

35

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION 268/2012  
Cuttack, this the 21<sup>st</sup> day of August, 2015

CORAM  
HON'BLE MR. R.C. MISRA, MEMBER (A)

Pramod Kumar Mallick  
Aged about 33 years  
S/o Late Shri Padmanav Mallick,  
Ex. GDS MC, Kamakshyanagar S.O.,  
At Rekula,  
PO/PS Kamakshyanagar,  
District Dhenkanal.

...Applicant

(Advocate : Mr. D.P. Dhalasamant )

**VERSUS**

Union of India represented through

1. Director General of Posts,  
Government of India,  
Ministry of Communications,  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.

2. Chief Post Master General,  
Odisha Circle, Bhubaneswar,  
District Khurda - 751 001

3. Director Postal Services,  
Office of the Post Master General,  
Sambalpur Region,  
Sambalpur - 768 001

4. Superintendent of Post Offices,  
Dhenkanal Division,  
Dhenkanal - 759 001.

5. Inspector of Post Offices,  
Kamakshyanagar Sub Division,  
Kamakshyanagar, Dhenkanal.

...Respondents

(Advocate : Mr. S.B. Mohanty)



O R D E R

R.C.MISRA, MEMBER(A):

This Application has been preferred by Sh. Pramod Kumar Mallick under Section 19 of the Administrative Tribunals Act, 1985, for direction to be issued to the respondent-department to provide him an employment under 5% compassionate ground quota by quashing the impugned order A/5 dated 7<sup>th</sup> December, 2011 issued by the Superintendent of Post Offices, Dhenkanal Division, Dhenkanal.

2. The brief facts giving rise to this application are that the applicant's father while working as Gramin Dak Sevak Mail Carrier (for short "GDSMC") Kamakshyanagar S.O. passed away on 15<sup>th</sup> November, 2009, leaving behind the applicant and one married daughter. It is stated that before the death of his father, his mother had already breathed her last. In the circumstances, in order to look after his father applicant got married and is blessed with three children. It is submitted that applicant has passed +2 in Arts and belongs to Scheduled Caste category.

3. It is pleaded that after the death of applicant's father on 15.11.2009, respondent No. 4 vide Memorandum dated 27<sup>th</sup> November, 2009 intimated him about the provision for consideration of appointment on compassionate grounds. Consequently, he submitted an application to the Superintendent of Post Offices, Dhenkanal Division, Dhenkanal for consideration as such. Thereafter, the respondent No. 5, vide his Memorandum dated 23<sup>rd</sup> December, 2009 (A/4) requested the Tehsildar, Kamakshyanagar to furnish details of immovable properties and other valuables in respect of the deceased employee. Since nothing favourable was heard from the side of



respondents, applicant submitted another representation and in reply to that, respondent authorities vide their letter dated 7<sup>th</sup> December, 2011 (A/5) informed ~~him~~<sup>the</sup> applicant that his case cannot be considered for appointment on compassionate grounds, being less meritorious, having scored 33 merit points, whereas cases scoring above 50 merit points, only came in the zone of consideration.

4. Grievance of the applicant is that his case was not sent by the respondents for consideration by the Circle Relaxation Committee and without this process being undertaken, respondents are alleged to have violated the provisions of Article 14 and 16 of the Constitution. Further, it is the stand of the applicant that as per the Instructions of the Department of Personnel & Training dated 5<sup>th</sup> May, 2003, all such cases are required to be considered thrice which has not been done in this case. Hence, being aggrieved by this inaction, applicant has approached this Tribunal. Applicant has prayed for quashing of letter dated 7<sup>th</sup> December, 2011 (Annex.A/5), and also letter dated 15<sup>th</sup> December, 2011 (Annex.A/6), but no Annex. A/6 is enclosed to the O.A.

5. A counter-reply to the O.A. has been filed by the respondents stating therein that the documents so filed by the applicant in support of his appointment on compassionate ground were duly verified by respondent No. 5 and thereafter, the same were placed before the Postmaster General, Sambalpur Region, Sambalpur on 14<sup>th</sup> March, 2011 along with the proforma report on merit points based on 100 point scale as per the parameters prescribed in the Directorate letter No. 17-17/2010-GDS dated 14<sup>th</sup> December, 2010 (R/1) for consideration. Thereafter, the Postmaster General, Sambalpur Region, Sambalpur vide his letter dated 25<sup>th</sup> October, 2011 intimated that as per the Instructions of the Directorate, the most deserving and hard cases mean that cases over and above



50 merit points would come under the zone of consideration. But, in the instant case, the merit points come to 33 only for which the case was not recommended but submitted to CRC for consideration. The CRC considered 129 GDS cases including the case of applicant on 12.12.2011 and rejected his case as the applicant scored only 33 points. A copy of the CRC decision dated 15<sup>th</sup> December, 2011 is filed along with the reply at R/3.

