

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.No. 838/2013

Cuttack this the 11th day of August, 2016
CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Ali Dei @ Nayak aged about 63 years wife of Late Shri Bhima Nayak.
2. Bharat Nayak aged about 37 years, S/o Late Shri Bhima Nayak.
Both are of Vill. Kuranjipur PO Dalakasoti, POS Balipatna, Dist.Khurda.

...Applicants

By the Advocate: Mr.D.P.Dhalasamant

-VERSUS-

- 1- Union of India represented through its Secretary, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, New Delhi-110 001.
- 2- Chief Postmaster General, West Bengal Circle, Kolkata.
- 3- Senior Postmaster, Alipur Head Post Office, At/Po-Alipur, Kolkata – 700 027.

...Respondents

By the Advocate: Mr.P.R.J.Dash

ORDER

PER R. C. MISRA :

There are two applicants in this O.A. The applicant No. 1 is widow of late Shri Bhima Nayak and applicant No. 2 is son of the deceased government employee, who was working as a Group 'D' staff under the Senior Postmaster, Alipur Head Post Office at Kolkata and while working had expired on 29.04.1998. Applicant No. 2 had submitted a representation to respondent No. 3 for appointment under compassionate ground which was not considered.

2. The applicant No. 2 was, however, empanelled for engagement as Group 'D' staff and performed his duties against ad hoc Group 'D' post in pursuance of orders dated 15.10.1999 and 09.08.2000. He had again submitted a representation on



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17.10.2007 to respondent No. 3 praying for his appointment on compassionate ground. Applicants have filed a case bearing No. T.S. No. 14/729 before the Additional District Judge, Bhubaneswar for issuance of a direction to provide compassionate appointment along with other reliefs but, the same was rejected on the ground of jurisdiction vide order dated 21.08.2004. Thereafter, applicants filed OA No. 489/2010 before this Tribunal praying for issuing a direction to the respondents for providing compassionate appointment to applicant No. 2. The Tribunal vide its order dated 05.10.2012 directed the respondents to consider the case of applicant No. 2 in the next CRC. The order of this Tribunal was complied with by respondent No. 3 while issuing order dated 24.10.2013 (Annex.A/6) whereby, he was informed that his case for compassionate appointment cannot be considered since a married son is not considered dependant on a government servant as per the DOP&T O.M. No. 14014/02/2012/Estt.(D) dated 30.05.2013 as communicated vide C.O. letter dated 03.10.2013. The order at Annex.A/6 dated 24.10.2013 is under challenge in this O.A.

3. The applicants further averred that late Shri Bhima Nayak had another wife named Pagali Dei at Alipur, who expired on 29.05.2009. She has one daughter and a son named Arta Nayak who is mentally retarded. It is claimed that the applicants of this OA are at present taking care of the retarded son of deceased employee. The main ground of challenge in this OA is that the rules of compassionate appointment as prevalent at the time when deceased employee had expired and the application for



compassionate appointment was filed, should govern the field for consideration of applicants' prayer. But, the respondents have rejected their case in view of OM dated 30.05.2013 mentioning that 'a married son is not considered dependant on a Government servant'. At the time when the cause of action or the grievance to applicants arose, the OM dated 30.05.2013 did not exist, therefore, it is the case of applicants that said OM cannot be invoked to reject their claim.

4. The respondents by filing a counter affidavit have submitted that father of applicant No. 2 Shri Bhima Nayak expired on 29.04.1998 and on application of one Smt. Pagali Dei, said to be wife of deceased employee on the basis of declaration made by late employee on 17.04.1986, DCRG, Leave Encashment, Family Pension etc. were settled in the name of Smt. Pagali Dei. It is further submitted that said Smt. Pagali Dei also expired on 29.05.2009.

Subsequently, the present applicants filed a petition bearing No. 729/1999 before the Additional District Judge, Fast Track Court, Bhubaneswar praying inter alia, for appointment under compassionate ground to be given to the son of deceased employee. According to judgment dated 21.08.2003 of the Court, it was decided that although the applicant No. 1 of this OA is legally wedded wife of late employee, but no relief could be granted to her in so far as grant of pension and pensionary benefits are concerned. Thereafter, a Review Petition was filed bearing No. 2/2004 which was also dismissed on 20.05.2010. In obedience to the orders of this Tribunal in OA No. 489/2010 filed by the present applicants, the respondents started collecting all the



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relevant documents duly verified by the Sr. Superintendent of Post Offices, Bhubaneswar Division. The Senior Superintendent of Post Offices, Bhubaneswar Division, intimated that the Transfer Certificate of the applicant No. 2 is forged one which was issued by the Head Master, Rama Chandra High School, Kurangipur on 07.07.1994. Later on, another duplicate Transfer Certificate dated 01.02.2013 was submitted which was issued by Headmaster-cum-Secretary of Harijan Abasi High School on 08.04.2013. Subsequently, it was known that applicant No. 2 is the married son of late Shri Bhim Nayak. As per the DOP&T OM dated 30.05.2013, a married son is not considered dependent on a government servant. This was intimated to the applicant vide order dated 24.10.2013 and his case was rejected.

