
ORDERS OF THE BENCH


Date of Order: 19.09.2014

OA No. 509/2012

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 509/2012

DATE OF ORDER : 19.09.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Vivek Chand Munot son of Late Shri Gyan Chand Munot, aged about 23 years, resident of Gali No. 9, House No. 161, Om Nagar, Outside Nehru Gate, Beawar. Aspirant for appointment on compassionate grounds on the suitable post.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Beawar Postal Division, Beawar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed the present OA being aggrieved by the contents of the letter dated 27.10.2011 (Annexure A/1) and 21.06.2011 (Annexure A/2) vide which the applicant has been informed on behalf of respondent no. 2 that his case for appointment on compassionate grounds has been considered by the CRC on 04.05.2011 and due to family not in indigent condition, the case of the applicant has not been recommended for appointment. According to the applicant, his father expired while in service at the age of 46 years leaving the mother and four sons from which one son is minor but his case has been

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rejected solely on the ground of terminal benefits which is against the policy. The applicant's prayer is that the respondents be directed to give him appointment on a suitable post on compassionate grounds by quashing the letters dated 27.10.2011 and 21.06.2011 (Annexure A/1 and A/2) alongwith letter dated 20.01.2010 (Annexure A/6)

2. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the applicant.

3. The learned counsel for the applicant submitted that the father of the applicant was a substantive employee of the respondent department and was working on the post of Postal Assistant. He expired on 07.11.2010 while in service. The late father of the applicant left behind him his widow, four sons. One of them was minor at the time of death of the father of the applicant.

4. The learned counsel for the applicant argued that after the death of the father of the applicant, the condition of the family became indigent. All the sons were unemployed. That the case of the applicant has been rejected solely on the ground of terminal benefits which is against the provisions of Para 16 of the OM dated 09.10.1998 issued by the DOPT which deals with for providing compassionate appointment on the death of an employee during service.

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5. The learned counsel for the applicant also argued that under the Scheme of 09.08.1998 issued by the DOPT, there is no provision of awarding merit point to the candidates. The Department of their own provide weightage system for various parameters as laid down in their circular dated 20.01.2010 (Annexure A/6). The learned counsel for the applicant also argued that the circular dated 20.01.2010 (Annexure A/6) issued by the respondents is discriminatory because according to this circular, the points are awarded for unmarried daughters whereas no points are awarded for unmarried sons. In support of his arguments, he referred to the judgment of the Hon'ble Madras High Court in the case of **Jayalakshmi vs. Tamil Nadu Generation and Distribution Corporation Ltd.** (Writ Petition No. 22171/2013 decided on 13.08.2013).

6. The learned counsel for the applicant also argued that vacancy position has not been correctly calculated by the respondents. He submitted that the applicant's case has not been considered by the respondents due to limited vacancy position. Therefore, his case should have been kept pending for further consideration in the next years.

7. The learned counsel drew my attention to the chart, which is annexed along with Annexure R/4, in which details of all the candidates and weightage points secured by them have been given by the respondents. He submitted that in the case of Shri Pradeep Khichi son of Late Sarwan lal, whose name appeared at sr. no. 9, 10 marks have been awarded for two

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unmarried daughters whereas in the case of the applicant, whose name appeared at sr. no. 14 in the same chart, he has not been given any mark though the father of the applicant left four unmarried sons and if the marks are awarded for unmarried sons then the applicant would have secured more marks than Shri Pradeep Khichi and in that case, the applicant would have been offered appointment on compassionate grounds.

8. Therefore, he argued that the respondents be directed to offer appointment on compassionate grounds to the applicant.

9. On the other hand, the learned counsel for the respondents submitted that the appointment on compassionate grounds is not a vested right. The appointment on compassionate ground is offered based on relative merit points. This system of relative merit points has been introduced by the respondents vide letter dated 20.01.2010 for ensuring transparency and balance in the objective assessment of the financial condition of the family left behind by the deceased employee. The Circle Relaxation Committee considers the cases of all the candidates for appointment on compassionate grounds on the basis of relative merit points and the most deserving cases i.e. who secure higher merit points are considered for appointment on compassionate grounds.

