

178

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 26.10.2007.

ORIGINAL APPLICATION NO. 88/2007

Suresh Meghwal S/o Late Sh. Daulat Ram Meghwal, age 26 years, by caste Meghwal, resident of Village Chawad, Tehsil Sarada, District Udaipur, Father was last posted as Sorting Assistant (RMS), Udaipur.

....**Applicant.**

Versus

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan, Jaipur.
3. Superintendent, Railway Mail Service (RMS), 'J' Division, Ajmer.
4. Assistant Post Master General (S&V), Through Chief Post Master General, Rajasthan Circle, Jaipur.

....**Respondents.**

For the Applicant : Mr. Sandeep Shah, Advocate

For Respondents : Mr. M. Godara, Adv. Brief holder for
Mr. Vineet Mathur, Advocate

CORAM :

HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

ORDER

[BY THE COURT]

Suresh Meghwal, has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985. He sought for the following reliefs :

"(i) By an appropriate order or direction, the imugned order dated 7.3.2007 (Annex.A/1) may kindly be quashed and set aside and the respondents be directed to grant appointment to the applicant on compassionate ground on the post of Postal Assistant / Sorting Assistant.



(ii) Any other appropriate relief which this Hon'ble Tribunal deems fit and proper in the facts of the case may kindly be passed in the favour of the applicant.

(iii) Cost of the Original Application may kindly be awarded in the favour of applicant."

2. The brief facts of the case are as follows :-

(i) Shri Daulat Ram Meghwal, father of the applicant, was appointed under the respondent - department on 19.12.1971.

(ii) He expired on 3.5.2004 while serving on the post of Shorting Assistant in the respondent - department. He was survived by his wife, two unmarried sons and one unmarried daughter.

(iii) The family is getting family pension amounting to Rs. 4219/- + Dearness Relief and had received terminal benefits to the tune of Rs. 4,59,229. The family has their own house and also a landed property 2.92 hectare.

(iv) The mother of the applicant filed an application before the respondent - department for grant of compassionate appointment to the applicant on 21.5.2004. The respondents vide their letter dated 21.9.2005 informed that the Circle Selection Committee (CRC) did not find the family in indigent condition and the application has been rejected.

(v) The applicant filed an O.A. No. 169 of 2006 in this very Bench of the Tribunal and the case was decided vide order dated 13.12.2006. Operative part of the order is as follows :-

h/s

"4. After considering the arguments put forth by the learned counsel for both the parties and in accordance with the judgements of Hon'ble Rajasthan High Court, the terminal benefits should not be the main criteria for deciding for appointment on compassionate grounds. The respondent - department may re-consider the applicant's request for compassionate appointment and if he is found otherwise suitable, the applicant could be offered compassionate appointment depending upon the vacancy position and the rules and regulations to fill up such vacancies."

(vi) The respondent - department reconsidered the case in compliance of the Tribunal's order dated 13.12.2006 as mentioned in the impugned order at Annex. A/1. The CRC did so by circulation of papers as mentioned in the impugned order. The relevant para of the impugned order dated 7.3.2007 is reproduced below :-

"..... In view of above comparative chart it is evident that the criteria adopted by CRC for rejection of the case of the applicant was not terminal benefits, only but there are other reasons like higher comparative higher family pension, other source of income, higher number of unmarried daughters & minor children. The case of the applicant is not found most indigent hence not recommended for appointment even after reconsideration as per direction of Hon'ble CAT bench Jodhpur as above."

(vii) The applicant filed the present O.A. to quash the impugned order and requested for granting appointment on compassionate grounds.

3. The learned counsel for the applicant discussed the following issues :-

(i) The Tribunal's order dated 13.12.2006 kept at Annex. A/4 and the impugned order at Annex. A/1.

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(ii) The respondents' reply to the O.A. No. 169 of 2006 in particular para 7 at page 37 and Annex. R/1 kept at page No. 46 which gives a tabulated statement of four applicants considered for compassionate appointment against the vacancies for the year 2004.

4. The learned counsel for the applicant mentioned that three vacancies were available for compassionate appointment for the year 2004. One person, Shri Yatendra Singh Meena's name was considered though his father died on 6.7.2000. This clearly makes out that persons are being taken in the respondent - department for the deaths occurred not only in the year of consideration but, also for previous years. Had the case of Sh. Meena's not considered against the vacancies of the year 2004, the applicant could have got appointment. His case should now be considered for the vacancies of the subsequent years viz. 2005 or later on the same analogy.

