

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 701 of 2012
Cuttack, this the 7th day of January, 2015

Ms. Abinash Kaur

Versus

Union of India & Ors.

..... Applicant

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ^{ys}
2. Whether it be referred to PB for circulation? ^{ys}



(R.C.MISRA)
Member (Admn.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

15
Original Application No. 701 of 2012
Cuttack, this the 7th day of January, 2015

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HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

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Miss Abinash Kaur,
aged about 24 years,
D/o. Late Abtar Singh, Ex-SPM, Khariar Road SO,
Resident of At- Statuepada, Bhawanipatna-766001,
Dist. Kalahandi, Odisha.

...Applicant

(Advocates: M/s. G.K.Behera, D.R.Mishra)

VERSUS

Union of India Represented through

1. Director General of Post,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar
Dist- Khurda, Odisha.
3. Post Master General,
Berhampur Region, Berhampur-760001,
Dist- Ganjam, Odisha.
4. Superintendent of Post Offices,
Kalahandi Postal Division,
At/PO-Bhawanipatna-766001,
Dist- Kalahandi, Odisha.

...Respondents

(Advocate: Mr. G.Singh)

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ORDER

SHRI R.C.MISRA, MEMBER (ADMN.) :

The applicant, in the present case, is the daughter of late Abtar Singh, who was serving as Sub Post Master at Khariar Road Sub Post Office, under the Superintendent of Post Offices, Kalahandi Postal Division, and has approached the Tribunal with a prayer to direct the Respondents to



16

consider her case afresh and recommend and appoint her against the post of Postal Assistant in the Bhawanipatna Postal Division under compassionate quota.

2. The brief facts of the case are that the father of the applicant while serving as Sub Post Master at Khariar Road Sub Post Office expired on 02.02.2009 leaving behind the dependent widow, the applicant and one minor son, who live in great distress due to untimely passing away of the applicant's father. Soon after the death of the breadwinner of the family, the widow of the deceased employee approached the Respondents for compassionate appointment in favour of her daughter. The copy of the death certificate, legal heir certificate and income certificate etc. as per requirement were submitted along with the application for compassionate appointment. The applicant is a Post Graduate and is otherwise eligible for the post of P.A. The applicant submitted the solvency and valuation certificate in respect of his property in response to a letter issued by the Respondents-authorities. The Circle Relaxation Committee considered the case of the applicant for compassionate appointment in a meeting held on 25.04.2011 but turned down the same vide letter dated 20.05.2011. The applicant was intimated that her case for compassionate appointment in the P.A. cadre in relaxation of normal Recruitment Rules was considered by the CRC in the meeting held on 25.04.2011 and rejected due to the want of vacancy and not being indigent in comparison to others. On 16.05.2012, the widow of the deceased employee made a representation to Respondent No. 1 to reconsider the case of compassionate appointment of her daughter. In response to this representation, the Respondents informed the widow vide letter dated 18.05.2012 that her representation was rejected since the case of her daughter had already been considered in the CRC held on 25.04.2011



17

and was not found as exceptional and deserving to be considered again. The applicant, in this O.A., has submitted that this order of the authorities is arbitrary since the Department of Personnel and Training instruction dated 05.05.2003 clearly provides for giving consideration three times to the case of the applicant seeking appointment on compassionate ground whereas in the present case admittedly consideration has been given only once to the case of the applicant. Against the background of these facts, the applicant has prayed that her case needs to be reconsidered by the concerned authorities.

3. The counter affidavit filed by the Respondents in this case mentions that the family of the applicant is not living in indigent condition the reason being that the family is receiving basic family pension of Rs. 8480/- per month plus admissible Dearness Relief. The total terminal benefits received by the family comes to Rs. 7,85,802/-. The monthly income of the family comes to Rs. 10,147/-. The family is living in their own house and solvency of the family is Rs. 12,99,000/-. The case of the applicant was considered by the CRC which met on 25.04.2011 and was rejected due to want of vacancy and also due to the fact that the family was not found to be indigent in comparison to other cases. The Respondents have also further considered the representation of the mother of the applicant for reconsideration of the matter and it was intimated to the mother that the case is not found to be exceptional and deserving to be considered once again. The submission made in the counter affidavit is that the case of the applicant was given a fair consideration strictly according to the rules and the case was rejected because of two reasons. The first ground of rejection is want of vacancy and the second ground is that the case was found not to be indigent in comparison to others. The decision of the CRC also has been

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18
communicated to the applicant. The prayer for reconsideration was also rejected because as per the facts there was nothing exceptional in the case deserving reconsideration. The Respondents in the counter affidavit have also submitted clearly the present financial condition of the applicant and her family members and submitted that the family is not in such a situation of distress that compassionate appointment is to be extended to them. The Respondents have further argued that there was no vacancy also for this purpose. They have submitted that it has been held by the Hon'ble Apex Court in the cases of Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319) and Hindustan Aeronautics Limited Vs. Smt. A.Radhika Thirumalai (JT 1996 (9) SC 197) that appointment on compassionate ground can be made only if a vacancy is available for that purpose. It is further argued that appointment under compassionate ground cannot be claimed as a vested right.

4. The applicant's Counsel has filed a rejoinder in which the thrust is on the Department of Personnel and Training instruction dated 05.05.2003 which provides for giving three times consideration to the cases seeking appointment on compassionate ground whereas in the present case consideration has been given only once. The Ld. Counsel for the applicant by filing a written note of submission has emphasized this point again and he has also specifically mentioned that the applicant deserves more merit points against terminal benefits, movable/immovable properties and number of dependents.

5. Having heard Ld. Counsels from both the sides, I have also perused the records. I find that in the present case the CRC has considered the case of the applicant for compassionate appointment on 25.04.2011. In this regard the communication sent to the applicant vide letter dated



19

20.05.2011 reveals that the prayer of the applicant was rejected due to the want of vacancy and his case being not indigent in comparison to others. The ^{minutes of} meeting of the CRC held on 25.04.2011 is not available for this Tribunal for examination. It is, therefore, not possible to examine whether the applicant's case has been given a fair consideration with regard to the case of the other applicants. Be that as it may, the other reason for rejection advanced by the Respondents is want of vacancy. Thereafter, in reply to the representation of the applicant's mother made on 16.05.2012, it was intimated by the Department that there was nothing exceptional about the case of the applicant deserving further consideration. To be fair, if in a particular year for which the prayer is being considered and there is no vacancy, the Respondents authorities should have considered it again when the vacancy is available for consideration. Therefore, due to this reason it cannot be held that the matter will not be considered again. To that extent, I find that the letter dated 18.05.2012 is not an appropriate reply made to the mother of the applicant. On the other hand, the case made out by the Ld. Counsel for the applicant that according to circular of the Department of Personnel and Training there can be three times consideration of the case of the applicant becomes stronger. On the matter of the indigent condition of the applicant, the Tribunal would not like to make any observation in the absence of the minutes of the CRC meeting and other documents which were taken into account by the Committee. However, this is a matter which should be decided strictly as per the facts with regard to the various parameters to be considered in the case of compassionate appointment. It is the ^{by} duties of the Respondents to consider each case on the basis of its merit in comparison to other cases which are under consideration. Whether the case of the present applicant was indigent in comparison to others is,

20

therefore, finally a fact to be decided by the Respondents on merit. But in the present case it appears that ^{the R} ~~firmly~~ ^{ion R} communicated that no reconsideration is possible goes against the spirit of the scheme for compassionate appointment. This becomes even more ^{in R} appropriate when it is considered that ~~the~~ one ground of rejection is lack of vacancy. It is to be remembered that lack of vacancy is not a permanent situation and, therefore, in case there is vacancy the Respondents are to consider the prayer of the applicant obviously taking into account other facts regarding the indigent condition of the family. But to refuse to consider outright is denial of natural justice in this case. It has been emphasized by the Hon'ble Apex Court in a number of cases that compassionate appointment is not a matter of right and it has to be considered in the light of the provisions of the Scheme taking into account the urgent needs of the family and its financial situation after the death of the concerned Govt. servant. It will be appropriate to quote from the judgment of the Hon'ble Apex Court rendered in 2013(2) SLR 429 SC, Civil Appeal No. 6224/2008 decided on 25.03.2012, where the Hon'ble Apex Court has observed as follows:

“There can be no quarrel of the settled legal proposition that claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touch stone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule, public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to aforesaid recruitment, taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood.”


[Signature]

21

The Hon'ble Apex Court goes on to further observe that appointments^h on compassionate ground have to be made in accordance with the rules, regulations and administrative instructions taking into consideration the financial condition of the family of the deceased.

6. Taking into consideration the various submissions made by the Ld. Counsel for both the sides and after carefully^Q considering the facts of the case, I hold that the case of the applicant for compassionate appointment needs to be reconsidered two times more by the concerned authorities strictly according to the rules, regulations and guidelines pertaining to the claim for compassionate appointment. Accordingly, the letter dated 18.05.2012, Annexure-A/10, is quashed and the matter is remanded for reconsideration by the Respondents authorities.

7. With the above observation and direction, the O.A. is disposed of with no order as to costs.


(R.C.MISRA)
MEMBER (Admn.)

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