6. The applicant has also filed a rejoinder to the counter-reply reiterating the facts enumerated in his O.A. It is stated that the scheme for engagement of GDS on compassionate ground as per Directorate letter dated 14<sup>th</sup> December, 2010 and 1<sup>st</sup> August, 2011 has no application to the case of the applicant and the procedure prevailing at the time of the death of applicant's father on 15<sup>th</sup> November, 2009 for appointment under compassionate ground will be applicable. To be specific, applicant has contended that the system of allocation of merit points on a hundred point scale based upon various attributes as introduced by letter dated 14<sup>th</sup> December, 2010 and partially modified by letter dated 5<sup>th</sup> August, 2011, would not be applicable to case of the applicant.

7. I have heard the learned counsel for both the parties and perused the pleadings of the respective parties.

8. The object for providing compassionate appointments is to give immediate succour to the family of the deceased employee to help them to tide over the sudden crisis created by death of the bread winner. In the present case, the respondents have submitted that the applicant scored only 33 merit points, much less than the minimum required 50 points for consideration as a hard and deserving case. The system of allocation of merit points on the basis of various attributes has been introduced in the



Department vide letter dated 14<sup>th</sup> December, 2010. The case of the applicant was considered in the meeting of the C.R.C. held on 12<sup>th</sup> December, 2011. The decisions taken in the meeting were communicated vide letter dated 15<sup>th</sup> December, 2011, as enclosed at Annex. R/3. In Part-III of the proceedings, the name of the applicant occurs at Sl. No. 46, and his case has been rejected on the ground that on the basis of attributes prescribed, he did not score 50 points so that he could be considered as a hard and deserving candidate. He could score only 33 points.

9. The learned counsel for applicant in course of his submissions, placed reliance on the argument that when the applicant's father expired, the system of allocation of merit points was not in force, and therefore even though by the date of C.R.C. meeting, i.e. 12<sup>th</sup> December, 2011, the system of allocation of points was already implemented, such application of Circular letter dated 14<sup>th</sup> December, 2010 was irregular, considering the fact that applicant's father expired on 15<sup>th</sup> November, 2009.

10. This issue had come up before the Tribunal in O.A. No. 946/2013 decided on 15<sup>th</sup> June, 2015. The Tribunal relied upon the following observation of the Hon'ble Apex Court in the case of **State Bank of India and Another Vs. Raj Kumar** (C.A. No. 1641 of 2010), as quoted below :

***"As none of the applicants under the scheme has a vested right, the scheme, i.e. 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. .... As compassionate appointment is a concession and not a right the employer may wind-up the scheme or modify the scheme at any time depending upon its policies, financial capability and availability of posts."***


11. The Hon'ble Apex Court had made similar observation in **M.B.G. Gramin Bank Vs. Chakrawarti Singh**, C.A. No. 6348 of 2013, based upon the decision in the case of **State**



**Bank of India and Another Vs. Raj Kumar. O.A. No. 377/2008** was decided by the Ahmedabad Bench of this Tribunal with an observation that the weightage system brings in a yardstick for measurement of indigency. This Bench had decided **O.A. No. 469 of 2013**, based upon the ratio laid down by the Apex Court.

12. Compassionate appointment is not a matter of right of the applicant. He therefore, cannot claim that the cause of action for consideration arose from the date of death of the applicant's father. The respondents organisation considered the prayer for compassionate appointment on the basis of guidelines that were in force on the date of consideration. This is perfectly valid as per the law laid down by the Hon'ble Apex Court.

13. The applicant has made a claim that the application for compassionate appointment should have been considered three times as per the Department of Personnel & Training letter dated 5<sup>th</sup> May, 2003. No such specific prayer has been made in the O.A. In the view of this Tribunal no such direction need be issued <sup>to</sup> <sup>by</sup> the respondents. In the O.A., at para 5, the applicant mentions that the Regional Office did not send the applicant's case to C.R.C. This is factually erroneous since the records show that the C.R.C. considered the matter, but rejected the same on the basis of his scoring only 33 merit points against a minimum requirement of 50. The applicant has failed to bring up any facts that will dispute the allocation of scoring 33 points. He has not brought up any additional facts before the Tribunal to plead that he deserved to be allocated higher points. On the other hand, the respondents have clearly submitted that the applicant could not reach the minimum required merit points to deserve any consideration.



14. It is also perused from the O.A. itself that due to death of the mother of the applicant prior to his father's death, the applicant married in order to look after the deceased employee, and he has also been blessed with three children. If the applicant had married before the death of his father, it is to be construed that he was not in indigent condition, and with due satisfaction of his financial capability, married and, had three children out of that marriage. The condition of indigency is not brought out from the fact that the applicant was himself supporting his own family consisting of wife and, three children.

15. I have considered the matter in detail, and based upon the discussions made in foregoing paragraphs, I do not find any merit in this O.A. which is accordingly dismissed, with no order as to costs.



**[R.C.MISRA]**  
Member (A)