5. The respondents' advocate mentioned that there are certain preliminary objections; para 4 of the reply is reproduced below :-

"4. That before proceeding further to give parawise reply to the original application, the answering respondents would like to raise preliminary objection regarding maintainability of the original application as the case of the applicant has been considered in accordance with the rules and policy on the subject, therefore, this Hon'ble Tribunal would not like to interfere into the lawful order passed by the authority. Further, it is also relevant to mention here that as held by this Hon'ble Tribunal as well as the Hon'ble Apex Court that unless any biasness or illegality is proved against the considering authority, the courts would not like to interfere into the matter. In this matter, it is also relevant to submit that as held by this Hon'ble Tribunal also as per the provisions of law, a candidate or dependent with above the

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age of 25 years cannot be considered dependant. Thus, the applicant is not dependent upon the deceased. Hence, he is not eligible for getting appointment on the compassionate ground while the respondents have considered his case sympathetically and in accordance with the rules and policy on the subject, therefore, this Hon'ble Tribunal would not like to interfere into the order passed by the competent authority."

The respondents' advocate further pointed out that the case of Shri Yatendra Singh Meena now being mentioned by the applicant's advocate, is not in proper spirit. His name does not feature anywhere earlier and he is not made as a party in this particular case.

6. The respondents' advocate mentioned that as per the orders of the Tribunal in O.A. No. 169 of 2006, the CRC did not recommend the case of Shri Suresh Meghwal and the process of reconsideration was by circulation of papers and that they have brought out a comparative statement in their order dated 7.3.2007 kept at Annex. A/1. In the comparative statement, it was brought out that CRC's non recommendation was on various grounds and that the applicant was not found most indigent and hence rejected.

7. The learned counsel for respondents mentioned that compassionate appointment is not a right for appointment. It is only for right of consideration. Further, there are no mala-fide or arbitrariness in the process of selection. He argued on the issue of the same comparative table as produced earlier and mentioned that as the basic data do not change, the position also do not change. In support of his arguments, the learned counsel quoted para 9 of

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Chapter 6 of Swamy's Master Manual for DDOs and Head of Offices ,
Part II – Establishment, Edition 2003, which is reproduced below :-

"9. Only in really deserving cases.Compassionate appointments can be made only in really deserving cases and only if vacancy meant for appointment on compassionate grounds within a year and that too within the ceiling of 5% of the vacancies."

8. On the question, how Yatendra Singh Meena's case, was considered for the vacancies of 2004, the learned advocate for the respondents' could not give clear reasons except that it could have been done for some relaxation granted by the competent authority.

9. In his rebuttal, applicant's advocate averred that the fact of giving appointment to Shri Meena is mentioned in the O.A. in para 5(E) and no reply came from the respondents either in their counter or in the process of arguments. The learned advocate for the applicant further averred that the respondent – department is adamant and the impugned order is the result of adamency.

10. I have gone through the various papers on record and the discussions made by the learned counsels for both sides. By going through the impugned order, it could be seen that the CRC did the exercise without application of mind. The matter was considered by the CRC in circulation and not by holding discussions/celebrations. The comparative chart given in Annex. A/1 is exactly the same as was given in the reply to the previous O.A. (page 46). Though, the learned advocate for the respondents argued vehemently that CRC considered the matter of the applicant for the vacancies meant for

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such appointment for that very year within the ceiling of 5%, he could not give any reasons for considering the name of Shri Yatindra Singh Meena. From the impugned order at Annex.A/1, it is quite clear that Shri Meena's father expired in the year 2000 and he was considered against one of the three vacancies for compassionate appointment of 2004. Had this not been done, perhaps the CRC could have considered the applicant's case for recommendation for appointment.

11. In view of the above discussions, the respondent - department should reconsider applicant's request for compassionate appointment either for the three vacancies of the year 2004 excluding the case of Shri Yatendra Singh Meena or for the vacancies of any subsequent year following the rules and regulations, to fill up such vacancies. The O.A. is allowed to this extent. This exercise should be completed within a period of six months.

12. No order as to costs.

R.R.Bhandari
(R.R.Bhandari)
Admv. Member

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