

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00506 of 2014
Cuttack, this the 6th day of February, 2015

Golakh Bihari Panigrahi & Another Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes
2. Whether it be referred to PB for circulation? Yes


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

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**Original Application No. 260/00506 of 2014
Cuttack, this the 6th day of February, 2015**

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

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1. Golakh Bihari Panigrahi,
aged about 67 years,
Rahadinga Branch Post Office in account with Nalibar SO under
Jagatsinghpur HO, under Cuttack South Division,
A permanent resident of At/PO-Jaipur, Via-Tarapur,
Dist- Jagatsinghpur.
2. Sachidananda Panigrahi,
aged about 36 years,
Son of Golakh Bihari Panigrahi,
At/PO-Jaipur, Via-Tarapur,
Dist- Jagatsinghpur.

...Applicant

(Advocates: Mr. T.Rath)

VERSUS

Union of India Represented through

1. Secretary-cum-DG Posts,
Ministry of Communication and IT,
Govt. of India, Dak Bhawan,
New Delhi.
2. CPMG Odisha Circle,
Bhubaneswar-751001,
Dist- Khurda.
3. Supdt. of Post Offices,
Cuttack South Division,
15 Cantonment Road,
Post- Cuttack-753001, Dist-Cuttack.

...Respondents

(Advocate: Mr. D.K.Behera)

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ORDER

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

The applicants have approached the Tribunal in this O.A. with a prayer that the respondents may be directed to consider the request of the applicants for extending rehabilitation assistance in favour of applicant No.2 in any GDS post or any other post befitting his qualification. He has also prayed that the order of rejection dated 10.01.2014 passed by the respondent No.2 may be quashed.

2. Facts of the case as adumbrated from this O.A. are that the applicant No.1 while working as GDSMD-cum-MC, Rahadinga Branch PO in account with Nalibar SO under Jagatsinghpur HO under Cuttack South Division of the Department of Post was prematurely retired on the ground of permanent incapacity on the recommendation of a duly constituted Medical Board, with effect from 2.6.2009. Thus, the family faced sudden financial crisis. The applicant No.1 submitted an application with necessary papers on 27.06.2009 to the respondent No.2 making a prayer that the applicant No.2 may be provided with a compassionate appointment. The respondents did not consider the application, even after a few reminders submitted by the applicant, and therefore, applicant filed O.A.No.875/2013 seeking a direction to be issued to respondents to extend rehabilitation assistance. This OA was disposed of on 19.12.2013, and a direction was issued to respondent No.2 to consider the representations dt. 27.02.2012 and 8.5.2012, and communicate the result of consideration to applicant No.1, in a well-reasoned, speaking order. In obedience to the orders of the Tribunal, the respondent No.2 considered the representation and passed an order dt. 10.1.2014 (annexed as A/5) in which he rejected the prayer of the applicant for compassionate appointment. The applicants have challenged this order in the



present OA alleging that this order of rejection is a result of non-application of mind of the respondents.

3. The applicants have listed a few main grounds of challenge, the first of which is that the instruction of the Deptt. of Post dt. 9.10.2013 that "a married son is not considered dependent on a GDS" should not be retrospectively applied to the applicants' case which pertained to the year, 2009. The second ground cited is that as per a letter dt. 21.2.2012, the Deptt. Of Post extended the benefit of rehabilitation assistance to the wards of invalidated employees who took retirement prior to 14.12.2010. In para-2 of this letter it is clearly mentioned that it is now decided to consider compassionate engagement to one of the wards of invalidated GDS discharged before 14.12.2010 on the basis of the indigent condition of the concerned family by applying the same provisions of compassionate engagement as were in force at the time of discharge of the GDS on the ground of medical invalidation. The applicants in view of this provision contend that by applying the provisions of the scheme subsequent to the date of invalidation, and rejecting his prayer, the respondents have committed illegality.

4. The third ground cited in their favour by the applicants is that the application for rehabilitation assistance was filed well in time, and his merit points which should have been 51 were unreasonably reduced to 31 only because of application of wrong guidelines. Based upon these grounds as adduced by the applicants, a prayer has been made for setting aside the order dated 10.1.2014 and also for issuing direction for conferring the benefit of compassionate appointment on applicant No.2.

5. The respondents, i.e. authorities of the Deptt. of Post have filed a counter reply. On the factual dimensions of the case, the counter reply mentions


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that the Deptt. of Post in their letter dated 14.12.2010 and 9.3.2012 has worked out a system of allocation of points on a 100 point scale while considering the comparative merit of the various applicants for compassionate appointment. It has been further classified that case will be adjudged as 'hard and deserving' only if they score more than 50 merit points. In the light of the existing guidelines of the Deptt. of Post, the Circle Relaxation committee in their meetings dated 26.9.2012 and 1.10.2012 considered the case of applicant No.2 along with other cases. The applicant obtained 31 points, and thus did not fall in the hard and deserving category, and therefore, was not recommended for compassionate appointment. The rejection of the case by the CRC was communicated to the applicant, and the applicant being aggrieved challenged this decision in OA No. 875/2013 before the Tribunal. In their order dt. 19.12.2013, the Tribunal directed respondent No.2 to consider and dispose of representation dt. 27.2.2012 and 8.5.2012 and communicate the result to applicant No.1 in a well reasoned order. The respondent No.2 had then re-examined the case of the applicant. But since merit points of the applicant, i.e. 31, were much less than the required minimum of 51 points, even after re-examination, the applicant was not found to be deserving. Another matter that weighed on respondent No.2 is the Department of Post's letter dt. 9.10.2013 which laid down that 'a married son is not considered dependent on a GDS'. The applicant No.2 was married and thus was disqualified for compassionate appointment as per the decision of the Department. Thus a reasoned and speaking order incorporating all these grounds of rejection was issued by respondent No.2 on 10.1.2014, and communicated to applicants. The assertion made by the Respondents is that the applicant's case has been correctly considered in the light

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of existing guidelines, and no illegality having been committed, this OA filed by applicants deserves only to be dismissed for lack of merit.

