

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No.370/2012

Reserved on 16th December, 2015

Jodhpur, this the 5th day of January, 2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Mohd. Sher Shekh s/o Late Shri Gaffar Mohd. Shekh, aged about 35 years, By caste Shekh, Resident of Village and Post- Sava, Tehsil and District Chittorgarh (Rajasthan), Ex- Group-D employee was working under respondent No.3

.....Applicant

By Advocate: Mr. Jog Singh

Versus

1. Union of India through the Secretary, Ministry of Telecommunication, Post and Telegraphs Department, Government of India, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur
3. Superintendent of Post Office, Chittorgarh Division, Chittorgarh.

.....Respondents

By Advocate : Mr. K.S.Yadav

ORDER

This OA has been filed u/s 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

- (I) The impugned order dated 16.3.2012 (Ann.A/1) passed by the Superintendent, Post Office, Chittorgarh Division, Chittorgarh, letter dated 09.11.2005 (Ann.A/2) passed by the office of respondent No.2, letter dated 07.12.2009 (Ann.A/3) and the order dated 8.10.2011 (Ann.A/4) also passed by the office of respondent No.3 may kindly be quashed and set aside.

(II) The respondents may kindly be directed to give appointment to

"D" posts which was granted to the other similarly situated persons vide order dated 22.06.2009 (Ann.10) and 29.07.2009 (Ann.11).

- (III) Any other appropriate order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of humble applicant.
- (IV) Cost of the application may kindly be awarded in favour of humble applicant.

2. When the matter came up for hearing and consideration today, counsel for the applicant, with reference to the averments made in the OA submitted that Shri Gaffar Mohd. Shekh, father of the applicant, who was working in the respondent department, died on 03.06.2004 while in service leaving behind his wife and three children, namely, elder son Dilsher, who is handicapped, second son Mohd. Sher Shekh, the applicant and third son who was minor at that time. The applicant, therefore, applied for appointment on compassionate grounds, but the same was rejected in the meeting of the CRC held on 22.08.2005 and the representation for review made by him was also rejected on 09.11.2005 as may be seen from Ann.A/2 (page 15). In the order dated 09.11.2005 reason for present vacancies not being available in Postal Assistant cadre was also mentioned. Counsel for the applicant submitted that thereafter the applicant made numerous correspondences with the authorities of the respondent department and when he realized that there was no hope of getting satisfactory relief, he filed an OA before this Tribunal, which was registered as OA NO.197/2011. The aforesaid OA was disposed of vide order dated 8th July, 2011 (Ann.A/22) (page 48) and the following directions were given:-

"2. Heard. It would appear that one unmarried son of the deceased employee is handicapped. Apparently, the Committee does not seem to have considered this aspect at all. Therefore,

reconsideration by assigning him additional points to compensate for the handicap of his brother, which is liability which he has to bear. This shall be done in a time frame of next five months, and if necessary, the applicant shall also be heard and a speaking order shall be issued to him.

3. The O.A. is, thus allowed to the limited extent as stated above."

Thereafter the respondents sought extension of time for implementation of the aforesaid order and after reconsidering the case of the applicant, the same has been rejected vide order dated 14th March, 2012 communicated on 16.03.2012 (Ann.A/1). In this context, counsel for the applicant contended that despite the orders of the Hon'ble Tribunal no additional points have been assigned for the handicap of his elder brother and simply five additional points have been given treating him as a dependent. Further in the said order, it has been stated that 44 cases were considered including that of the applicant against 11 vacancies for PA/PM/MTS against the DR vacancies for the year 2011 and it has only been informed that the case of the applicant was not recommended as it was not found comparatively more indigent in view of the lesser vacancies available for the purpose. However, no such details have been provided to the applicant as to how points were assigned to him and his individual position was assessed in comparison to others and therefore, he prayed that the order dated 14.3.2012 communicated to him vide order dated 16.3.2012 (Ann.A/1) may be set-aside and the OA be allowed and the applicant be granted appointment on compassionate grounds as prayed for.

3. Per contra, counsel for the respondents, reiterating the points made in the reply, submitted that appointment on compassionate grounds can only

submitted that as evident from order Ann.A/1 (also filed as Ann.R/6), the case of the applicant has been reconsidered most systematically and objectively in the meeting of the CRC held on 12.3.2012 alongwith 44 cases against 11 DR vacancies for the year 2011. A perusal of the order would clearly indicate that the same has been considered in the light of the directions of the Hon'ble Tribunal in OA No.197/2011 decided on 8.7.2011 and five additional points have been duly awarded treating Shri Dilsher Mohd. Shekh, handicapped elder brother (now also married) of the applicant, as dependent and whose liability the applicant has to bear, though

there is no specific provision in rules for handicapped or disabled persons.

