

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A No. 060/00889/2017

...
Date of decision- 20.12.2017
...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

...

Vaibhev S/o Sh. Subhash Chander Aggarwal, aged 21 years Resident of Gupta Trades Street, near Dala Farms, Garden Avenue, Jail Road, Gurdaspur, Punjab. (Group C).

...APPLICANT

BY ADVOCATE: Sh. V.K. Sharma, Advocate.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Telecommunications & Information Technology, Department of Posts, North Block, New Delhi.
2. Director Postal Services (Punjab West Region), Punjab Circle, Sector 17, Near Shivalik Hotel, Chandigarh.
3. Superintendent of Post Offices, Gurdaspur Division 143521.

...RESPONDENTS

BY ADVOCATE: Sh. Ram Lal Gupta, Advocate.

ORDER

SANJEEV KAUSHIK, MEMBER (J):-

The applicant challenged the correctness of order dated 21.06.2017 whereby his claim for appointment on compassionate ground has been rejected. He also sought direction from this Tribunal to direct the respondents to reconsider the claim of the applicant for appointment on compassionate ground in view of the provision contained in Rule 2 of CCS (Medical Examination) Rules, 1957 and Rule 38 of the CCS (Pension) Rules, 1972.

2. The facts are not in dispute. Brief factual matrix which is necessary for adjudication of the matter are that mother of the applicant, Smt. Suman Lata, was working as Accountant in the office of Superintendent of Post Offices, Gurdaspur Division. After completion of 27 years of service, she submitted three months notice for voluntary retirement from service on 05.01.2016 under Rule 48-A of CCS (Pension) Rules, 1972 (Annexure A-2). Her request was accepted by the department vide memorandum dated 21.01.2016. She was ordered to relieve after completion of three months notice period w.e.f. 04.04.2016. Unfortunately she died on 25.12.2016. On 15.05.2017, the applicant submitted representation to respondents to consider his case of appointment on compassionate ground as her mother sought voluntary retirement on medical ground. His request was turned down vide order dated 21.06.2017. Hence the present O.A.

3. In furtherance of above plea, Mr. V.K. Sharma, learned counsel for the applicant vehemently argued that since the mother of the applicant sought voluntary retirement on medical ground, therefore, after her death, case of the applicant is to be considered for appointment on compassionate ground in terms of Compassionate Scheme of 1998. He argued that in terms of clause 2 of the said Scheme, dependent of family of Government Servant who retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules, 1957 or under Rule 38 of the CCS (Pension) Rules, 1972, becomes eligible for appointment under Compassionate Scheme. Since the respondents have rejected his claim in an arbitrary manner, therefore, the same be quashed and a direction be issued to consider his case for appointment on compassionate ground.

4. The respondents resisted the claim of the applicant by filing written statement wherein they submitted that application submitted by mother of the applicant dated 05.01.2016 was under Rule 48 A of CCS Pension Rules-1972. The competent authority accepted the same and allowed her to retire vide order dated 21.01.2016 w.e.f. 04.04.2016. Since she has retired under Rule 48 A of the CCS Pension Rules 1972, there is no provision for extending the appointment on compassionate ground. It has also been submitted therein that she was relieved on 04.04.2016 and had unfortunately died on 25.12.2016.

5. In support of above plea, Mr. Gupta, Sr. CGSC for the respondents vehemently opposed the prayer of the applicant and argued that since she retired under Rule Rule 48 A of the CCS Pension Rules 1972, therefore, the applicant cannot claim the benefit which is not attached to that Rule.

6. I have given my thoughtful consideration to the entire matter and have perused the pleadings as available on record.

7. I am in agreement with the submissions made at the hands of the respondents that present O.A has no merit and deserves to be dismissed for the simple reason, perusal of application (Annexure A-2) i.e. three month notice for voluntary retirement which makes it clear that the same has been submitted under Rule 48 A of the CCS Pension Rules 1972. Though reason was made that she underwent cardiac treatment but fact remains that it was under Rule 48 A of the CCS Pension Rules 1972. While accepting the same, the competent authority has specifically indicated therein that the same has been accepted under Rule 48 A of the CCS Pension Rules 1972, vide order dated 21.01.2016 (Annexure A-3). Thus, contention raised

by the applicant that since his mother took voluntary retirement on medical ground makes him eligible for appointment on compassionate ground as per 1998 policy, cannot be accepted because clause 2 of the said scheme cannot extend the benefit to those who retired on voluntary retirement under Rule 48 A of the CCS Pension Rules 1972 as the same is applicable to those who retired on medical ground. Though his mother sought voluntary retirement on medical ground, but under Rule 48 A of the CCS Pension Rules 1972, does not include his case under Clause 2 of the 1998 policy, therefore, I find no reason to interfere with impugned order.

8. Moreover, it has repeatedly been held by the Lordship that sympathy cannot be misplaced and over right the rule formulation. While being sympathetic to the persons who come before the court, the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking appointment.

9. In **Ramakrishna Kamat & Ors. Vs. State of Karnataka & Ors.** [JT 2003 (2) SC 88], the Hon'ble Supreme Court rejected a similar plea for appointment on sympathetic ground stating that :

"We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularization and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by zilla parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned single judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."

10. As early as in 1911, **Farewell L.J. in Latham vs. Richard Johnson & Nephew Ltd.** [1911-13 AER reprint p.117] observed :

"We must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous Will O' the Wisp to take as a guide in the search for legal principles."

11. Yet again recently in **Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others** [(2004) 2 SCC 130], it is stated:

"We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in [Article 142](#) of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision."

12. It is not out of place to mention herein that compassionate appointment is an exception to general rule. It is applicable only for those whose bread earner dies while in service which is not in the present case.

13. In view of the above, the present O.A is dismissed devoid of merit. No order as to costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 20.12.2017

`jk'