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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

O.A.2144/2011

Dated this Thursday the 05th day of March, 2020.

Coram: Dr.Bhagwan Sahai, Member (Administrative).

Rahul Kawaduji Dharmik,
R/o.Timki Chimabai Peth,
Near Matamandir, Nagpur - 18. .. Applicant.

(By Advocate Ms.Shiba Thakur).

Versus

1. Director of Accounts (Postal),
Maharashtra Circle Office of
Director of Accounts,
Nagpur - 440 001.
2. Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001. ... Respondents.

(By Advocate Shri R.G. Agrawal).

Order reserved on : 17.02.2020

Order delivered on : 05.03.2020.

O R D E R

Shri Rahul Kawaduji Dharmik, resident of Timki Chimabai Peth, Near Matamandir, Nagpur filed this O.A. on 30.06.2011 seeking direction to the respondents to issue order of appointment to him immediately on compassionate grounds. This OA was first disposed of at the admission stage itself on 30.01.2012 with a direction to the respondents to do the needful by considering his case in ensuing meetings of Circle Relaxation Committee for two consecutive years and try to accommodate him and in

case he still remains aggrieved, he would be at liberty to approach the Tribunal as per law.

2. The respondents subsequently sought review of that order in R.P.No.2001/2012, which was disposed of on 17.02.2014 in view of no grounds made out for the review. Those two orders of the Tribunal were challenged by the respondents before the High Court in Writ Petition No.2025/2016 which was partly allowed setting aside the orders of the Tribunal dated 31.01.2012 and 17.02.2014 and restoring the OA back to the file of the Tribunal. Thereafter, on 16.04.2018 this OA was dismissed in default for absence of the applicant and his Advocate. Subsequently, M.A.No.2111/2019 was allowed on 07.11.2019 and the O.A. was restored to its original position subject to payment of cost of Rs.1,000/-.

The counsels of the parties were finally heard on 17.02.2020 and the OA was reserved for orders.

2. Summarized relevant facts:

2(a). The applicant has stated that his father late Shri Kawaduji Dharmik, Senior Accountant while working with the respondents died on 11.10.2005. The applicant submitted his application on 04.06.2006 for appointment on compassionate grounds. But his application was rejected by the respondents

with letter dated 05.03.2010 as he owned a house valued at Rs.2,60,000/- and there were three adult sons and no unmarried daughter in the family of late Shri Dharmik and therefore, his case was not found in indigent condition in view of limited number of vacancies and many applications seeking appointment on compassionate grounds. Therefore, this OA has been filed.

2(b). While the OA was filed on 30.06.2011, the applicant has also filed M.A.No.2071/2018 for condonation of delay claiming that this OA was earlier allowed but that order was challenged in High Court by the respondents in a Writ Petition and based on its decision thereon, it has been remanded back. Thus, the question of delay does not arise. Since the OA had already been filed in 2011, there is no disproportionate delay and whatever delay has happened is because of bonafide reasons and it should be condoned.

3. Contentions of the parties:

The applicant and his counsel have contended that -

3(a). the applicant has completed necessary qualification of computer training and was studying in Second year of B.Com degree course. The Circle Relaxation Committee (CRC) in its meetings on 06.07.2009 to 10.07.2009 considered his case on

various other aspects which were not required to be considered, although the Supreme Court has laid down certain conditions for granting employment on compassionate grounds;

3(b). the house property owned by his father is not sufficient for entire family of his three brothers and mother, and the family pension received by his mother is not adequate. He has submitted required material/documents along with applications during stipulated period and is fit for getting the employment;

3(c). his case has not been considered by the CRC as per policy of the Government to provide employment on compassionate ground on 5% of posts and they have ignored his genuine case;

3(d). his father suffered from cancer and died after prolonged illness and the amount of retiral benefits of Rs.4,26,547/- was spent on clearing the loan taken by the family and on illness of his mother;

3(e). consideration of house of the family is false and incorrect, it is only an ancestral property and his father had only $1/3^{\text{rd}}$ share in it. Its value of Rs.4,75,820/- is totally incorrect, as per ready reckoner its value is about Rs.14 Lakhs, with $1/3^{\text{rd}}$ share of his father. He himself is unemployed and his younger brother is studying. The

criteria applied for rejecting his case are only flimsy grounds. Therefore, this OA should be allowed;

3(f). in support of his case, the applicant has filed a copy of DOPT OM dated 26.07.2012 by which the instructions contained in OM dated 05.05.2003 prescribing a time limit of three years for considering cases of compassionate appointment were withdrawn and it was directed to regulate the cases of compassionate appointment in terms of the instructions in DOPT OM dated 09.10.1998 as amended from time to time. It further states that onus of examining the penurious conditions of the dependent family will rest with the authority making compassionate appointments;

3(g). he has also filed a copy of OM of Ministry of Defence dated 30.04.2015 relating to review of compassionate appointment cases, which by referring to OM dated 30.05.2013 clarified that those cases which had been closed on completion of three years time limit as per earlier policy of DOPT, can be reopened provided the cases were closed due to non-availability of vacancies during three years time period. The DOPT OM further clarified that the cases which had been closed for not being found suitable under the criteria for compassionate appointments need not be reopened, irrespective of

the waiver of time limit. Therefore, his case should have been considered.