Counsel for respondents further submitted that it has also been mentioned in the aforesaid order that the family owns a house to live in, it has income of Rs. 2917/- per month from other sources and the widow is getting family pension at the rate of Rs. 4126 + DA per month. The family has no liability like education and marriage of children. Thus, it was contended that the CRC

after making objective and comparative financial assessment of the financial condition and liabilities of the family recommended the cases which were

found more indigent in comparison to other cases and the case of Shri Mohd.


Sher Shekh i.e. the applicant was not recommended as it was not found comparatively more indigent in view of the limited vacancy available for the

purpose. Counsel for the respondents submitted that the CRC has reconsidered the case of the applicant in accordance with the Scheme for compassionate appointment and within the prescribed parameters and as the case of the applicant was not found comparatively indigent, it was not

recommended. The order Ann.A/1 is thus in accordance with the parameters

Tribunal in OA No.197/2011 decided on 8th July, 2011 and fully valid and there is no ground to set aside the same and grant the relief prayed for by the applicant. Counsel for the respondents also submitted that father of the applicant died in the year 2004, more than 10 years ago and compassionate appointment is to be granted keeping in view the immediate succor to the family which may suddenly find itself in dire straits as result of death of the bread winner and referred to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2206 of 2006, Local Administrative Department and Others vs. M.Sevanayagam and Kumaravelu. He also submitted that presently both the applicant and the elder handicapped brother are married and this is not disputed and therefore, he prayed that on all these grounds, the OA may be dismissed.


4. In this context, counsel for the applicant reiterated that he has not been provided the information regarding comparative ranking of the applicant and the applicant has not been given additional points specifically for the handicap of his elder brother and has merely been treated as a dependent. The order is not legal and valid and therefore, deserves to be set-aside. Counsel for the applicant also contended that retiral benefits including family pension cannot be counted for the purpose of considering financial condition of the family in the cases of compassionate appointment and in support of his contention relied upon the judgment of the Hon'ble Apex Court in the case of Govind Prakash Verma vs. LIC and Others reported in 2005 SCC (L&S) 590.



5. Considered the aforesaid contentions and perused the record. It is seen from order dated 14.03.2012 communicated on 16.03.2012 (Ann.A/1, also filed as Ann.R/6) that in pursuance to the order of this Tribunal dated 08.07.2011 in OA No. 197/2011 filed by the applicant, the case of the applicant was reconsidered by the CRC in its meeting held on 12.03.2012 alongwith 44 cases against 11 vacancies of PA/PM/MTS available for appointment on compassionate grounds against DR vacancies of the year 2011. In the order Ann.A/1 it has also been mentioned that there is no provision in the rules for awarding additional points for disabled dependent but Shri Dilsher Mohd. Shekh who is handicapped and also married has been considered as dependent of the deceased employee and accordingly 5 additional prescribed points have been awarded to him. In this context, the 100 point scale prescribed by the competent authority for considering the cases of compassionate appointment was seen, in which there is a provision for awarding points to the dependent of the deceased employee though there is no specific reference to a disabled dependent and for one dependent there is provision for granting 5 marks only. The Tribunal in its order dated 08.07.2011 in OA No.197/2011 had also directed for reconsideration of the case by assigning additional points for the handicap of the brother, which is a liability he (that is the applicant) has to bear. With the grant of 5 additional points in the case of the applicant by treating his elder brother who is handicapped as a dependent and whose liability the applicant has to bear, it can be said that the directions of the Tribunal have been complied with and there does not appear much force in the contention of the counsel for the applicant that separately no additional points have been given for the

applicant was married at the time of reconsideration of the case on 12.03.2012. It is also clear from Ann.A/1 that the CRC has also considered other all relevant factors and in the 100 point scale, which is applicable to all cases for compassionate appointment, there is provision of considering family pension and terminal benefits in order to assess comparative financial condition. As this 100 point scale is applicable in all cases, there does not appear to be any violation of the principles upheld in the judgment of the Hon'ble Apex Court in Govind Prakash Verma Vs LIC (supra). Therefore, it cannot be said that the case of the applicant has not been considered in accordance with the Scheme laid down for compassionate appointment or is not in accordance with the directions given by this Tribunal in OA No.197/2011. There is also no basis to presume that the case of the applicant was not comparatively less indigent to those considered along with him. In view of the above analysis, there appears no ground to set-aside order Ann.A/1 or grant any other reliefs as prayed for.

7. In view of the above analysis, the OA lacks merit and is accordingly dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

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