6. I have heard Ld. Counsels for both sides and perused the records. The Ld. Counsels have also filed their written notes of submission which I have gone through.

7. I have carefully considered the submissions of Ld. Counsels, and also examined the circulars and guidelines of the Department of Post pertaining to the subject matter. First of all it is required to take snapshot of the circular letter dt. 14.12.2010 issued by the Department of Post to all Chief Post Master General on the subject of "scheme for engagement of GDS on compassionate grounds-merit points and procedure for selection". The circular was issued in view of the fact that hitherto there was no laid down transparent criteria for adjudging degree of indigence of the GDS family while considering cases of compassionate appointment. Thus it was needed to have a system in place to have balanced and objective assessment of the financial condition of the concerned family, and other relevant criteria like social obligations of the family. It was mentioned that the Department of Personnel and Training had put a limit of 5% of the Direct Recruitment vacancy on compassionate appointment. It was not intended to have any such stipulation for the purpose in case of GDS. However, the need for making a proper assessment to arrive at the exceptional and deserving cases can hardly be over-emphasized. Against the background of such concern, the Department of Posts worked out a system of allocation of points on various attributes based upon a hundred point scale. By the issue of the circular letter dt. 14.12.2010, the system of allocation of merit points on various attributes was introduced for the first time.



8. The next circular to be examined is the letter dt. 21.2.2012 issued on the subject of 'consideration of compassionate appointment on GDS posts to dependants of Gramin Dak Sevaks discharged on medical grounds based on the proof of invalidation prior to 14.12.2010'. Para 2 of this circular letter which the applicant relies upon is quoted below.

"The issue of allowing compassionate engagements to one of the dependants of the GDS discharged on invalidation on medical grounds supported by the invalidation proof has been considered in this Directorate and it has now been decided to allow considering compassionate engagement to one of the dependants of GDS discharged before the date of issue of this Directorate letter No. 17-17/2010-GDS dt. 14.12.2010 on consideration of the indigent condition of the family taking recourse to the application of the same provisions of compassionate engagement and process as were in force at the time of discharge of GDS on invalidation, without a further reference to the Directorate."

9. The decision of the Department of Post as reflected in the above circular is that cases of invalidated GDS discharged before 14.12.2010 will be considered by applying the same provisions which were applicable at the time of discharge of GDS on invalidation. The Ld. Counsel for the applicant has precisely argued that applicant No.1 was discharged on 2.6.2009 and, therefore, subsequent guidelines introduced shall not apply to his case. In the face of the decision of the respondents as quoted above, the submission of Ld. Counsel appears to be valid. No facts have been brought to my notice regarding any subsequent circular issued by the Deptt. of Posts by way of reviewing this decision. There is no clarification by respondents why this circular letter dated 21.2.2012 was not taken into account while considering the case of the applicants. There is no doubt that the order



passed by respondent No.2 on 10.1.2014 in compliance of the directions of this tribunal is a reasoned and speaking order. But this order does not discuss the Department's instructions dated 21.2.2012. The departmental authorities have not invoked the provisions as applicable, and on that score alone, the consideration will not be termed as valid and sustainable.

19. The Tribunal would refrain from making observations on the merit of the case, as it is the prerogative of the departmental authorities to consider the prayer, and take a decision based upon the facts and departmental instructions but in the present case, the Ld. Counsel for applicant has raised a valid point of law. Can the respondent No.2 supersede the instructions of the Deptt. of Post on the subject matter, by making any deviation in this case? The applicant No.1 was retired on the ground of medical invalidation in the year 2009, before the guidelines of compassionate appointment of GDS were issued in the year 2010. In the year 2012 the Deptt. took a policy decision about how the cases of invalidation which occurred before 14.12.2010 will be disposed of. This decision while being in force will be binding on all the departmental authorities.

10. It is the law settled by various decisions of the apex court that Courts and Tribunals should not give directions to make compassionate appointment. All that they should do is to ask the departmental authorities to consider such prayers in accordance with the laid down criteria and norms. In the matter of the Chief Commissioner Central excise & Customs, Lucknow & Ors Vs Prabhat Singh, CA No. 8635 of 2012, the following observations have been made.

“Courts and Tribunals should not fall prey to any sympathy syndrome as to issue directions for compassionate appointments, without reference to prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse



the compassionate appointment to all those who seek
a Court's ~~observation~~, "intervention."

12. In view of the discussions as held above, I hold that the applicants' case for rehabilitation assistance should be appropriately considered in the light of the circular dated 21.02.2012 (Annexure-A/7), especially the para 2 of this circular. The order dated 10.1.2014 (Annexure-A/5 of the O.A.) of the respondent No.2 is therefore quashed, and the matter is remitted back to respondent No.2 with a direction that he will consider the prayer of the applicant by applying the provision contained in circular dt. 21.2.2012, as per its merit, and take a decision in the matter and communicate the same to the applicants with a reasoned and speaking order within a period of 90 days of the receipt of this order.

13. With the above observations and directions this OA is disposed of with no order as to costs.


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

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