

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.206/2010

Date of decision: 25/02/2011.

Hon'ble Dr. K.B. Suresh, Judicial Member.

Hon'ble Mr. Sudhir Kumar, Administrative Member.

Umed Singh S/o late Shri Binraj Singh, by caste Rawna Rajput, aged about 38 years, R/o village & Post Ladnu, District Nagaur (Raj.) ward of late Smt. Kamla Devi GDS, MC, Post office Dujar (Ladnu), District Nagaur (Raj.).

: Applicant.

Rep. by: Mr. S.K. Malik, counsel for applicant.

Versus

1. The Union of India through the Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Post Master General, Western Region, Rajasthan, Jodhpur.
3. Superintendent of Post Office, Nagaur (Rajasthan).

: Respondents.

Rep. By: Mr. Kuldeep Mathur, counsel for respondents.

ORDER

Per Mr. Sudhir Kumar, Administrative Member.

The applicant of this case is before this Tribunal aggrieved by the order dated 16.07.2010 (Annexure-A/1), whereby his application for compassionate appointment as a Gramin Dak Sevak has again been rejected by the Circle Relaxation Committee, Jaipur. The applicant had earlier filed an OA No.98/2009 before this Tribunal, in which he had challenged the order dated 12.03.2009, whereby his case for compassionate appointment had been rejected by the respondents. That earlier O.A. of the applicant had been allowed by this Tribunal on 15.02.2010 (Annexure-A/2), by quashing the letter dated 12.03.2009 impugned therein, and directions had been issued upon the


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respondents to reconsider the request of the applicant for compassionate appointment in an objective manner, keeping in mind the observations made by the Tribunal in the order on that O.A.. The present impugned order has thereafter been passed by the respondents, once again rejecting the case of the applicant for compassionate appointment by giving relaxation in the rules, after a fresh consideration of his case a second time by the Circle Relaxation Committee, Jaipur.

2. The applicant is aggrieved that the letter of communication of such rejection by the Circle Relaxation Committee, impugned letter dated 16.07.2010 (Annexure-A/1), does not disclose any reasons for the decision, and that thereafter the applicant is left with no alternative except to approach this Tribunal once again. He has reiterated his case, as agitated in the earlier O.A. also, that his family is below poverty line, and is in indigent conditions, and that the vacancy caused due to the death of an Extra Departmental Agent should be filled up by appointing one of his/her dependent/near relative on compassionate ground, as, if it is not done, it would be quite difficult to give compassionate appointment in hard cases, as the extra departmental posts are isolated and well spread out. The applicant has also raised the ground that mere receipt of terminal benefit of Rs.48,000/- upon the death of his mother, and the certified annual income of Rs.24,000/- to the applicant, is not sufficient to conclude that the family is not in indigent circumstances, and, therefore, the respondents have acted in an arbitrary manner, and also contrary to the observations made by the Tribunal in its order dated 15.02.2010 on O.A. No.98/2009.

11. The applicant has ~~alleged~~ ^{have} alleged that the respondents ~~has~~ ^{have} not considered 11. his case in an objective and fair manner, and rejection of his case once again is the outcome of colourable exercise of power, which has to be regarded as malafide. In the result, he had prayed for the impugned order to be quashed and set aside, and for directions to the respondents to consider the case of the applicant for appointment on compassionate grounds, and to give him appointment on any of the GDS posts, with all consequential benefits, and for exemplary costs to be imposed on the respondents for causing undue harassment to the applicant, and any other relief(s).

3. The respondents filed a reply written statement on 27.09.2010. They submitted that in compliance of the directions of this Tribunal dated 15.02.2010 in the earlier O.A. No.98/2009 filed by the applicant, the Circle Relaxation Committee had considered his case on 01.07.2010, and had considered the case in an objective manner, and observed that there is no indigent circumstances in his case, and, therefore, the case was not recommended for appointment on compassionate grounds.



4. The respondents had taken a preliminary objection regarding the entitlement of applicant for seeking appointment on compassionate grounds, since, in view of the law as laid down through a catena of judgments, one who is over and above the age of 25 years cannot be brought within the ambit of dependent of a deceased, and unless the applicant can come within the ambit of dependent, no such appointment on compassionate grounds can be

granted to the applicant. They further submitted that one has a right of consideration of his case, but not a right of appointment necessarily, and that in the instant case, the applicant has failed to point out any lacunae or irregularity on the part of the respondents while considering his case earlier, or reconsidering his case this time. It was further submitted that this Tribunal may not like to re-appreciate the evidence available, and to direct the respondent to reconsider the case, unless any mistake, bias, or arbitrariness is proved by the applicant to have been committed or indulged in by the respondents.

5. Giving the details of the ^{re-}~~re~~ examination of the case of the App. applicant by the Circle Relaxation Committee in its meeting held in the Chamber of Chief Post Master General on 01.07.2010, the respondents stated that after perusing the records, the Committee had observed that late Smt. Kamla Devi, i.e. the mother of the applicant, who was a GDS employee, had expired on 03.04.2008, after attaining the age of 63 years and 10 months, just one year and two months prior to the date of her scheduled superannuation on 31.05.2009. They pointed out that the applicant was 37 years old at the time of death of his mother, the deceased GDS, and that he was already supporting his own family at that time. It was further noted by the Committee that the deceased GDS did not leave any liability of education of minor children and/or marriage of daughter and son etc. to be performed by the applicant when she died. The Committee also observed that the object of the scheme for providing compassionate appointment is to provide immediate assistance to the family members of those employees who die in

harness leaving the family in indigent circumstances, in order to provide immediate assistance and help to a family in need. It was submitted that in case of the applicant, no indigent circumstances exist, as he already had a separate annual income, was advanced in age, and had his own family which he was supporting, and, therefore, the Committee did not find the case good enough to reconsider his case for appointment on compassionate grounds.

6. It was further mentioned that the Minutes of the Circle Relaxation Committee were sent to the Superintendent of Post Offices, Nagaur, for being forwarded to the applicant, but inadvertently, due to some clerical error, the detailed decision of Circle Relaxation Committee as contained in the minutes of the meeting could not be attached to the impugned letter which was sent out to the applicant. It was submitted that the respondents did not have any intention not to communicate to the applicant the reasons as recorded in detail in the minutes of the meeting, and in proof of their good intentions, they annexed the minutes of the meeting of the Circle Relaxation Committee as Annexure-R/1 dated 01.07.2010. The respondents further gave the details of the family members of the applicant, who were his dependents, and stated that they were not the dependents of the deceased, and no liabilities of the deceased GDS remained to be looked after, which could be considered for giving the applicant appointment on compassionate grounds. It was submitted that the Minutes of the Meeting as produced (at page 27) would itself reveal that the case of the applicant was considered in an objective and fair manner. It


was further submitted, therefore, that the applicant is not entitled to any relief, and the O.A. is, therefore, liable to be rejected.

7. The respondents had also submitted an affidavit from the Post Master General, Rajasthan Western Region, Jodhpur, to support their contention that the Minutes of the Circle Relaxation Committee meeting held on 01.07.2010 had been sent for being forwarded to the applicant, and it was only due to some clerical error and bonafide mistake in the office of the Superintendent, Post Offices, Nagaur, that a copy of those minutes could not be enclosed with the impugned letter dated 16.07.2010.

8. Heard. During the course of arguments, the learned counsel for the applicant cited the case of Om Prakash Jat vs. Union of India & Ors. in OA No.11/2006 in which order dated 31st July, 2006, were passed by this Tribunal, in which the Tribunal had come to the conclusion that the case of the applicant of that case for compassionate appointment had been turned down without giving cogent reasons, and that he had not been given a fair treatment, and even though the applicant therein had been found fit and eligible for the post of GDS BPM, orders rejecting his compassionate appointment had been issued. The Tribunal had allowed that O.A., with directions to the respondents to reconsider the case of the applicant therein for compassionate appointment. Before issuing such directions, the Bench had observed that the ED agents have a special type of employment status, inasmuch as while they have been held to be holders of civil posts, their employment has got a trapping of contractual service, inasmuch as

they are almost part time workers, and are required to perform his duties for lesser period than other full fledged government servants. It was noted that neither pension, nor family pension, is admissible for them, and nor does the normal scheme for grant of compassionate appointment to the dependents of full fledged Government servants apply to their case. The Bench had that day noted that separate instructions had been issued under Rule 10 of the Gramin Dak Sevak Service Rules in this regard, which envisages that such appointment to the dependent of the deceased GDS should be given only in very hard and exceptional cases.

9. On the other hand, the learned counsel for the respondents pointed out that the applicant had attained 37 years of age on the date of death of his mother, the deceased ~~of~~ GDS, and he had a hu. family of his own, which he was already supporting through his independent income, and that the deceased GDS had not left any liabilities to be taken care of, which could form the basis for supporting the candidature of the applicant for compassionate appointment. He, therefore, prayed for the O.A. to be rejected.