3(h). Supreme Court decision dated 25.08.1989 in Civil Appeal No.3642/1999 in case of **Smt. Sushma Gosain and others Vs. Union of India and reporting in (1989) 4 SCC 468** observed that in all claims for appointment on compassionate grounds, there should not be any delay as the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of bread earner in the family. Therefore, such appointments should be provided immediately to redeem the family in distress. Such cases should not kept pending for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

3(i). Uttarakhand High Court decision dated 18.12.2019 in Writ Petition No.1035/2019 in case of **Brijesh Kumar Yadav Vs. State of Uttarakhand and others** held that if the Writ Petition has been disposed of by the Court directing the respondents to take a decision on representations of the petitioner, the respondents should not have new ground for rejecting claim of the petitioner. In that case, noticing that the concerned authorities while rejecting the representations of the petitioner had acted arbitrarily, the impugned order

was set aside and the Writ Petition was allowed. In view of these caselaws, the O.A. be allowed.

In reply and during the arguments, the respondents have contended that-

3(j). the applicant's first application for appointment on compassionate ground dated 14.06.2006 was considered by the CRC in its meeting held on 06.07.2009 to 10.07.2009. After due consideration, noting that the applicant's family had received substantial amount of settlement dues of Rs.4,26,547/- and the applicant's mother was receiving family pension of Rs.8,547/- per month in January 2009 and with revision of DR became Rs.14,012/- by January, 2014. In addition the family has house worth Rs.4,75,820/- and income from the house Rs.8,400/- per year (for the year 2006). Therefore, the applicant's case was not found to be relatively in indigent condition and his application was rejected and accordingly he was replied by letter dated 05.03.2010 (Annex A-1);

3(k). as per DOPT OM dated 05.05.2003, by considering the cases for compassionate appointment and as per the guidelines in DOPT OM dated 09.10.1998, if a case of appointment on compassionate ground is genuine and deserving but due to non-availability of regular vacancy, if it is not possible to consider in the first order, name of

such candidate can be kept under consideration for compassionate appointment for three years, subject to review of the conditions by the Committee and certificate of penurious conditions of the dependents of the applicant at the end of first and second year. After three years if it is not possible to provide appointment on compassionate grounds, the case should be finally closed and should not be considered again;

3(1). in support of their contentions, the respondents have relied on Apex Court decision dated 23.05.2012 in Civil Appeal No.6224/2008 in **Union of India and Another Vs. Shashank Goswami and Another reported in (2012) 11 SCC 307** holding that compassionate appointments have to be made in accordance with rules, regulations or administrative instructions considering financial conditions of the family of the deceased. The purpose of compassionate appointments is to enable the family to get over sudden financial crisis and not to confer status on the family but has to be made in accordance with rules, regulations or administrative instructions strictly. Such claim cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution, since public service appointments should be strictly made on the basis of open invitation of applications and on merit. In that

particular case, in view of terminal benefits of more than 3 lakhs received by the family, the applicant was not considered to be eligible for consideration for Group C post. Therefore, the present O.A. should be dismissed.

4. Analysis and conclusions:

4(a). I have perused the OA memo, its annexes, filed by the applicant, reply filed by the respondents and arguments of the learned counsels of the parties and caselaws cited in their support. For perusal of proceedings of the meetings of the CRC, as directed the respondents have produced the original case record, which was perused and thereafter returned, retaining a photocopy of it. Based on such consideration, the merits of the case are analysed as follows:

4(b). While the OA was filed on 30.06.2011, at that time the applicant did not file any application for condonation of delay. Later on 16.04.2018, the applicant filed M.A.2071/2018 for condonation of delay stating that there is no disproportionate delay and if at all it is there, it is bonafide and in view of financial condition of the family and tender age of the applicant, it should be condoned.

Since the OA has been filed challenging the rejection of his application for appointment on compassionate ground dated 05.03.2010, the period of

limitation allowed for the applicant was of one year i.e. only upto 04.03.2011, but there is delay of three months and 25 days in filing of the O.A. In view of the O.A. seeking employment on compassionate grounds, the delay is condoned.

4(c). After death of his father on 11.10.2005, the applicant submitted his application for employment on compassionate ground on 14.06.2006 i.e. after 8 months. The CRC in its meeting on 06.07.2009 to 10.07.2009 considered his case (along with other similar cases) and in view of receipt of settlement dues of late Shri Dharmik i.e. Rs.4,26,547/-, monthly family pension of his widow, value of the house owned by the family and income of the family from the house property assessed the degree of indigence of the applicant for compassionate appointment within the 5% quota of direct recruitment vacancies and the applicant's family was not found in indigent condition.

4(d). The CRC assessed the relative indigence of the applicant's family based on the reasonable set of criteria as per instructions of the Department of Posts by applying those criteria uniformly to all the applicants. A perusal of the case record produced by the respondents further reveals that in view of stipulations in DOPT OMs dated 03.05.2003, and 26.07.2012, Directorate order dated 19.04.2004,

the CRC again met in January, March, April and May, 2016 and decisions of this Tribunal and Bombay High Court in many of those cases, considered all pending cases from prior to 2000 upto January, 2010. The case of the present applicant was also considered by the CRC in view of rejection of his case earlier in the meetings held on 06.07.2009 to 10.07.2009 and earlier directions of this Tribunal in this O.A. on 31.01.2012 and R.P. on 17.02.2014 and the Writ Petition filed in Bombay High Court in which two orders of the Tribunal were challenged.

4(e). In this context of compassionate appointments, a gist of DOPT guidelines in different OMs on this subject and principles listed in following Apex Court decisions is summarized here.

(i) **Auditor General of India and others Vs. G.Ananta Rajeswara Rao, (1994) 1 SCC 192.**

(ii) **Umesh Kumar Nagpal Vs. State of Haryana and others, JT 1994 (3) SC 525.**

(iii) **Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambedkar and others, JT 1994 (2) SC 183.**

(iv) **Himachal Road Transport Corporation Vs. Dinesh Kumar, JT 1996 (5) SC 319.**

(v) **State of Haryana and others Vs. Rani Devi and others, JT 1996 (6) SC 646.**

(vi) **Local Administration Department Vs. M.**

Selvanayagam @ Kumaravelu, Civil Appeal No.2206/2006
dated 05.04.2011.

(vii) The Govt. of India & Anr. Vs. P. Venkatesh,
Civil Appeal No.2425/2019 dated 01.03.2019.

(viii) Sanjay Kumar Vs. State of Bihar and others
{(2000) 7 SCC 192}.

(ix). Manager, State Bank of India and others Vs.
Anju Jain (2008) 8 SCC 475.

(x). MGB Gramin Bank Vs. Chakrawarti Singh {(2014)
13 SCC 583}.

(xi). Haryana State Electricity Board and another
Vs. Hakim Singh, reported in 1997(8) SCC 85.

(xii). The Hon'ble Supreme Court in W.P.
No.8773/2015 dated 27.07.2017.

(i). The object of granting compassionate
appointment is to enable the family of the deceased
employee to tide over the sudden crisis after death
of the bread earner.

(ii). The object is not to give post to a member
of such family.

(iii). Mere death of an employee in harness does
not entitle his family to such source of livelihood
by employment on compassionate grounds. The
Government or the public authority concerned has to
examine the financial condition of the family of the
deceased and only if it is satisfied that without
providing employment, the family will not be able to

meet the crisis that a job should be offered to eligible member of the family.

(iv). Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds. Offering of an appointment on compassionate ground as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v). Appointment on grounds of descent is clearly violative of Article 16(2) of the Constitution and only immediate appointment in the event of there being no other earning member in the family to supplement the loss of income and to relieve economic distress of the family members, exceptions can be made for appointment on compassionate ground.

(vi). An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and, therefore, bad and illegal.

(vii). Compassionate appointment cannot be granted after lapse of reasonable period of time, it is not a vested right which can be exercised at any time.

(viii). Compassionate appointment cannot be offered by an individual functionary on adhoc basis. Extending of the scheme for appointment on compassionate grounds to all sorts of casual and adhoc employees, including those who are working as Apprentices, cannot be justified on Constitutional grounds.

(ix). The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of compassionate appointment. Scope of the compassionate appointment should not be based on an unwarranted sympathy or leniency. However, any such sympathy or leniency shown to a particular person should not have any adverse effect of affecting the rights of other eligible citizens, who are waiting and longing for public employment in this great Nation.

(x). Compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood.

(xi). Appointment on compassionate ground offered

to a dependent of a deceased employee is an exception to the normal rule of recruitment to public service posts. It is a concession, not a right.

(xii). Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution.

(xiii). The Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

4 (f). On analysing the case of the applicant in view of the above gist, I find no merit in the present O.A. the action of the respondents in considering his case based on the criteria applied for judging indigent condition of the dependents of employees who died in harness, there was no infirmity or flaw in the assessment of relative indigent condition of family of the applicant and, therefore, rejection of his case by them was fully justified.

4(g). The applicant himself has mentioned that as per ready reckoner the value of the house was about Rs.14 lakhs and his father had only 1/3rd share in it. Therefore, working out of its value by the respondents at Rs.4,75,820/- is not very different. Thus there was no flaw in assessing the value of the house property of the applicant made by the respondents and, therefore, the applicant's claim that his case had been rejected on flimsy grounds is baseless.

4(h). Also in view of the Supreme Court decision in **Local Administration Department & Anr. Vs. M. Sevanayagam @ Kumaravelu, Civil Appeal No.2206/2006** since death of the applicant's father was in 2005, by now his claim has become totally stale, hence deserves no consideration.

4(i). The Circle Relaxation Committee in its meeting on 06.07.2009 to 10.07.2009 concluded that in view of no relative indigency of the family, his case was not fit for recommendation for appointment on compassionate ground. In view of this, I find no merit in the O.A. and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr.Bhagwan Sahai)
Member (A).