10. He submitted that in the year 2010 there were 6 vacancies in Group 'C' cadre, 5 vacancies for Postman and 4

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vacancies for Group 'D'. The case of the applicant was considered for all these vacancies but since he was lower in merit, therefore, he could not be offered appointment on compassionate grounds. The last candidate who was offered appointment on compassionate grounds had secured 53 marks whereas the applicant has secured 50 merit points. Therefore, the applicant could not be offered appointment on compassionate grounds and thus the decision of the respondents in not offering appointment on compassionate grounds to the applicant is just and legal and according to the instruction on the subject.

11. The learned counsel for the respondents also argued that the case law referred to by the learned counsel for the applicant in the case of **Jayalakshmi vs. Tamil Nadu Generation and Distribution Corporation Ltd.** (supra) is not applicable under the facts & circumstances of the present case. He argued that in the case before the Hon'ble Madras High Court, the petitioner was a married daughter and she was denied appointment on compassionate grounds because she was married. The Hon'ble High Court held that if marriage is not a bar in the case of son for providing employment on compassionate grounds then the same yardstick shall be applied in the case of a daughter. The facts in the present OA are different. Here in the present OA, the marks have been awarded on the basis of fact that daughters are unmarried, which is treated as a liability whereas unmarried sons are not treated as liability. Thus the ratio laid down by the Hon'ble

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Madras High Court in the case of **Jayalakshmi vs. Tamil Nadu Generation and Distribution Corporation Ltd.**

(supra) is not applicable under the facts & circumstances of the case.

12. The learned counsel for the respondents also submitted that circular dated 20.01.2010 (Annexure A/6) which issues guidelines relating to award of merit points and procedure for selection for appointment on compassionate grounds is just and legal. It has been issued to ensure complete transparency and uniformity in the selection process and, therefore, it cannot be said that it violates any provisions of the Constitution. It does not create any discrimination between son and daughter while awarding points for consideration. It only provides for giving marks to the family who have unmarried daughters because unmarried daughters are treated as liability on the family whereas unmarried sons are not treated as a liability to the family. Thus the circular dated 20.01.2010 (Annexure A/6) does not create any discrimination between son and daughter as argued by the learned counsel for the applicant.

13. Therefore, the learned counsel for the respondents argued that the OA has no merit and it should be dismissed with costs.

14. Having heard the learned counsel for the parties, after perusal of the documents on record and the case law referred to by the learned counsel for the applicant, I am of the opinion

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that the applicant has not been able to make out a case for interference by this Tribunal. It is not disputed that the case of the applicant was duly considered for all the 15 posts for the year 2010. It is also not disputed that no candidates who had less marks than the applicant was offered appointment on compassionate grounds. The last candidate who was offered appointment on compassionate grounds had secured 53 merit points out of 100 whereas the applicant had secured 50 merit points out of 100. Hence, I am of the view that it cannot be said that respondents have not acted in a fair manner. The applicant being lower in merit in comparison to the candidates who were offered appointment on compassionate grounds, the respondents rightly did not offer appointment on compassionate grounds to the applicant.

15. With regard to the arguments of the applicant regarding judgment of the Hon'ble Madras High Court in the case of **Jayalakshmi vs. Tamil Nadu Generation and Distribution Corporation Ltd.** (supra), I am inclined to agree with the view of the learned counsel for the respondents that the ratio decided by the Hon'ble Madras High court is not applicable under the facts & circumstances of the present OA.

16. I do not find any force in the arguments of the learned counsel for the applicant that unmarried sons should be treated at par with unmarried daughters. In the social milieu that we have, the respondents have rightly considered that unmarried daughters are liability to the family. Therefore, I am

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of the opinion that the argument of the learned counsel for the applicant that by providing marks to the family who have unmarried daughters, the respondents have discriminated against the applicant has no force.

17. I have carefully perused the circular dated 20.01.2010 (Annexure A/6) which provides for related merit points and selection for appointment of candidates on compassionate grounds. I do not find any illegality or irregularity in the circular. In fact it ensures transparency and uniformity in the selection process.

18. Thus on the basis of above discussion, I do not find any merit in the OA. However, since the applicant has not been offered appointment on compassionate grounds because he was lower in merit in the vacancy for the year 2010, therefore, the respondents are directed to reconsider the case of the applicant in the next year vacancies, if they have already not been filled up. If the applicant is found suitable and meritorious compared to other candidates then he would be considered for appointment on compassionate grounds as per the Scheme.

19. With these observations & directions, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul