

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 15.10.2016

ORIGINAL APPLICATION NO. 060/01171/2014

Chandigarh, this the 24th day of October, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Dinesh son of late Mohan Singh, Ex Waiter, GPO, Canteen
Chandigarh, R/o H. No. 4151/1, B-Block, Adrash Nagar, Naya
Gaon, District Mohali (Punjab).

...APPLICANT

(By Advocate: Shri A.K. Sharma)

VERSUS

1. Union of India through, Secretary Ministry of Communication and I.T. Govt. of India, New Delhi.
2. Chief Postmaster General, Punjab Circle, Sandesh Bhawan, Sector 17-E, Chandigarh.
3. Sr. Superintendent of Post Offices, GPO, Chandigarh Division, Sector 17, Chandigarh.

.... RESPONDENTS

(By Advocate: Shri Ram Lal Gupta)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been remanded back by Hon'ble High Court of Punjab and Haryana vide its order dated 17.5.2018 for fresh adjudication on merits. The O.A. was summarily dismissed by this Tribunal vide order dated 30.10.2015 in default and for non-prosecution. M.A. for restoration of the O.A. was also turned down vide order on 20.11.2015. The Hon'ble High

Court has observed that the applicant has questioned the marks allocated to him with reference to the bench-mark and hence the O.A. requires to be decided on merits. The Hon'ble High Court has further observed that non-appearance of counsel was for reasons beyond his control and as such, the case was remanded back to this Tribunal for adjudication on merits.

2. This O.A. was filed by the applicant, Dinesh, seeking appointment on compassionate ground in view of the fact that similarly situated persons have been considered and so appointed. The father of the applicant, Mohan Singh, was working as waiter in the respondent department and died of cancer on 2.9.2010, leaving behind his wife, 3 sons and 2 daughters. His wife moved an application on 27.10.2010 seeking compassionate appointment for her son Dinesh who was 10+2 pass. According to the applicant, he visited the office of the respondent department and was given an assurance that his case would be considered in the Circle Relaxation Committee (CRC) meeting to be held in July 2011. The meeting of the CRC was held on 8.7.2011, but his case was not considered. As per the applicant, in this meeting, 4 candidates were selected of which 3 had less score than him and 3 required age relaxation, being over aged. The applicant sent a reminder on 2.7.2012 (Annexure A-3) and requested for job as MTS. Though the applicant was hopeful, but his claim was rejected vide letter dated 22.8.2012 (Annexure A-4). His mother again made a representation dated 7.3.2013 (Annexure A-5) for reconsideration of his case as beside her, 5 family members were dependent on the

deceased employee. The applicant also made representations dated 9.3.2013 and 17.1.2014 (Annexure A-6 & A-7). Later, through RTI, he came to know that his case was not considered in the CRC meeting held on 8.7.2011. Rather, it was considered in the combined meeting held on 10.8.2012. It is also averred by the applicant that the points given to him are incorrect as he should have obtained 63 marks whereas the marks awarded to him are 48 only. He has also stated that property value of his house has been wrongly assessed at market rate whereas in other cases, property value has been considered at Collector rates.

3. The respondents have stated that the object of the Scheme for compassionate appointment is to grant appointment to a dependent family member of a government servant dying in harness or who is retired on medical grounds, leaving the family in penury and without any means of livelihood, to relieve the family from financial destitution and to help it get over the emergency. It is not an alternative mode of appointment. The widow of the deceased employee, Smt. Babli applied for appointment of her son on 27.10.2010 to Sr. Superintendent of Post Offices, Chandigarh. The same was forwarded to Chief Postmaster General, Punjab Circle on 1.8.2011 for consideration by the CRC. But on scrutiny, certain deficiencies, including no objection certificate from other dependents, were found. So, on 10.8.2011 respondent no. 3 (Senior Superintendent of Post Offices, Chandigarh) was asked for their removal and completion from the family of the deceased employee. Consequently, no objection certificate by the other dependents was

submitted on 25.8.2011 and after removal of other technical objections, the duly completed case could be submitted only on 2.9.2011. Further, the respondents have stated that while preparing the case for compassionate appointment to the post of Postal Assistant/Sorting Assistant, it was noticed that the marks obtained by the applicant in 12th class were 51.77% which were below the requisite bench-mark of 60% prescribed in the revised Recruitment Rules for these posts. It is averred that it is clearly laid down in the Scheme for Compassionate Appointment that the applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant RRs. Consequently, respondent no. 3 was requested to re-examine the eligibility of the candidates in the light of RRs and submit compassionate appointment cases accordingly. The applicant vide his request dated 2.7.2012 consented for consideration in MTS category. Accordingly, synopsis was submitted to respondent no. 2 vide letter dated 9.7.2012. The case of the applicant was placed before CRC in its meeting held on 10.8.2012. The relative merit points were awarded to the candidates as per instructions contained in Directorate letter dated 20.1.2010 and the applicant earned 48 points whereas the last candidate approved for appointment by CRC in the meeting of 10.8.2012 had obtained 93 points. Accordingly, the case of the applicant was rejected by the Committee after examining all aspects of the case namely financial position, assets and liabilities of the family, etc. as per revised procedure for selection and

instructions issued from time to time. It is further stated that in all, 49 applications were considered against 13 vacancies in MTS category in CRC meeting held on 10.8.2012. Comparative statement awarding merits is given in Annexure R-3 and minutes of the CRC clearly state the manner in which applicant's case was considered and decided. It was not possible to accommodate all the application in view of limited vacancies available for compassionate appointment.

4. The respondent have also quoted number of judgments of the Apex Court in support of their averments. First judgment relied upon was rendered in Civil Appeal No. 2206/2006 – **Local Administration Department vs. M. Selvanayagam @ Kumaravelu** decided on 5.4.2011. It was observed in this case that 'an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.' Reliance has also been placed on the judgment rendered in the case of **Umesh Kumar Nagpal vs. State of Haryana** reported in (1994) 4 SCC 138 wherein the Apex Court has crystallized the law that 'as a rule, appointments in the public services should be made strictly on the basis of open invitations of

applications and merit. No other mode of appointment or any other consideration is permissible.' Compassionate appointment is an exception to the rules to enable the family to tide over sudden crisis. Hence these cannot be used as a normal or alternative mode of employment or offered as a matter of course.

5. The applicant has filed rejoinder reiterating the grounds already taken in the O.A. and also highlighting discrepancies in points awarded to him and another candidate Gagandeep Singh.

6. We have heard the learned counsels for opposing parties, carefully gone through the pleadings and have given our thoughtful consideration to the matter.

7. We observe that the applicant's case is based mainly on the ground that having secured 48 points, had his case been considered in the CRC meeting held on 8.7.2011, he would logically have been selected as a person with only 42 points was selected therein. From the pleadings we note that in all, 3 CRC meetings were held after the death of the father of the applicant – i.e. on 8.7.2011, 28.2.2012 and 10.8.2012. The applicant's case was considered in the meeting held on 10.8.2012 when 49 candidates in all were considered and 13 were selected. The applicant has pleaded that consideration of his case was intentionally delayed to enable other candidates to be selected on limited competition. During the course of arguments at Bar, it was clarified by the respondents that the first 2 CRC meetings on 8.7.2011 and 28.2.2012 were for the post of Postman category and hence cases for consideration were limited (being 7 and 4 respectively). This was

perhaps because RRs for this post specified high bench-mark of 60% in 10+2 or 12th class. The 3rd CRC on 10.8.2012 was for the post of MTS and hence, the number of applications was much more. The case of the present applicant could not be considered in the meeting on 8.7.2011 as his application was not complete and he had not submitted NOC from other family members. We agree with these contentions of the respondents as these are borne out by the minutes of the 3 CRC meetings, the RRs and the applicant's own submissions. Further, we note that his original application dated 27.10.2010 did not specify the post for which he wanted to be considered. In such a situation, the department could obviously not consider him against the post of Postman for which he was not qualified (his marks being less than bench-mark of 60% in 10+2). It is true that the cut off marks in this meeting as well as the next CRC meeting held on 28.2.2012 were quite low being 42 and 62 respectively. As against these, the cut-off marks for MTS in the meeting on 10.8.2012 was 93 points. The applicant got 48 points. But, he cannot use the cut off marks of earlier two meetings for justifying his own case as the first two meetings were for the post of Postman and not for MTS. We note that the applicant applied for the post of MTS first time only on 2.7.2012 and as such, his case could not be considered earlier to that. The department can in no way be held responsible if the post against which the applicant sought appointment was not mentioned by him. In such cases, the department would obviously consider him only for the post for which he was qualified – that is MTS post. And this was done as

his case was considered in the next CRC meeting for MTS held on 10.8.2012. Also, even if his name had been considered for the post of Postman, he was not qualified and hence he would not have been selected. We also note after carefully going through the minutes of the earlier two CRC meetings that no relaxation in educational qualification was given in the first two meetings held for the post of Postman.

8. Further, we note that the applicant has claimed that he deserves 63 points. His claim for extra marks is made under two items – first under valuation of property which should fetch him 10 marks instead of 1 awarded to him, thus adding 9 marks. His logic is that in his case property was valued at market rates whereas in another case of Gagandeep Singh, it was valued at Collector rates and without construction cost. But, by his own admission, the property was got valued by an Assessor by the applicant himself and given to the department. The applicant claims that this was done as per the verbal directions of the department, but he has no proof to support this. Secondly, the difference of 5 marks is claimed for unmarried daughter in which the department has taken only one unmarried daughter whereas as per applicant, there were two unmarried daughters at the time of death of deceased employee. So, according to him, this should fetch him 10 marks instead of 5, thus adding 5 marks. In all, he works out that his marks should be 63 and not 48. As per our calculation, these should be 62 ($48+9+5=62$). Perhaps, he is missing out one mark already awarded to him in valuation of property. Be that as it may, this would not

make adequate difference in the total marks obtained by him to get him selected. The applicant was way below the cut off marks of 93 points in MTS category. So, he would not have made to the select list in MTS category even if he was awarded marks as per his own self assessment. Hence, we find his rejection for compassionate appointment in MTS category to be justified.

9. As regards the contention of the applicant that relaxation has been granted in many other cases and hence his case could also be considered for relaxation in marks and he could be considered for the post of Postman, we observe that he had earlier never specified the post against which he wished to be considered. As such, the department of its own volition could only consider him against a post for which he was fully eligible and not the post necessitating relaxation. In any case, his application in complete form with NOC was not available with the department till 25.8.2011 and with specification of the post only on 2.7.2012. As such, there was little scope for consideration of his case before this. His case was considered in the first meeting held thereafter i.e. on 10.8.2012. Besides, we also observe from the minutes of 3 CRC meetings that though age relaxation is being granted in both Postman and MTS categories, no relaxation in educational qualification was granted in case of Postman. This is logical as Postman has to do lot of reading and writing work and that is why high bench-mark of 60% in 10+2 has been prescribed for them. Hence, we do not find this argument of the applicant to be valid.

10. Applicant has also claimed that his application was purposefully delayed. However, he has been unable to produce any documentary evidence in support of this. As per his own admission, NOC was submitted by him only on 25.8.2011. It is true that even the department has not been able to produce any evidence to show what action was taken by them on his first application dated 27.10.2010 for next 9 months that is till 1.8.2011. This is despite our specific query to this effect during the arguments at Bar. However, in view of the fact that CRC meetings of 8.7.2011 and 28.2.2012 were for the post of Postman for which he had not specifically applied and was not qualified, he could not be considered against this post in these meetings; and so we do not find adequate ground to believe that there was any malafide by the department to delay his case. Hence we do not find this plea acceptable.

11. In view of the above, we find no illegality in the impugned order made by the respondents and do not see any need for interference with the same. Therefore, the O.A. is dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 24.10.2018

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