5. Having heard learned counsels for both parties, I have perused the records.
6. The learned counsel for applicants submitted that in the course of hearing that the DOP&T has in the meantime clarified on 25.02.2015 that a person even though is married, shall be eligible for compassionate appointment, if he otherwise fulfills the criteria laid down under the Scheme.

However, this clarification will be effective from the date of issue of FAQ i.e. 25.02.2015. It has also been clarified that case of compassionate appointment already settled with reference to FAQ dated 30.05.2013 need not be reopened. It is further submitted by learned counsel that respondents have called for a certificate of Valuation of Land from applicant vide Memo dated 17.04.2015. From this, it is evident that case of the applicant is still under consideration. The main plank of argument of

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learned counsel for applicant is that father of the applicant No. 2 died in harness in the year 1998 and a representation was made for compassionate appointment immediately thereafter. In the year 2007, another representation was made by the applicants. It is contended by learned counsel for applicant that O.A. No. 489/2010 was disposed of on 05.10.2012 with a direction to consider case of applicant No. 2 on priority basis during the next CRC. As communicated on 24.10.2013, the prayer of applicant was rejected on the basis of DOP&T O.M. dated 30.05.2013 the contents of which have already been discussed above. On 25.02.2015 a further clarification was issued by the DOP&T that the married sons will hence forth be eligible for compassionate appointment but, cases already settled in terms of the O.M. dated 30.05.2013 need not be reopened. However, learned counsel for applicants has argued that as per the law laid down by the Hon'ble Apex Court in the case of **Canara Bank and Anr. Vs. M. Mahesh Kumar** reported in 2015 (2) SCC (L&S) 539 and AIR 2015 SC 2411 the rules prevalent at the time of the death of the father of applicant No. 2 i.e. 29.04.1998, should be the guiding factor for considering case of applicant. The O.M. dated 30.05.2013 which was issued much later cannot be invoked to reject the prayer of applicants.

7. On the other hand, learned counsel for respondents has argued that applicant No. 2 has submitted a false Transfer Certificate which is why his case was rejected. The impugned order dated 24.10.2013 mentions that applicant's case for compassionate appointment cannot be considered since a married son is not



considered dependant on a government servant as per O.M. of DOP&T dated 30.05.2013. Although, in the counter affidavit other grounds are mentioned mainly about the submission of false Transfer Certificate, for rejection of his claim, the fact remains that in impugned order itself, no such ground has been reflected. The law is well settled that validity of an order will be adjudged only on basis of grounds taken in the order itself and by making submission of additional grounds in the counter affidavit, the respondents cannot defend a case in the Court of law. In the case of **M.S. Gill and Another Vs. The Chief Election Commissioner** delivered in Civil Appeal No. 1297/77 and reported in AIR 1978 SC 851, the Hon'ble Supreme Court has laid down the following law :

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

In the present case the only ground taken by the respondents in the impugned order is that the DOP&Ts O.M. dated 30.05.2013 is a bar for consideration of claim of applicant No. 2. This is the only ground the validity of which can be judged by the Tribunal in this O.A., the other grounds as reflected in the counter-affidavit have not been communicated to the applicant in the order of rejection that has been challenged.

8. The Apex Court in the matter of **Canara Bank and Anr. Vs. Mahesh Kumar** reported in 2015 (2) SC 2411 has observed as follows :

"13. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No. 154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, (AIR 2007 SC (Supp)414), the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993."



The Hon'ble Apex Court had observed that the employee of the Bank died when 1993 Scheme was in force. His dependent applied timely for compassionate appointment under the scheme. Therefore, his claim cannot be decided as per the subsequently introduced 2005 Scheme providing for ex-gratia payment. It was also held that plea by the Bank that said claim cannot be considered in view of passage of time, was not tenable.

9. It has been repeatedly emphasized by the Hon'ble Apex Court in a catena of judgments that compassionate appointment cannot be claimed as a matter of right, and that it is not another source of recruitment. Strictly speaking, it is a deviation from the Constitutional principles as enshrined in Articles 14 and 16 of the Constitution, but is a welfare measure in order to help the bereaved family to tide over an immediate financial crises caused by the sudden demise of the bread-winner.

The following decision of the Hon'ble Supreme Court in the matter in the **Canara Bank** case (supra) will have to be noted:

"Compassionate appointment cannot be made in the absence of rules and regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme."

10. In the result, I deem it fit to order that in view of the law as laid down by the Hon'ble Apex Court, the respondents have to consider the representation of the applicants for compassionate appointment of applicant No. 2 as per the Rules that were in force at the time when the government employee had expired and representation was made by applicants for compassionate appointment. On the other hand, respondents should consider all the facts and circumstances of the case as well as the documents and place the matter before the Compassionate Appointment Committee for consideration. After a decision is taken by the authorities regarding



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compassionate appointment as per the Rules, the same should be communicated to the applicants within a period of 120 days from the date of receipt of this order.

11. With the above observations and directions, the OA stands disposed of with no order as to costs.


(R.C.MISRA)
Member(A)

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