

**Central Administrative Tribunal
Madras Bench**

**OA/310/00553/2016, OA/310/00728/2016, OA/310/00698/2016,
OA/310/00559/2016, OA/310/00657/2016, OA/310/00674/2016,
OA/310/00008/2017, OA/310/01166/2017 & OA/310/00215/2017**

Dated the 12th September Two Thousand Eighteen

P R E S E N T

Hon'ble Mr.P.Madhavan, Member(J)

1. V.Rathinam	.. Applicant in OA 553/2016
2. M.Saravanan	.. Applicant in OA 728/2016
3. T.Suresh	.. Applicant in OA 698/2016
4. R.Zaheer Khan	.. Applicant in OA 559/2016
5. D.Rajapandian	.. Applicant in OA 657/2016
6. M.Murugavel	.. Applicant in OA 674/2016
7. S.Saravanan	.. Applicant in OA 8/2017
8. B.Mathivanan	.. Applicant in OA 1166/2017
9. S.Kathick Raja	.. Applicant in OA 215/2017

By Advocate **M/s.P.Rajendran**

Vs.

1. The Union of India, rep by the Chief Postmaster General, Tamil Nadu Circle, Chennai 600 002.	.. Respondents in all the OAs
2. The Superintendent of Post Offices, Madurai Division, Madurai 625 002.	.. Respondent in OA 553/2016
3. The Senior Superintendent of Post Offices, Tiruvannamalai Division, Thiruvannamalai District.	.. Respondent in OA 728/2016
4. The Senior Superintendent of Post Offices, Chennai City Central Division, Chennai 600 017.	.. Respondent in OA 698/2016
5. The Senior Superintendent of Post Offices, Tambaram Division, Tambaram 600045,	.. Respondent in OA 559/2016

6. The Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai 600017. .. Respondent in OA 657/2016
7. The Superintendent of Post Offices,
Pollachi Division,
Pollachi 642001. .. Respondent in OA 674/2016
8. The Senior Superintendent of Post Offices,
Salem East Division,
Salem 636001. .. Respondent in OA 8/2017
9. The Superintendent of Post Offices,
Tirupattur Division,
Tirupattur 635601. .. Respondent in OA 1166/2017
10. The Senior Superintendent of Post Offices,
Nilgiris Division,
Udagamandalam 643 001. .. Respondent in OA 215/2017

By Advocate **Mr.K.Rajendran, Mr.C.Kulandaivel, Mr.M.T.Arunan,**

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. These OAs are filed by the applicants under section 19 of the AT Act. As the legal issue raised and relief sought in OA Nos. 553,728, 698, 559, 657 & 674 of 2016 and OA Nos. 8, 1166 & 215 of 2017 are similar, the learned counsels for the parties having agreed, these OAs were heard together and disposed of by this common order.

2. The applicants in these OAs are seeking to quash the impugned order passed by the 2nd respondent in the respective dates and direct the respondents to appoint them on compassionate grounds in any suitable job commensurate with their qualification and grant them all consequential benefits and render justice.

3. OA Nos.553/2016, 728/2016, 698/2016, 559/2016, 657/2016 & 674/2016 were earlier disposed of by this Tribunal by Order dated 04.4.16, 22.4.2016 & 18.4.2016, 04.4.2016, 11.4.2016 and 13.4.2016, respectively. But the Hon'ble High Court of Madras set aside the above order as they were passed without hearing the respondents.

4. The applicants in all the OAs have applied to the respondents for compassionate appointment. They were rejected by the respondents in the following two grounds in all cases:-

“1. There is non-availability of direct recruitment vacancies in the respective cadre under RRA quota.

2. Less indigent as per Relative Merit Points(RMP) under RRR quota.”

5. According to the counsel for the applicants, the RMP system was implemented from 2010 onwards and it was not the scheme that was prevalent at the time of application for compassionate appointment. The original scheme for compassionate appointment was as per OM No.14014/6/94 Estt.(D) dated 09.10.1998 and all the appointments had to be made in the basis of seniority, whereas the RMP scheme does not take into account the seniority, and applicant's of 2011 and 2012 gets priority on the basis of points. The counsel for the applicants submit that the Hon'ble Supreme Court in ***State Bank of India vs. Jaspal Kaur reported in (2007) 9 SCC 571*** has held that in the case of compassionate appointment, the policy prevailing at that time of death of the employees who died in harness has to be applied and not the subsequent policy. Therefore, the rejection of the applications made by the applicants is liable to be set aside.

