

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00964/2017
16.08.2018

Orders pronounced on:

(Orders reserved on: 06.08.2018)

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

Jaswinder Kaur

wife of late Shri Harjinder Pal,

aged 44 years,

resident of village Jai Singh Pura (Sector 27),

Post Office Sector 26,

Panchkula (Haryana).

Applicant

By: **MR. D.R. SHARMA, ADVOCATE.**

Versus

1. Union of India through Secretary,
Ministry of Communications and Information Technology,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Post Master General,
Haryana Circle,
Ambala Cantt.
3. Senior Superintendent of Post Offices,
Ambala Division, Ambala.

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Respondents

By : **MR. R.L. GUPTA, ADVOCATE.**

O R D E R

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

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the orders dated 19.9.2016 (Annexure A-1), 21.6.2016 (Annexure A-13) and 27.10.2016 (Annexure A-15), vide which her claim for appointment on compassionate appointment as Group 'D' employee has been declined and for issuance of direction to the respondents to offer her appointment against a Group 'D' post.

2. The facts leading to the filing of the instant Original Application (OA), that husband of the applicant was working as a Chowkidar in the post Office, Sector 8, Panchkula, since 1991 on part time basis for 5 hours. She claims that he used to work for 16 hours but was being paid for only 5 hours. He was not extended benefit of Scheme dated 12.4.1991, which provided for regularization of part time employees. On filing of an O.A. decided on 8.5.2003, the applicant was directed to extend benefit of scheme of 12.4.1991. He was conferred temporary status w.e.f. 1.1.1992 and he was to be treated as temporary government servant on completion of 3 years of service as casual labour. Some other benefits to such employees were also extended on 30.1.1992 (Annexure A-4). According to her, some thieves entered post office and her husband was kidnapped / captured and ultimately he was found dead on 5.1.2009. FIR was registered on 4.1.2009. She is matriculate and as such applied for appointment on compassionate grounds on 9.2.2009. Her claim for compassionate appointment was however rejected on 26.9.2012 which was challenged in O.A.No. 93-HR-2013 which was decided on 31.5.2013 to consider her claim but again her claim was rejected on 4.9.2013. She filed O.A.No. 1506-HR-2013

and vide order dated 23.5.2014 O.A. was allowed directing the respondents to re-consider her claim , but it was rejected vide order dated 19.1.2015. This order was challenged in O.A.No. 060/754/2015 which was decided on 24.2.2016 quashing impugned order dated 19.1.2015 with a direction to consider her claim and pass necessary orders and costs were also imposed to the tune of Rs.10,000/-. However, her claim for appointment was approved as Gramin Dak Sevak (GDS) only, as temporary status labourers are not treated regular employees and their employment is on part time basis and in the nature of contractual appointment. Hence the instant O.A.

3. The respondents have filed a reply. They submit that claim of appointment on compassionate grounds of an employee working on daily wage or casual or apprentice or ad-hoc or contract or re-employment cannot be considered as per instructions dated 30.5.2013 (Annexure R-1). The Postal Directorate had issued instructions dated 17.12.2015 to allow compassionate engagement to one of the dependent family members of such casual labourers engaged on or before 1.9.1993 only in case where one dies while at work due to terrorist activity/dacoity/robbery/serious accident /natural calamity like fire, flood, earthquake, etc. without application of point system provided that HOC is personally satisfied of the indigent condition of the family subject to fulfillment of the requisite educational qualification and basic computer knowledge as per GDS Engagement Rules, 2011 and vacancy is available (Annexure R-2). The deceased was only a part time employee. In pursuance of directions of this Tribunal, he was granted temporary Group D status w.e.f. 1.1.1992. He was murdered on 4.1.2009 while on duty. Earlier claim of the applicant for appointment was rejected as scheme covers only dependents of regular

government servants. The claim of applicant was again considered twice and rejected as Scheme did not envisage appointment of dependents of employees, who were not regular and were working only on temporary basis. Her case was considered by Circle Relaxation Committee on 5.5.2016 and approved for the post of Postman but since it was over 5 years old, it was referred to Directorate, which advised to file a writ petition against decision of this Tribunal. Then her case was considered for engagement as GDS instead of filing a CWP in the Hon'ble High Court and ultimately she was engaged as GDS and she is working as such since 2016. The applicant has filed a rejoinder.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. The learned counsel for the applicant would argue that since the applicant's case was allowed by this Tribunal in earlier lis for considering it for appointment on compassionate grounds and in pursuance thereto, she was to be appointed against Group D employee, and as such she was to be granted Group D employment. But she has been offered appointment as GDS only which is illegal. On the contrary, learned counsel for the respondents would argue that the applicant's case was not even covered under any Scheme meant for regular employees, since her husband was a temporary status employee, so her case was covered under GDS Scheme and she has been appointed under that scheme which is liable to be upheld.

6. We have considered the submissions carefully. The applicant had filed C.P. No. 060/00004/2017 against the respondents for non compliance of the order dated 24.2.2016 in passing the order dated 19.9.2016 (Annexure CP-3 therein), which was dismissed as infructuous and applicant was given liberty to challenge the validity of the said

order. We find that the applicant has been forced to approach this Tribunal time and again and to say the least, the respondents have not been very kind towards the applicant. The claim of the applicant was allowed vide order dated 24.2.2016 in O.A. No. 060/00754/2015 in very clear terms and the observations made therein are reproduced in extenso for ready reference :-

"11. To begin with, I am constrained to record that the respondents have shown their sheer obduracy in this case inasmuch as the claim of the applicant is being rejected on the same plea which has been considered and brushed aside by this Tribunal in earlier lis. If the respondents had any problem with the findings recorded by this Tribunal, they could have easily gone to a higher forum. They cannot be allowed to time and again made observations which are contrary to findings recorded by this Tribunal. They respondents are well within their power and authority to challenge the decisions rendered by this Tribunal if the same is not acceptable to them. But if the same has attained finality they are under obligation to implement the same. The respondents are, time and again, taking only one plea that a casual labourer, like deceased employee, cannot be treated at par with regular employees in the matter of compassionate appointment. This objection was turned down by a Division Bench of this Tribunal in O.A.No. 92-HR-2013 decided on 31.5.2013 and again in O.A.No. 1506-HR-2013 decided on 23.5.2014. The view was further based on decision of Co-ordinate Ernakulam Bench of this Tribunal in O.A.No. 999/2001 decided on 14.8.2012. The relevant portion of decision in O.A.No. 1506-HR-2013 is reproduced below for ready reference of respondents :-

"8. The issue raised in this case is no longer res-integra and stands clinched in a number of decisions quoted above, including one cited by the learned counsel for the applicant. The view taken by the C.A.T. Jodhpur Bench, Jodhpur in O.A.No. 135/2004 decided on 26.8.2004 was that a widow of a temporary status mazdoor, who had spent 3 years of service as such and died in harness, is entitled to be considered for compassionate appointment, was upheld by the Hon'ble High Court of Rajasthan in CWP No.732/2005 decided on 17.10.2013 holding that there was no failure in substantial justice in the directions issued by the Tribunal for consideration of case of the applicant. The Ernakulam Bench of this Tribunal in O.A.No.999/2001 decided on 14.8.2012 has held as under :-

'8. The scheme of compassionate appointment provides for such appointment on compassionate grounds inter alia to a dependent family member of a Government servant who dies while in service. And the term Government servant under the Compassionate Appointment Scheme is defined as "a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis."

9. Tracing the history leading to the treating of the temporary status employees with three years service in that capacity at par with temporary Group D employee, it is seen that the Apex Court in the case of Jagrit Mazdoor

Union (Regd) vs Mahanagar Telephone Nigam Ltd., 1990 Supp SCC 113, has held as under:-

"After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis."

10. In the wake of the above judgment of the Apex Court, the Department of Posts issued letter dated 30-11-1992 which inter alia reads as under:-

"3. In compliance with the above-said directive of the Hon'ble Supreme Court it has been decided that the casual labourers of this Department conferred with temporary status as per the scheme circulated in the above said circular No.45-95/87-SPB-I dated 12.4.1991 be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status as per the abovesaid scheme. From date they will be entitled to benefit admissible to temporary Group'D' employees such as:

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularisation.
4. Central Government Employees Insurance Scheme.
5. GPF.
6. Medical Aid.
7. LTC
8. All advances admissible to temporary Group'D' employees.
9. Bonus."

11. It would be curious to note that whereas the Apex Court has held that the temporary status employees after three years of service would become entitled to such benefits as are admissible to Group 'D' employees on regular basis , the above order states "From that date they will be entitled to benefits admissible to temporary Group 'D' employees such as"

12. Be that as it may, the benefits as itemized (as extracted above) are not exhaustive but only illustrative. For, the term 'such as' occurring therein has to be taken to mean more by way of illustration. In this regard, the following decisions of the Apex Court are appropriate to be referred to:- (a) *Sanaboina Satyanarayana v. Govt. of A.P.*, (2003) 10 SCC 78. In this case, while interpreting the term "crimes against women such as Ss. 376 and 354," the Apex Court

has interpreted the word - 'such as' in the following term:-
 "When the clause noticed above, in the latter portion referred to two of the provisions of IPC, after the words "such as", it was more by way of illustration of the excepted category of offences relating to crimes against women in general and not with an intention to be exhaustive of the same."

(b) In Royal Hatcheries (P) Ltd. v. State of A.P., 1994 Supp (1) SCC 429, the Apex Court while explaining the term livestock, observed as under- "It is true, the words "such as" indicate that what are mentioned thereafter are only illustrative and not exhaustive." (Of course, in this case, in addition to the term 'such as' word, 'etc' has also been used).

(c) In Goodyear India Ltd. v. Collector of Customs, (2000) 10 SCC 489, the Apex Court has observed, -

"The words "such as stainless steel, nickel monel, incoloy, hastelloy" in sub-heading (2) are only illustrative of the various metals from which valves can be made but the said description is not exhaustive of the metals."

13. Thus, the benefits itemized in the order dated 30-11-1992 vide Annexure R-4 are only illustrative and not exhaustive. Since the scheme of compassionate appointment is applicable to the government servants, which include regular employees of Group 'D', those who are entitled to such benefits as available to the Group D employees on regular basis, are also entitled to the same. In addition, while defining the term 'Government servant' for the purpose of compassionate appointment, the term clearly spells out the excluded category i.e. "not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis". Temporary status employees treated at par with Group D employees are not enlisted in this excluded category.

14. In view of the above, we have no hesitation to hold that the applicant's husband having been conferred with the status of temporary Group D employee and entitled to all the benefits available to Group D employee on regular basis, as stated in Annexure A-3, the applicant is eligible to be considered for compassionate appointment. The OA is allowed. Respondents are directed to consider the case of the applicant in accordance with law on the subject."

9. The aforesaid view has been upheld by Hon'ble High Court of Kerala in O.P (CAT) No. 1 of 2014 (Z) titled Union of India etc. Vs. Smt. Chitra Babu, decided on 27.1.2014. Thus, the claim of the applicant for appointment on compassionate grounds cannot be denied to her on the ground that her claim is not covered by the instructions, in view of the judicial pronouncement to the contrary."

12. The Bench held that the respondents were not able to show any law to the contrary and as such it held that the claim of the applicant for grant of consideration for appointment on compassionate grounds deserves to be accepted and order dated 4.9.2013 (A-14) was quashed and set aside with direction to the respondents to re-consider the claim of the applicant in the light of the observations made in the said case and various judicial pronouncements and pass a speaking and reasoned order within a period of two months from the date of receipt of a certified copy of this order. However, the issue is at squire

one now once again. This act on the part of the respondents can safely be called as obduracy as they have shown scant regard to the findings recorded by this Tribunal. This is a fit case where suo moto contempt proceedings can be initiated against the respondents but court is restraining itself from doing so. One can only hope and expect that at least this time good sense would prevail and the respondents would consider the claim of the applicant in terms of the observations and directions given in earlier cases by this Tribunal and would not stick to their earlier stand which has time and again been considered and set aside.

13. It is trite that law is defeated by law. In the event, a judicial order by the court holds a view that a temporary status employee after 3 years service is to be treated at par with Group 'D' employee in certain matters including appointment on compassionate ground, such findings cannot be over reached by departmental authorities by recording contrary findings as it would amount to infiltration of executive in the judicial arena which cannot be allowed. The Apex Court in **Anil Ratan Sarkar and Ors. v. State of West Bengal** (2001) 5 SCC 327 held that administrative ipse dixit cannot infiltrate to an arena which stands covered by judicial orders. In view of these facts and law on the subject the impugned order dated 19.1.2015 (A-1) is quashed and set aside. The respondents are directed to consider the case of the applicant and pass necessary orders in the light of observations made hereinabove, within a period of two months from the date of receipt of a certified copy of this order. Considering the adamant act and conduct of the respondents, as discussed above, this is a fit case for imposition of costs which is quantified at Rs.10,000/-."

7. A perusal of the order goes to show that the court had to almost pass strictures against the respondents for not according proper consideration to the claim of the applicant. In earlier O.A., the impugned order passed on the ground that claim of applicant was not covered under relevant Scheme was quashed and set aside with direction to the respondents to re-consider the claim of the applicant in the light of the observations made therein and various judicial pronouncements and they were to pass a speaking and reasoned order. However, the respondents did not adhered to the findings recorded by this Tribunal and rejected the claim of the applicant. Thus, Court was forced to record that the act on the part of the respondents was sheer obduracy as they had shown scant regard to the findings recorded by this Tribunal and it was a fit case for initiation of suo moto contempt proceedings but they were let off with an expectation that at least good

sense would prevail and the claim of applicant would be considered in terms of the observations and directions given in earlier cases by this Tribunal and would not stick to their earlier stand which has time and again been considered and set aside.

8. However, a perusal of the order, Annexure A-1 shows that she has been engaged as GDS MP in Sector 20, Panchkula, on compassionate grounds under a scheme, which is not meant for the category of the applicant. Her rights stands recognized and accepted even by respondents in earlier O.A. that her claim is to be considered under the scheme meant for regular employees. Her claim was considered and approved also. However, it was sent to Postal Headquarters, which advised to file a writ petition. The Writ Petition has not been filed and a novel way has been advised to dilute the findings recorded by this Tribunal in earlier cases, by granting applicant appointment as GDS instead of as Group D employee which is not permissible in law. The respondents cannot dilute the findings and directions issued in earlier case in the name of appointing the applicant as GDS employee. Her claim stands clinched in earlier cases decided by this Tribunal. No doubt, the Court has dismissed the Contempt Petition filed by the applicant but liberty was granted to the applicant to challenge validity of the impugned order. Considering the findings and observations made in earlier cases, the view taken by the respondents in the impugned orders is not tenable from any angle and has to be rejected as once their stand that claim of applicant is not covered under Scheme meant for regular employees, has been brushed aside by this Tribunal and respondents have themselves considered her claim under regular scheme and her case was also sent for formal approval to Headquarters before formal appointment, then it does not lie in their

mouth to give a new twist to the case and appoint applicant as a GDS. The acceptance of appointment as GDS by applicant would not in any way act as an estoppel against her.

9. In view of the aforesaid discussion, this O.A is allowed. The impugned orders, Annexures A-1, A-13 and A-15 to the extent the same deny appointment to the applicant as Group D employee are quashed and set aside. The respondents are directed to act upon the recommendation already made in favour of the applicant for appointment as Postman and offer her such appointment, within a period of two months from the date of receipt of a copy of this order.

10. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 16.08.2018

HC*