

Reserved on 27.3.2018

Central Administrative Tribunal, Allahabad Bench,
Allahabad

This the 4th day of April, 2018

Original Application No. 330/00049/2014

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Bhanwar Singh son of late Chandrapal Singh r/o
village- Tukapur, Post Office- Iglas, District- Aligarh.

Applicant

By Advocate: Sri Vinod Kumar

Versus

1. Union of India through Director General, Post & Telegraph Department, Govt. of India, New Delhi.
2. Senior Superintendent of Post, Aligarh Region, Aligarh.
3. Post Master, Post Office – Karas, District- Hathras.

Respondents

By Advocate: Sri Shailesh Singh

ORDER

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. u/s 19 of the AT Act with the following reliefs:-

- i) That this Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 11.12.2013 passed by respondent No. 2 (Annexure No. A-1A of compilation No.1).
- ii) Any other suitable order or direction which this Tribunal may deem fit and proper in the circumstances of the case.

iii) And award cost of the present petition/ original application , in favour of the applicant.

2. The brief facts emerging from the O.A. are that the father of the applicant namely late Chandrapal Singh was appointed on the post of Postman on 10.10.1976 and died on 7.11.2011. Deceased had two sons. Applicant being elder son has applied for appointment on compassionate ground on 28.1.2013 with consent of his brother.

2.1 The respondent No. 2 has passed an order on 11.12.2013 rejecting the claim of the applicant on the sole ground that the married person is not entitled for applicant on compassionate ground.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant after the death of his father applied for compassionate appointment which was rejected by the respondents vide order dated 11.12.2013 on the ground that married son is not entitled to be considered as dependent on a Gramin Dak Sewak and it was advised to the applicant to apply for the unmarried dependent of the deceased govt. servant for appointment. It is further submitted that as per instructions contained under DG (Posts), New Delhi letter dated 9.10.2013, the married son is not eligible

to be considered as a dependant on a Gramin Dak Sewak.

4. Rejoinder reply is filed by the counsel for applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of counter reply.

5. Heard the learned counsel for applicant Sri Vinod Kumar and learned counsel for respondents Sri Shailesh Singh.

6. From perusal of record, it is evident that by the impugned order dated 11.12.2013, the respondents have rejected the claim of the applicant for compassionate appointment mainly on the ground that the applicant is a married son of deceased and thus he is not entitled to be considered for compassionate appointment under Dying-in-Harness Rules which is not sustainable.

7. The Single Bench of this Tribunal in **OA No.1042/2012 (*Ripu Daman Singh vs. Union of India and others*)** has decided the identical issue on 24.5.2016 with the following observations:-

"It is further pointed out that in the year 2015, again a clarification was issued to the frequently asked questions by the DOP&T clarifying that married son can be considered for appointment on compassionate ground if he fulfils all other requirements of the scheme.

8. In the **Writ Petition No.908/2015 (*Nagendra Kumar Yadav vs. Food Corporation of India and***

others) reported in 2016 Lab IC 1541, the Hon'ble High Court of Chhattisgarh at Bilaspur observed as follows:-

"19. It is well settled that marriage is an institution/sacred union not only legally permissible but also basic civil right of a man and woman. One of the most important inevitable consequences of marriage is the reciprocal support and marriage as an institution has great legal significance. Right to marry is necessary concomitant of right to life guaranteed under Article 21 of the Constitution of India as right to life includes right to lead a healthy life. Marriage does not bring about a severance of the relationship between a father and mother and their son or between parents and their daughter. These relationships are not governed or defined by marital status.

20. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical Union. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on, on this planet. (See Mr. 'X' v. Hospital 'Z' MANU/SC/0733/1998 : (1998) 8 SCC 296.)

21. In the matter of Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755. Their Lordships of the Supreme Court have clearly held that marriage is one of the basic civil rights of man/woman and observed pertinently in paragraphs 24 & 25 as under:-

"24. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three

elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the *Consortium Omnis Vitae* which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage is an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, succession ship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

25. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a women, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in *Dawood v. Minister of Home Affairs* (2000) 3 SA 936 (CC) noted as follows:

"Marriage and the family are social institutions of vital importance. Entering into and

sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."

22. Time and again, Their Lordships of the Supreme Court in umpteen number of cases repeatedly emphasized the need of compassionate appointment to the dependent of the deceased Government servant expeditiously. The whole object of granting compassionate

appointment is to enable the bereaved member of the deceased Government servant to earn both the ends. Therefore, whether or not the son of the deceased Government servant should be granted compassionate appointment is to be decided with reference to the fact that whether on consideration of all relevant facts and circumstances, he or she is dependent on the deceased FCI servant excluding purely on the ground of marriage is absolutely impermissible in law. The yardstick for extending the benefit of compassionate appointment should be dependency of the dependents on the deceased FCI servant. Marital status of the dependent should not be an impediment for his/her consideration on compassionate ground, as the object of such an appointment is to wipe-out his tears from the eyes of the suffering family on account of loss of sole breadwinner in the family, other consideration would defeat the object of the social welfare benefit which the Union of India has framed to see that deceased family survives after the death of FCI servant. Though the policy of the Central Government was accepted by the FCI, the policy does not contain any such prohibition that married son is not entitled for compassionate appointment, but frequently asked questions which are claimed to be the policy is not in accordance with law. It has been assumed that on account of marriage, son ceases to be dependent on the FCI servant which is an erroneous approach on the part of the respondents. It cannot be assumed without examining the facts and without taking into consideration the attendant circumstances that married son is not dependent on the Government servant. In a given situation, son even after marriage may not be earning and may be fully dependent upon the earnings of his father. Therefore, the assumption that once one is married, he becomes no longer dependent on his father is an incorrect proposition, and it cannot be

accepted, as such, denial of compassionate appointment to the son of the deceased FCI employee on the ground of his marriage is violative of Articles 14 and 15 of the Constitution of India."

9. In view of the aforesaid decision, I am also of the opinion that the claim of the applicant for compassionate appointment cannot be rejected on the ground of marital status of applicant. Therefore, the claim of applicant for compassionate appointment is liable to be reconsidered by the respondents ignoring his marital status.

10. Accordingly, the OA is allowed and the impugned order dated 11.12.2013 is quashed and set aside. The respondents are directed to reconsider the case of the applicant, ignoring the fact that he is a married son, for appointment on compassionate ground, within a period of two months from the date of receipt of certified copy of this order. No costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-