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CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA No.507 of 2005

Date of order : 14th July, 2006

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

Madan Mohan Mishra, son of Late Bhuneshwari Mishra, resident of village – Kauwaha, P.O. Manguraha, via Areraj, P.S. Govindganj, District – East Champaran.

Sanjay Kumar Mishra, son of Madan Mohan Mishra, resident of village Kauwaha, P.O. Manguraha, via Areraj, P.S. Govindganj, Dist -East Champaran.

..... **Applicant.**
Vrs.

1. Union of India through Director General, Department of Post, New Delhi.
2. Chief Postmaster General, Bihar Circle, G.P.O. Complex, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, East Champaran Division Motihari.

..... **Respondents.**

Counsel for the applicant : Shri S.K.Bariar
Counsel for the respondents : Shri B.K.Prasad, ASC



ORDER [ORAL]

Justice P.K.Sinha, VC :-

The applicant no.1 while working in the Postal Department, suffered very serious eye disease and was declared medically invalid on 11.12.2000 vice Annexure-A/2 and was paid the retiral benefits. As the applicant had incurred heavy loans, he applied through his letters dated 11.6.2001 and 24.8.2001 for appointment of his son Sanjay Kumar Mishra, applicant no.2 on compassionate ground. Subsequently, the applicant for the same purpose had filed O.A. No.668 of 2003 which was disposed of by order dated 22.2.2005 whereby the matter was remitted back directing the respondents to consider the prayer and dispose that of by a speaking order. While dealing with the matter in that order, notice of OM dated 5.5.2003 of the DOP&T was taken, which described that the concerned committee considering cases for such appointment, if found that a genuine case could not be accommodated for want of vacancy, that particular case could be left for consideration in the next year and if even then that could not be done for want of vacancy under 5% quota, that could be considered in the 3rd year, whereafter if appointment could not be given, the matter would be closed.

2. The speaking order was recorded by the Chief Postmaster General, Bihar Circle, Patna dated 23.6.2005 [Annexure-A/7], in which it was noticed that after his invalidation, the employee was paid DCRG of Rs.83,000/-, GPF of Rs. 2,794/- and was also getting monthly pension of Rs. 1810/- [plus DA]. It was mentioned that the case of the employee's son was considered by the CRC in the year 2001 itself and the claim was rejected finding the family not to be indigent, there being no minor children but the two major sons who could earn their livelihood and the family having their own house to live in. Thus, the terminal benefits and monthly pension were also taken into account plus the point there were no vacancy within 5% quota. It was stated that OM dated 5.5.2003 was not applicable as in the very first year of consideration the case was not found fit for grant of such appointment, hence there was no question to reserve the case for consideration in the next year.

3. About the allegation in the O.A. that son of one Rajeshwar Tiwari also working in Grade 'D', was given appointment superseding the claim of the applicants, the CPMG noted that the committee had found his case to be more deserving than that of the applicant. It was also mentioned that in view of the order of this Tribunal, the matter was re-examined by the CRC which again reached at the same conclusion.

[Signature]

4. Aggrieved by this order, the applicant has moved again.

5. The ld. counsel for the applicant has submitted that appointment of the son of Rajeshwar Tiwari was a clear case of malafide discrimination as the case of the applicant stood on much better footing but his case was ignored because of intervention by a Minister in the Central Cabinet which tilted the balance in favour of the son of Rajeshwar Tiwari. Annexure-A/8 dated 4.1.2002 is pointed out, in which the then Minister of Parliamentary Affairs, Govt. of India by his letter dated 4.1.2002 had intimated one Shri Radha Mohan Singh, M.P., referring to his letter dated 29.4.2001 addressed to his predecessor of the Minister about appointment of son of Rajeshwar Tiwari on compassionate ground, further intimating the Member of Parliament that the son of Shri Tiwari had been appointed by order issued on 27.8.2001. The learned counsel for the applicant also points out the averments in para 4.9 of the application stating therein that the applicant was medically incapacitated at the age of 55 years whereas Rajeshwar Tiwari was so incapacitated at the age of 58 years. It was pointed out that the applicant no.1 at that time had two unemployed sons and one unmarried daughters whereas Rajeshwar Tiwari had two sons and one daughter. This contention about the liability of the retired employees has been replied to in para 7 of the written statement claiming that the facts

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stated ^{by} the applicants were incorrect. It has been denied that the son of Rajeshwar Tiwari was appointed on some political pairvi claiming that he was so appointed in terms of rules and circulars. It has been stated that Rajeshwar Tiwari had two sons and two unmarried daughters besides his wife, whereas the applicant no.1 had two sons and one unmarried daughter, besides his wife as dependents. It was claimed that because of the aforesaid, the CRC considered the case of the son of Shri Rajeshwar Tiwari to be more deserving.

6. Shri S.K.Bariar, ld. counsel for the applicant, in view of that argued that may be that Rajeshwar Tiwari had one more unmarried daughter but other factors were not considered by the CRC such as that the applicant no.1 had superannuated at the age of 55 years whereas Rajeshwar Tiwari had at the age of 58. The learned counsel sought this Tribunal to infer that Rajeshwar Tiwari, thus, was getting more pension. However, such inference cannot be made because amount of pension would depend upon other facts also, particularly that at which age such an employee had entered into service. Payment of GPF would depend upon the contribution made by the employee himself and DCRG would also depend on the pay an employee was getting at the time of his retirement.

7. If the CRC gave more weight to the eligibility of the retired

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employee who had two unmarried daughters, in my opinion, this exercise of discretion by the members of the CRC cannot be said to be discriminatory or malafide. Such evaluation of the respective cases by the CRC can be interfered with only if it is shown that the exercise of discretion had been malafide and obviously discriminatory.

8. By Annexure-A/8 also it cannot be inferred that son of Rajeshwar Tiwari was preferred because of some political 'pairvi'. Annexure-A/8 is only an intimation sent by an Union Minister to a Member of Parliament, who had sent a letter in that regard to his predecessor in office, only informing him about the decision of the concerned authorities. By virtue of such communication, it cannot be inferred that the members of CRC were influenced or were put under pressure.

9. The learned counsel in that regard has pointed out paragraphs 4 and 5 of the applicant's rejoinder to the written statement filed by the respondents. In para 5 again the case of the applicant with that of Rajeshwar Tiwari's was compared and it had been also claimed that when after the decision of this Tribunal in the O.A. filed earlier, the CRC again considered the case of the applicant no.2, nowhere it was shown that it had considered the case taking into consideration the relative merits of all other cases which might have been considered by the CRC in its subsequent meeting.

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10. The CRC had once taken a decision in the year 2001 rejecting the claim of the applicant. Reconsideration would, therefore, mean reconsidering the matter against the same set of facts as then existed.

11. From the stand taken by the respondents, it is clear that when the case of the applicant no.2 was considered that was found to be weak on merits on the grounds given by them, as also that, having granted appointment to more deserving candidate, there was no vacancy left under 5% quota against ^{the} total available vacancies.

12. Moreover, now more than five years have elapsed since applicant no.1 was given retirement on medical ground. It will not be proper to direct the respondents to appoint the applicant after a lapse of more than five years, particularly in view of the facts that have been discussed above in this order.

13. This application, therefore, is dismissed with no order as to cost.



[P.K.Sinha]
Vice-Chairman

mps.