on 11.2.2019 is enclosed at Annexure-R/1 of the Counter.

(ii) His case was re-considered by the CRC on 10.6.2019 and since his merit point was 49 and the cut off mark for selection for compassionate appointment were 64, 63 and 68 respectively for the post of PA, SA and Postman cadre. The decision was communicated to the applicant vide the impugned order dated 21.6.2019 (Annexure-A/4). Copy of the CRC proceeding on 10.6.2019 is enclosed at Annexure-R/2 of the Counter.

(iii) Tribunal's order dated 12.10.2017 to consider the applicant for compassionate appointment has been implemented vide order dated 1.7.2019 of the Tribunal in CP No. 33/18.

4. Rejoinder has been filed by the applicant stating that his case has been rejected applying the departmental guidelines dated 13.1.2016 where as his case should have been considered as per the guidelines in force as on the date of death of his father i.e. on 8.10.2001. Hence, the guidelines dated 13.1.2016 are not applicable to his case and the decision to reject his case for compassionate appointment is not sustainable. It is also stated that the respondents have not indicated how the applicant secured less merit points than other selected candidates.

5. Heard learned counsel for the applicant who reiterated the stand taken in the OA that the guidelines dated 13.1.2016 under which the applicant's case has been rejected are not applicable and his case should have been considered as per the guidelines as on 8.1.2001 when applicant's father expired. It was submitted that in spite of the orders of Hon'ble High Court and Tribunal, the respondents have rejected the case vide the impugned order at Annexure-A/4 and that as stated in the said impugned order, the applicant's case is to be considered again.

6. Heard learned counsel for the respondents, who submitted that as stated in the Counter, the applicant has 49 merit points and that the CP No. 33/18 filed by the applicant for non-compliance of the Tribunal's order dated 12.10.2017 (Annexure-A/2 of the OA) passed in earlier round of litigation in respect of the applicant's claim for compassionate appointment has been dropped with observation that the order of the Tribunal has been complied.

7. On perusal of the pleadings as well as submissions made on behalf of both the parties, the question for decision in this case is whether the applicant's case for compassionate appointment is to be decided as per the guidelines in force as on 8.10.2001 (as submitted by the applicant), or as per the guidelines dated 13.1.2016, which has been applied by the respondents while rejecting the claim of compassionate appointment.

8. Applicant's claim for compassionate appointment was adjudicated by this Tribunal in OA No. 726/2011 and allowed by the Tribunal vide order dated 12.10.2017 (Annexure-A/2 of the OA) with observations as under:-

"3. Needless to say that the widow had also challenged the said order refusing regularization of her husband in O.A. No. 659/2011. This Tribunal not only set aside the speaking order dated 13.08.2009 but also directed the Respondents to regularize the service of the husband of the applicant No.1 from the date his juniors were regularized and to grant consequential benefits. Since the Hon'ble High Court observed that the deceased employee was entitled to regularization, the claim of the widow cannot be brushed aside merely on the technical ground that the employee was not regularized even though he continued for more than 11 years under temporary status. Their Lordships in the Hon'ble High Court placed reliance on a decision of CAT, Calcutta Bench, reported in **2005 (2) 458 in the case of Smt. Jotsana Bala Manna Vs. Union of India & Ors.** wherein the Hon'ble Tribunal has been pleased to observe that when the employee died after serving a considerable period in spite of grant of temporary status but before regularization, he shall be regularized even on completion of one year of service and more so when the person junior to the deceased employee has been regularized with retrospective effect. Since the Hon'ble High Court have given a stamp of authenticity of deemed regularization of the employee for continuing in temporary status for more than 11 years, Respondents are duty bound to treat the deceased employee as a regular employee for all purpose and are duty bound to grant other ancillary benefits like compassionate appointment to applicant No.2 if he is otherwise eligible as per the departmental norms and guidelines. Hence ordered."

9. From above, it is clear that the direction of the Tribunal in order dated 12.10.2017 (A/2) was to grant other ancillary benefits like compassionate appointment to applicant if he is otherwise eligible as per departmental norms and guidelines. This direction did not specify that the applicant's claim for compassionate appointment is to be considered as per the departmental guidelines which were in force on the day of death of the applicant's father i.e. on 8.10.2001 as contended by applicant in this OA. The applicant has also not furnished any policy guidelines of government or rules in support of his contention that his claim is to be considered as per the guidelines as on the date of death i.e. as on 8.10.2001 and not as per the subsequent guidelines in force as on the date of consideration. The justification furnished in the applicant's pleadings that since the claim for regularization of his father's service and for grant of pensionary benefits were considered retrospectively, his claim for compassionate appointment should also have been considered retrospectively as per the guidelines as on 8.10.2001, has no force in view of the fact that there is no specific direction of this Tribunal to that effect in the order dated 12.10.2017 (Annexure-A/2). It is noticed that as per the order dated 12.10.2017 of this Tribunal passed in OA No. 659/2011 (Annexure-A/1), the direction was to regularize the service of the applicant's father from the date from which his junior's service was regularized and to grant consequential retiral benefits and in compliance of the said order, the respondents

regularized the service of the applicant's father retrospectively w.e.f. 29.11.1992 vide order at Annexure-A/3 of the OA.

10. The issue of applicability of the rules on compassionate appointment as on the date of death was considered by the Full Bench of Hon'ble Supreme Court in the case of **N.C. Santhosh vs. State of Karnataka & Ors. in the Civil Appeal Nos. 9280-9281 of 2014**, in which the appellant's appointment on compassionate ground was cancelled since he was found to be ineligible to be ineligible for such appointment on date of consideration due to amendment of the rules subsequent to the death of the concerned employee. The appellant in that case had unsuccessfully argued before Karnataka Administrative Tribunal and Hon'ble Karnataka High Court that the rules as amended subsequent to the death should not have been applied in his case for cancelling the compassionate appointment already granted to him. After reviewing the previous judgments on the subject, it was held as under:-

"19. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar* the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

20. 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."

Hence, the law laid down by Hon'ble Apex Court after the above judgment is that the claim of compassionate appointment is to be considered in accordance with the norms prevailing as on the date of consideration of the application for such appointment and not as per the norms prevailing as on the day of death of the concerned employee.

11. In view of the foregoing discussions, I am unable to agree with the the applicant's contention that his case should have been considered as per the guidelines which were in force as on the date of death of his father i.e. on 8.10.2001. Hence, the respondents' action to consider the applicant's case in the light of the extant norms and guidelines as per the order dated 12.10.2017 of the Tribunal cannot be faulted and the question framed at paragraph 7 of this order is decided accordingly.

12. Another ground advanced by the applicant that the impugned order is non-speaking, illegal and arbitrary. It is noticed from the impugned order dated 21.6.2019 (Annexure-A/4) that the reason for rejection of the applicant's case has been mentioned to be less merit point of 49 where as the last applicant selected for compassionate appointment for different category of posts had secured higher merit points. It is also mentioned that the case has been considered as per the letter dated 13.1.2016 of the Directorate. But the respondents have not disclosed the details of the merit points assigned to the applicant as stated in para 8 of the Rejoinder. Further, copy of the letter dated 13.1.2016 has not been furnished by the respondents with their Counter. If these details would have been known to the applicant, he would have got an opportunity to inform the authorities whether his case has been considered by assigning the merit point correctly as per the guidelines of the respondents. By not communicating such details to the applicant, the respondents have not allowed a reasonable opportunity to the applicant to place his case before the authorities for consideration in accordance with the extant guidelines on compassionate appointment.

13. In view of the above discussions, I am not inclined to interfere with the order dated 21.6.2019 (Annexure-A/4) passed by the respondents in this case. But considering the fact that the applicant was not allowed a reasonable opportunity to place his case before authorities for consideration of his case, the respondents are directed to inform the applicant a copy of the Directorate letter dated 13.1.2016 and the details of the merit point assigned to the applicant within four weeks from the date of receipt of a copy of this order. The applicant will be at liberty to file a representation on his claim for compassionate appointment before the respondent no.2 with sufficient justification if he disagrees with the merit points assigned to him, within two weeks from the date of receipt of the above documents from the respondents and if such a representation is filed by the applicant, the respondent no.2 will consider it in accordance with the extant guidelines and rules on compassionate appointment keeping in mind the observations made in this order and dispose of the said representation by passing a speaking order to be communicated to the applicant within four months from the date of receipt of the aforesaid representation from the applicant.

14. The OA is disposed of in terms of the paragraph 13 of this order. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

