

29
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.260/00035 OF 2014

Cuttack, this the 29th Day of April, 2016

U. Mohanty & Another Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ✓


(A.K. PATNAIK)
MEMBER (J)

30
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00035 OF 2014
Cuttack, this the 29th day of April, 2016

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

.....

1. Urmila Mohanty, aged about 57 years, W/O-Late Gobardhan Mohanty,
2. Satyapriya Mohanty, aged about 41 years, S/O-Late Gobardhan Mohanty, both of are resides, At-Hatakata, P.O- Puruassottam Prasad, Via-Khandaparagarh, Dist-Nayagarh.

.....Applicant

By the Advocate(s)-M/s. D.P. Dhalsamant, N.M. Rout.

-Versus-

Union of India, represented through

1. Director General of Posts, Govt. Of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist.- Khurda.
3. The Sr. Superintendent of Post Offices, Puri Division, At/Po/Dist-Puri.

.....Respondents

By the Advocate(s)-S. Behera



O R D E R

A.K.PATNAIK, MEMBER (J):

The applicant No. 1 (Urmila Mohanty) and Applicant No. 2 (Satyapriya Mohanty) is the husband and son of Late Gobardhan Mohanty. Late Gobardhan Mohanty was a GDSBPM of Purusottam Prasad B.O. and died in harness on 14.11.2003.

2. Their grievance is that after the death of Late Gobardhan Mohanty, the Inspector of Posts, Nayagarh East Sub Divosin, Nayagarh, Respondent No.4 vide Memo dated 14.01.2004 sought certain documents and name of one of the legal heirs for considering appointment on compassionate ground. In pursuance of the said memo, Applicant No.1 nominated the name of Applicant No.2 for appointment on compassionate ground and submitted the required documents. Thereafter, nothing was communicated to them by the Respondents. Hence, they filed OA No. 224 of 2009 before this Tribunal seeking for a direction to the Respondents to provide employment to the Applicant No.2 in any GDS post under compassionate ground. The said OA was disposed of on 02.06.2009 with direction to Respondent No.1 to consider the case of applicant No.2 for appointment on compassionate ground within a period of sixty days. The respondent No. 2 vide letter dated 29.12.2011 rejected the claim of the applicants which order they challenged once again in OA No. 505 of 2012 which was disposed of by this Tribunal on 17th January, 2013. The relevant portion of the order is quoted as under:

“7. Facts reveal that the Gobardhan Mohanty died on 14.11.2003 and the legal heirs approached the Tribunal in O.A No. 224/09 which was disposed of on 02.06.2009 with direction to consider the case of applicant No.2 for compassionate appointment within a period of 60 days from the date of receipt of copy of this order. Finally, the case of applicant No.2 received consideration by the CRC held on 12.12.2011 and rejected the same taking into consideration the Directorate letters dated 14.12.2010 and 01.08.2011. Law is well settled in the case of



Y.V. Rangaiah Vs. J. Sreenivasa Rao (1983) 3 SSC 284 that consideration of the candidature for the candidates must be in accordance with the rules governing the field when the vacancy occurred and the consideration of the candidate fell due.

8. In the pleadings, it has not been stated as against which year vacancy the case of the applicant was considered. Be that as it may Respondents should have considered the case of the applicant taking into consideration the instruction which were in existence up to the 60 days from the date of order of this Tribunal.

9. In view of the above, impugned order is set aside and the matter is remitted back to the Respondents to consider the case of the applicant in the light of the observations made above.

10. With the above orders and directions, the OA stands disposed of. No costs."

3. It is the case of the applicants that in compliance of the aforesaid order, the Respondents considered and rejected the case of the applicants for providing employment on compassionate ground in favour of applicant No.2 and intimated the reason of rejection to them vide order dated 26th August, 2013 copy of which is filed herewith as Annexure-A/4 to the O.A. Hence being aggrieved by such order of rejection, this O.A has been filed by the Applicants seeking the following reliefs:

- "8.1 That the order dated 26.08.2013 under Annexure-A/4 be quashed.
- 8.2 That direction be issued particularly to the respondent No. 1 to give appointment to the applicant No. 2 under compassionate ground within a stipulated period.
- 8.3 And further be pleased to pass any order/order(s) as deem fit and proper to give complete relief to the applicant.
- 8.4 And for the said act of your kindness the applicant as in duty bound shall every pray."

4. By reiterating the stand taken in the impugned order of rejection at Annexure-A/4, the Respondents have strongly opposed the prayer of the applicants and have prayed for dismissal of this OA.

5. Heard Mr. D.P.Dhalsamanta, the Learned Counsel appearing for the Applicant and Mr. S. Behera, the learned SCGPC appearing for the Respondents



and perused the documents appended thereto in support thereof in their respective pleadings.

6. At the outset, Mr.Dhalsamanta, the learned counsel for the applicant drew my attention to the earlier order of this Tribunal dated 17th January, 2013 in OA No. 505 of 2012 and the order of rejection 26th August, 2013 (Annexure-A/4) to prove that the order of rejection being not in accordance with the direction of this Tribunal, the same is liable to be set aside. It has been contended by him that Late Sri Gobardhan Mohanty, the Ex GDSBPM died on 14.11.2003 and nowhere in the rule/instructions the authority is empowered to deal with the cases of compassionate appointment to consider the grievance of the legal heirs of a deceased employee in the manner it has been considered and rejected by the respondents. This is the reason for which the Respondents did not mention in the impugned order under which rule they have considered the case of applicant No.2. In similar situation the legal heirs of those employees who died in 2003 have been provided with appointment on compassionate ground. Therefore, the impugned order is liable to be quashed.

7. Mr. S. Behera, the learned SCGPC appearing for the respondents reiterated the stand taken in the counter which was also based on the points taken in the impugned order and he has accordingly prayed for dismissal of this OA.

8. Before proceeding further in the matter, it is relevant to extract the impugned order dated 26th August, 2013 (Annexure-A/4) and the same is extracted hereunder for ready reference:

“This is regarding compassionate appointment case of Sri Satyapriya Mohanty, S/o Late Gobardhan Mohanty, Ex- GDSBPM, Purusottam Prasad BO in account with Khandaparagrah SO under Puri Division. Gobardhan Mohanty expired on 14.11.2003. In his


blles

place his son Sri Satyapriya Mohanty applied for compassionate appointment.

The compassionate appointment case of Sri Satyapriya Mohanty was put up before the CRC held on 24.03.2005 and could not be decided due to difference of opinion among VRC members. The Chairman and one member of the CRC did not recommend the case since one son of the deceased was working as a teacher. But one member of the CRC recommended the case due to the reason "Though one son is employed he is getting monthly salary of Rs. 500/- which is very low. The widow has an annual income of merely Rs. 8000/-. The condition of the family can be said to be indigent." The chief Postmaster General after going through the case has recommended the same due to the indigent condition of the family. The case was referred to Directorate for approval vide CO letter of even No. dated 05.09.2005. Before receipt of the decision of Directorate, the mother of the applicant Smt. Urmila Mohanty filed OA No. 224/2009 before the Hon'ble CAT, Cuttack bench, Cuttack. The Hon'ble Tribunal vide order dated 02.06.2009 allowed the OA with direction to the respondent No. 1 viz DG Posts, New Delhi to consider the case of the applicant and to pass a reasoned order on his claim within 60 days date of receipt of the order which has been received at this office on 08.06.2009. As per the direction of Directorate vide letter No. IR No. 3239/09/GDS dated 09.09.2009, a fresh proposal was sent to Directorate vide this office letter of even No. dated 18.09.2009 for approval. Directorate returned the case vide letter No. 17-30/2010-GDS dated 24.01.2011. the case came up for consideration by CRC at CO level in accordance with the instruction contained in the Directorate letter No. 17-17/2010-GDS dated 01.08.2011.

As per the direction of the Hon'ble Tribunal, Cuttack Bench, Cuttack vide order dated 02.06.2009 arising out of OA No. 2245/2009 and direction of Directorate, the CRC which met on 12.12.2011 for GDS candidates reconsidered the compassionate appointment case of Sri Satyapriya Mohanty along with other 128 cases keeping in view the instructions contained in the Directorate letter No. 17-17/2010-GDS dated 14.12.2010 and 01.08.2011. The CRC did not find his case hard and deserving in terms of the parameters prescribed in the Directorate letter No. 17-17/2010-gDS dated 14.12.2010 and 01.08.2011 as he secured only 33 merit points in 100 points scale based on various indigence related attributes, whereas to be recommended for any GDS Post, a candidate must have to secure over and above 50 merit points to be treated as 'hard and deserving'.

Further, as per the directions contained in Directorate letter No. 17-1/2010 GDS dated 09.03.2012; all cases rejected by the CRC held on 12.12.2011 were again reconsidered along with the applicant's as per the fresh modified 100 points calculation sheet in the CRC held on 26.09.2012/01.10.2012. this time also the applicant scored only 40 merit points for which his case could not be recommended for



appointment in any GDS Post by the said CRC, not finding the case hard and deserving. To be treated as hard and deserving minimum 51 merit points are required as per the parameters fixed by the Department.

After knowing the rejection of her son's case, Smt. Urmila Mohanty, the widow filed OA 505/2012 before the Hon'ble CAT, Cuttack bench with a prayer to quash the rejection order and to provide appointment under compassionate ground.

The Hon'ble CAT disposed of the case vide its order dated 17.01.2013 with the following observation that "Respondents should have considered the case of the applicant taking into consideration the instruction which were in existence" and directed as follows.

"In view of the above, impugned order is set aside and the matter is remitted back to the Respondents to consider the case of the applicant in the light of the observations made above."

In accordance with the directions of the Hon'ble CAT, Cuttack Bench Cuttack, the case of the applicant was put up before the CRC, which met on 30.07.2013 for reconsideration along with other cases for the third time.


The Hon'ble CAT had observed that the Respondents should have considered the case of the applicant taking into consideration the instructions which were in existence up to 60 days from the date of the order of the Hon'ble Tribunal(02.06.2009). the Committee examined the case in accordance with the instructions but could not recommend the case for compassionate appointment as:

1. The EX-GDSBPM has no dependent children for education, no liability of marriage of daughter.
2. The EX-GDSBPM has only four sons who are all married.
3. The four sons of the EX. GDSBPM are living in their own house.
4. One of the sons is working as PET in SLN High School, Nabarangpur.
5. The family has also got about 2.5 Acre of land for their sustenance.

In accordance with the norms of the Department, I accept the decision of the Circle relaxation Committee held on 30.07.2013 in this case and reject the case of the applicant for compassionate appointment this time also.

This reasoned & speaking order is issued in obedience to Hon'ble CAT's order dated 17.01.2013 in OA No. 505/2012."

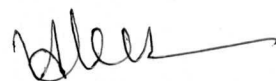
9. The principle of law which is clarified and stands crystallized with regard to the applicability of the Rules in regard to appointment on compassionate ground after the judgment of the Hon'ble Apex Court in the case of **Canara Bank**



& Anr –Vs-. M.Mahesh Kumar & Ors, reported in 2016 (1) AISLJ 75 is that the claim of the dependent for compassionate appointment shall be considered as per the scheme which was in vogue at the time of death of the concerned employee. In the impugned order no whisper has been made as to under which provision of the rules they have considered the case of the applicant and what was the vacancy position, as directed in the previous order of this Tribunal. In this view of the matter, it can safely be held that the order of rejection is nothing but a vague one more so being not in accordance with the earlier order of this Tribunal and the consideration, appears to be not in accordance with the law laid down in the case cited supra.

10. The above being the facts and law, the impugned order under annexure/A-4 is quashed and the matter is remitted back to the respondents to consider the case of the applicant keeping in mind the observation and direction made in the earlier order and the law laid down by the Hon'ble Apex Court in the case cited supra and communicate the decision of such consideration in a well-reasoned order to the applicants within a period of ninety days from the date of receipt of a copy of this order.

11. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.Patnaik)
Judicial Member

K.B.