10. While we are fully in agreement with the observations of the concurrent Bench which decided the O.A. No.11/2006 on 31.07.2006, the facts of this case do not appear to be on all fours with the facts of that earlier case. In the instant case, the applicant was already advanced in age, and was supporting his own family at the time his mother expired, without leaving any liabilities to be fulfilled on her account. As was quoted by the concurrent Bench in the above cited order itself, in Tata Cellular vs.

Union of India; AIR 1996 SC 11, the Hon'ble Apex Court has observed that Courts (and therefore this Tribunal also) do not sit in appeal over such administrative decisions, and merely review the manner in which the concerned administrative decision was made, and that the Courts/Tribunals must exercise utmost restraint while exercising the power of review, and judicial interference, or else they would be guilty of usurping the power of the authority, which took the right decision. Therefore, if an authority takes a decision on the basis of some material, which a reasonable person could have taken in that case, judicial interference at the time of judicial review is not permissible. However, on the other hand, if the decision is not based on legitimate reasons, and is actuated by bad faith, then judicial interference would be the proper remedy to undo the wrong.

11. We may also add that, as has been held by the Hon'ble Supreme Court in Divisional Manager, Aravali Golf Club & Anr. vs. Chanderhass & Anr. (2008) 1 SCC 683, "In the wake of separation of powers, the powers of judiciary are limited and must never be abused or misused, but should be exercised by the Judiciary with the utmost humility and self restraint. The judicial activism has to be resorted to only in exceptional circumstances, with in built limitation".

12. In the instant case, the respondents have properly reconsidered and discussed the case of the applicant in detail, and have given their reasons while arriving at a conclusion to reject the case of the applicant, as per the Minutes of the Circle Relaxation

Committee submitted by them. They have also stated on oath that they did not have any intention to hide or suppress their logic and reasoning being given to the applicant, and that the minutes had been sent for being forwarded to the applicant, but somehow due to error or mistake in the office of respondents at Nagaur, while sending the impugned letter dated 16.07.2010, the minutes concerned could not be enclosed. It is seen that in the forwarding letter dated 12.07.2010, the Superintendent, Post Offices, Nagaur, had been clearly directed to communicate the decision of the CRC to the concerned candidate, and the minutes of the CRC had been enclosed for such communication.

13. Therefore, neither the decision of the respondents is lacking in reasoning or logic and due application of mind, nor can they be found wanting in having followed the proper procedure in obeying the directions issued by this Tribunal while passing its order on 15.02.2010 in O.A. No.98/2009.

14. It is not for this Tribunal to put itself in the shoes of the respondent authorities, and to try to re-appreciate the facts, and arrive at a conclusion which may perhaps be different from the one arrived at by the respondents, as that is not a function of this Tribunal, as has been specifically laid down in the above cited observations of Hon'ble Supreme Court in the case of Tata Cellular vs. Union of India (supra), and in the case of Divisional Manager, Aravali Golf Club & Anr. vs. Chanderhass & Anr. (supra).

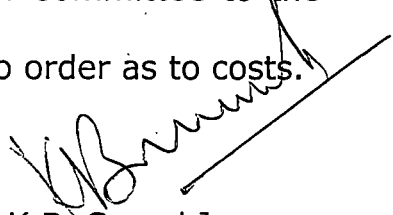
15. In his book on Administrative law, Sir William Wade has very succinctly summed up the law on this point as follows:-

"The doctrine that the powers must be exercised reasonably has to be reconciled with no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion.....if the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits."

16. The applicant has also not been able to show any incidence of the decision of the authority having been actuated by bad faith, or malafide intention or bias on the part of any of the Members of the Circle Relaxation Committee, which considered his case. Bias cannot also be alleged without making the concerned person as a party to the proceedings, and allowing him an opportunity to be heard, and the applicant has not made any particular individual as a party, and has also not made any specific allegation of bias.

17. In the result, we do not find any reason to interfere with the conclusion arrived at by the Circle Relaxation Committee on 01.07.2010, as produced by the respondents, and therefore, there is no reason to interfere with the impugned order communicating the gist of the decision of the Circle Relaxation Committee to the applicant. The O.A. is, therefore, dismissed. No order as to costs.


[Sudhir Kumar]
Administrative Member


[Dr. K.B. Suresh]
Judicial Member

दिनांक 21/4/16 के आदेशानुसार
मेरी उपस्थिति में दिनांक 27/6/16
को चरण-I व II में चर्चा किया गया।

अनुष्ठापन अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर