

16
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.705 of 2013
Cuttack this the 07th day of May, 2015

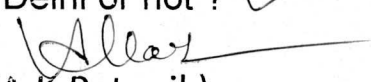
Prasanta Kuma Lenka...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi or not ? ✓


(A.K. Patnaik)
Member (Judicial)

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.705 of 2013

Cuttack this the 07th day of May, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Prasanta Kuma Lenka, aged about 37 years, S/o. late
Dharmananda Lenka, At/Po-Titira, Via-Borikina, Dist-
Jagatsinghpur

...Applicant

By the Advocate(s)-M/S.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through

1. The Director General of Posts, Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001
3. Superintendent of Post Offices, Cuttack South Division, Cuttack-753 001

...Respondents

By the Advocate(s) Mr.S.Behera

ORDER

A.K.PATNAIK, MEMBER(J)

Father of the Applicant (Late Dharmananda Lenka) was an ED Packer of Borikina Sub Post Office. While working as such, he prematurely died on 06.06.2009. In such eventuality, by making an application, appointment on compassionate ground was sought in favour of the applicant who is the son of the deceased employee. The same having been considered was rejected on 29.12.2011 by the



18

Respondent- authorities. Against this rejection, applicant approached this Tribunal in OA No. 295/2012. This Tribunal vide order dated 12.04.2012 disposed of the said O.A. by holding that the case of the applicant, as per the DoP&T OM dated 05.05.2003, should be considered on two more occasions. Accordingly, respondent- authorities considered the matter of compassionate appointment of the applicant and rejected the same on 16.10.2012. Aggrieved with the above decision of the respondent-authorities, applicant again moved this Tribunal in OA No. 916 of 2012. As the impugned order of rejection was found to be an unreasoned one, this Tribunal vide order dated 18.12.2012 remitted the matter back to the respondent- authorities for giving consideration to the case of the applicant in the light of the earlier order of this Tribunal dated 12.04.2012. Backed by this, the respondent-authorities considered the case of the applicant and rejected the same on the ground that as per the Directorate letter dated 13.4.2012, a candidate has to secure the minimum 51 merit points for being recommended for appointment on compassionate ground, whereas the applicant herein secured only 37 merit points on a 100-point scale, based on various indigence related attributes fixed by the department and this fact was intimated to the applicant vide letters dated 23/25.04.2013 & 26.08.2013(Annexure-A/5 and A/6), respectively, the full text of which is quoted hereunder.



19

Order(A/5)

This is regarding the case of Sri Prasanta Kumar Lenka, S/o. late Dharmananda Lenka, Ex-GDSPkr, Borikina SO under Cuttack South Division. The Ex-GDS expired on 06.06.2009 while in service. His son Sri Prasanta Kumar Lenka applied for appointment on compassionate ground.

The case of Sri Prasanta Kumar Lenka was considered in the CRC meeting held on 12.12.2011 and was rejected as the applicant scored 26 merit points which was less than the prescribed 51 merit points on a 100-point scale as per the parameters prescribed in the Postal Directorate letter No.17-17/2010-GDS dated 14.12.2010.

Being aggrieved with the decision of the CRC held on 12.12.2011, Sri Prasanta Kumar Lenka moved to the Hon'ble CAT, Cuttack Bench, Cuttack by filing OA No.295/2012. The Hon'ble CAT disposed off the case vide order dated 12.04.2012 with the following observation.

"Having heard Ld. Counsel for the parties, we direct Respondents to consider the case of the applicant taking into account the provisions made in the DOP&T circular dated 05.05.2003. It has been the consistent stand of this Bench that three times consideration would mean consideration against three consecutive recruitment years. The same needs to be followed and matter be placed before the next CRC for consideration and thereafter reasoned orders be issued by the Respondents under intimation to the applicant".

In accordance with the direction of the Hon'ble CAT, Cuttack Bench, Cuttack, the case of Sri Prasanta Kumar Lenka was put up for consideration again before the CRC, which met on 26.09.2012/01.10.2012. In the meantime the merit points allocated to various indigency related parameter was changed vide Directorate letter



20


No.17-17/2010-GDS dated 09.03.2012. The CRC found that the applicant scored 37 merit point only on the 100-point scale based on the prescribed yardsticks of merit points vide the latest order of Postal Directorate letter viz.No.17-17/2010-GDS dated 09.03.2012. Since the applicant's score in this CRC meeting was also less than 51 merit points, the CRC could not approve his case for appointment on compassionate ground as per the instructions contained in Directorate letter No.17-17/2010-GDS dated 13.04.2012. However, to obey the order of the Hon'ble CAT dated 12.04.2012, the CRC further decided to consider the compassionate appointment case of Sri Prasanta Kumar Lenka one more time in the next CRC.

A reasoned order was issued by the undersigned, bearing No.CRC/17-31/GDS/2011 dated 04.12.2012 and the same was delivered to the applicant on 17.12.2012 wherein it was clearly mentioned that his case would be considered one more time in the next CRC as per the order of the Hon'ble CAT. But, before getting the speaking order and without knowing the actual order of the crc HELD ON 26.09.12/01.10.12, he thought that his case was simply rejected and approached the Hon'ble CAT by filing ' O.A.No.916/2012 on 16.11.2012 to quash the rejection order.

The Hon'ble Tribunal disposed of the case No.916/2012 vide order dated 18.12.2012 with the following direction.

"Hence, the order under Annexure A/20 is hereby quashed and the matter is remitted back to the Respondents to reconsider the case of the applicant keeping in mind the observation and direction made earlier in O.A.No.295 of 2012 disposed of on 12.04.2012".

It is pertinent to mention here that the Hon'ble CAT was not aware that CRC already considered his case second time and have decided to consider his case for third time, when



21

CRC is held next. However, in compliance with CAT's order in O.A.No.916/2012 dated 18.12.2012, the position is being clarified herein, once against, as mentioned, in various paras above".

Order(A/6)

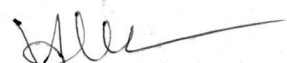
This is regarding compassionate appointment case of Sri Prasanta Kumar Lenka, S/o. late Dharmananda Lenka, Ex-GDSPkr, Borikina SO under Cuttack South Division. The Ex-GDS expired on 06.06.2009 while in service. His son Sri Prasanta Kumar Lenka applied for appointment on compassionate ground.

The case of Sri Prasanta Kumar Lenka was considered in the CRC meeting held on 12.12.2011 and was rejected as the applicant scored 26 merit points which was less than the prescribed 51 merit points on a 100-point scale as per the parameters prescribed in the Postal Directorate letter No.17-17/2010-GDS dated 14.12.2010.

Being aggrieved with the decision of the CRC held on 12.12.2011, Sri Prasanta Kumar Lenka moved to the Hon'ble CAT, Cuttack Bench, Cuttack by filing OA No.295/2012. The Hon'ble CAT disposed off the case vide order dated 12.04.2012 with the following observation.

"Having heard Ld. Counsel for the parties, we direct Respondents to consider the case of the applicant taking into account the provisions made in the DOP&T circular dated 05.05.2003. It has been the consistent stand of this Bench that three times consideration would mean consideration against three consecutive recruitment years. The same needs to be followed and matter be placed before the next CRC for consideration and thereafter reasoned orders be issued by the Respondents under intimation to the applicant".

In accordance with the direction of the Hon'ble CAT, Cuttack Bench, Cuttack, the case



of Sri Prasanta Kumar Lenka was put up for consideration again before the CRC, which met on 26.09.2012/01.10.2012. In the meantime the merit points allocated to various indigency related parameter was changed vide Directorate letter No.17-17/2010-GDS dated 09.03.2012. The CRC found that the applicant scored 37 merit point only on the 100-point scale based on the prescribed yardsticks of merit points vide the latest order of Postal Directorate letter viz.No.17-17/2010-GDS dated 09.03.2012. Since the applicant's score in this CRC meeting was also less than 51 merit points, the CRC could not approve his case for appointment on compassionate ground as per the instructions contained in Directorate letter No.17-17/2010-GDS dated 13.04.2012.

A reasoned order was issued by the undersigned, bearing No.CRC/17-31/GDS/2011 dated 04.12.2012 and the same was delivered to the applicant on 17.12.2012 wherein it was clearly mentioned that his case would be considered one more time in the next CRC as per the order of the Hon'ble CAT. But, before getting the speaking order and without knowing the actual order of the crc HELD ON 26.09.12/01.10.12, he thought that his case was simply rejected and approached the Hon'ble CAT by filing O.A.No.916/2012 on 16.11.2012 to quash the rejection order.

The Hon'ble Tribunal disposed of the case No.916/2012 vide order dated 18.12.2012 with the following direction.

"Hence, the order under Annexure A/20 is hereby quashed and the matter is remitted back to the Respondents to reconsider the case of the applicant keeping in mind the observation and direction made earlier in O.A.No.295 of 2012 disposed of on 12.04.2012".

In obedience to the order of the Hon'ble CAT and decision of the CRC which met on 26.09.2012/01.10.2012, the compassionate



23

appointment case of the applicant was, once again, put up before the CRC held on 30.07.2013 for the third time for reconsideration.

This time also the said CRC could not recommend the case of the applicant as he secured 37 merit points in the same 100-point scale based on various indigency-related attributes fixed by the Department, whereas as per Directorate letter No.17-17/2010-GDS dated 13.04.2012, a candidate must have to secure minimum 51 merit points to be recommended for any GDS post.

This reasoned and speaking order is issued in obedience to Hon'ble CAT's order dated 18.12.2012 in O.A.No.915/2012".

2. Being aggrieved by such decision, the applicant has filed the present OA with prayer to quash the aforesaid letter of rejection dated 23/25.04.2013 & 26.08.2013 and consequently, for direction to be issued to the respondent-authorities to provide him an employment on compassionate ground.

3. Respondents have filed an exhaustive counter resisting the claim of the applicant. In the counter-reply, the respondents while elucidating the detailed factual matrix and the indigency-attributes influencing the decision making process, have submitted that there being no injustice caused to the applicant in the matter of consideration of compassionate appointment and conversely, appointment on compassionate ground is not a matter of right, this OA is liable to be dismissed. To strengthen their view point, the respondents have relied on the decision of the Hon'ble Apex



24

Court in ***Life Insurance Corporation of India Vs Mrs Asha Ramchandra Ambekar and others (JT 1994 (2) SC 1931)***.

4. Despite opportunity having been given, no rejoinder has been filed by the Applicant.

5. Mr.D.P.Dhalsamanta, Learned counsel for the Applicant by putting up the sequence of events of this case, has focused his argument on the applicability of Directorate letter dated 13.04.2012 wherein it has been provided that a candidate must have to secure minimum 51 merit points to be recommended for appointment on compassionate, to the case of the applicant herein. According to Mr.Dhalasamant, the death of the postal employee having occurred in the year 2009 and the letter of the Directorate introducing 51 merit point having been issued with effect from 13.04.2012 cannot have any retrospective application and therefore, the grounds on which the rejection orders are based being bad in law, are liable to be set aside. In this connection, he has placed reliance on an earlier order dated 08.01.2014 in OA No. 334 of 2014 of this Tribunal.

6. On the other hand, Mr.S.Behera, Learned Additional CGSC appearing for the Respondents while vehemently opposing the submissions made by Mr.Dhalasamant stated that the dependants of the deceased employees do not have any lawful claim to employment on compassionate grounds in exception of the concession available for consideration



285

for compassionate appointment under the relevant scheme adopted by the Department concerned. The claim for compassionate appointment is, therefore, confined only within the four walls of the provisions of the scheme set out in this regard. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create an indefeasible right in favour of the applicant and as such the case of the applicant was rightly considered by the extant rules in force which needs no interference by this Tribunal. Accordingly, Mr. Behera has prayed for dismissal of this OA.

7. Having considered the rival submissions, perused the pleadings and materials placed in support thereof including the decisions relied on by the respective parties. Since learned counsel for the applicant has confined his argument regarding the applicability of the Directorate letter dated 13.4.2012 in the matter of consideration of compassionate appointment, I am not inclined to look into the other aspects of the matter.

8. It is now well settled principle of law that appointment on compassionate grounds is not an alternate source of

Wlle

recruitment. On the other hand, it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. It is also well settled law that one cannot claim as a matter of right for appointment on compassionate ground rather such appointment is subject to the provisions made for the purpose. The three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the scheme in force at the time of death would apply. On the other hand if a scheme provides that on the death of an employee, if a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfill any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the



24

application and the scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil. However, for deciding the issues raised in this case, I have gone through the decisions of the Hon'ble Apex Court one is rendered in the case of **State Bank of India and Anr. vs. Raj Kumar(2010) 11 SCC 661** and the other one is in the case of **MGB Gramin Bank Vrs Chakrawarti Singh, (Civil Appeal No. 6348 of 2013, dated August, 7, 2013)/ [2013] 10 S.C.R. 12**. Relevant portion of the order in the case of MGB Gramin Bank (supra) is quoted herein below:

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

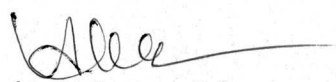
25

15. The respondent may apply for consideration of his case under the new Scheme and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date of receiving of application."

9. I have also gone through the order of this Tribunal dated 08.01.2014 in OA No. 334/2012 and found that the same is of no help to the applicant as the earlier order was without taking into consideration the decision of the Hon'ble Apex Court in the cases of **State Bank of India and Anr. vs. Raj Kumar** and **MGB Gramin Bank Vrs Chakrawarti Singh**, (supra). The above being the facts and law, application of the extant rules or provision for consideration of compassionate appointment cannot make the impugned orders herein weak and vulnerable and therefore, there is no justifiable reason to interfere with those orders.

For the discussions made above, this OA is dismissed.

No costs.


(A.K.Patnaik)
Member (Judicial)