6. The respondents filed reply disputing the averments in the OAs. According to them, in between 1990 to 1999 more than 600 cases were approved and a waiting list was prepared. As per guidelines of the DOPT OM 37-16/2001-SPBI dated 25.7.2001, the above waiting list was discontinued. Aggrieved of the above order, candidates who were in the waiting list filed OAs before various Tribunals. OA 862/2001 and a batch of other OAs were allowed and the respondents filed WP No.38990/2002 before the Hon'ble High Court of Madras. The Hon'ble High Court dismissed the above WP and the respondents filed SLP before the Hon'ble Apex

Court. The Hon'ble Supreme Court by order dated 30.7.2010 directed the respondents to regularise the services of 202 persons who were engaged in the department as on 27.10.2009 and 37 interlocutory applicants against the vacancies kept reserved for compassionate appointment from the year 2001 to 2009 on **humanitarian grounds** and set aside the orders of the Tribunal and High Court with regard to the interpretations of OMs and Circulars of the department and kept the law open. Thereafter, the cases received from the year 2000 to 5.3.2012 were taken up for consideration by CRC against 5% D.R. vacancies accrued for the year 2010 and 2011 and by utilizing the remaining vacancies of 2009 after implementation of the order of the Hon'ble Supreme Court. The case of the applicants were also considered alongwith other 875 applicants by CRC for compassionate appointment as per RMP received. The applicants herein could not get necessary merit points for showing indigency and there was no sufficient number of vacancies available.

7. According to the counsel for the respondents, the scheme for compassionate appointment was introduced in the year 1998 by the nodal Department (DOPT) as per OM 14014/6/94 Estt(D) dated 08.10.1998 and the main criteria for eligibility was the indigency which deserves immediate assistance for relief from financial destitution. The Postal Department as per letter No.37-36/2004-SPB 1/c dated 20.1.2010 had accepted the proposal of relative merit points for deciding the question of indigency in a transparent manner and the respondents had followed the same procedure for ascertaining indigency of the family of the applicants. According to the respondents, there has not taken place any change in the scheme for compassionate appointment as

such. The decision of the Hon'ble Supreme Court in ***State Bank of India vs. Jaspal Kaur reported in (2007) 9 SCC 571*** is not applicable to his case as the respondents had not changed the scheme of 1998 as such. The respondents relies on the decision of the Hon'ble Supreme Court in ***State Bank of India vs. RaJ Kumar reported in (2010) 11 SCC 661*** where it was held that compassionate appointment is not a source of recruitment and it is an exception to the general rule. The dependants do not have any special claim or right to employment, except by way of the concession that may be extended by the employee under the rules or by a separate scheme to enable the family of the deceased to get over the sudden financial crisis. The claim of compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn and follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicants. If a scheme provides for automatic appointment to a specified family member, on death of an employee, without any other requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event only the scheme in force at the time of death would apply. When there is no vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the

application was made, will be applicable. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of new posts. The counsel appearing for the respondent had also cited the decision of the Hon'ble Supreme Court in MGB Gramin Bank vs. Chakrabarti Singh reported in AIR 2013 SC 3365 wherein it was held again that such claims can be considered only on the basis of the scheme available at the time of consideration.

8. I have gone through the averments in the OA and the reply given by the respondents. The main issue raised before me is that whether the RMP system of ascertaining indigency can be applied to the case of the applicants who had applied for appointment on compassionate grounds prior to 2010. On a perusal of the records, I find that the compassionate appointment scheme was implemented by the nodal department as per OM No.14014/94 Estt.(D) dated 09.10.98. The said scheme was produced as Annexure R1 by the respondents. On going through the scheme, it can be seen that the scheme was evolved to protect the family of government servants dying in harness from penury and without any means of lively hood and to relieve the family of the government servant concerned from financial destitution and to help it get over that emergency. For getting compassionate appointment it should be shown that the family is indigent and deserves immediate assistance for relief from financial

destitution and the applicant should be eligible and suitable for the post in all respects. From the above, it can be seen that compassionate appointment is not automatic and certain conditions have to be fulfilled for getting appointment. The RMP system was introduced only to ascertain the relative indigency of the applicant and it is based on various attributes like financial condition of the family, assets and liabilities, size of the family, number of children, income of the earning members, terminal benefits received, number of dependents and their age, unmarried daughters, number of minor children, leftover service of the deceased employee etc.

9. On a reading of the scheme brought in 1998, it can be seen that the indigency of the family is the most important factor in considering for compassionate appointment. The RMP system was brought for uniformity and transparency in the assessment of indigency. So I am of the view that RMP system followed by the respondent is not in itself a scheme but only a method proposed by the department to assess the indigency. So, there is no merit in the contention of the counsel for the applicant that RMP is a new scheme in itself. So the decision of the Hon'ble Apex Court in *State Bank of India vs. Jaspal Kaur (supra)* has no direct application in this case.

10. The Hon'ble Apex Court in the later case of ***State Bank of India vs. Raj Kumar reported in (2010) 11 SCC 661*** has categorically stated that compassionate appointment cannot be claimed as a right and it also clarified that the application of such persons can be traceable only to the scheme framed by the employer for such employment. When there is no right created, the scheme that is in force when the

application is considered and not the scheme that was in force earlier when the application was made will be applicable. In this case also though the applications were filed before 2010, it was considered by the CRC only in 2012 and the scheme that is prevalent was applied and orders were communicated. There is no case of malafide on the part of CRC as alleged by the applicants. The Hon'ble Apex Court in ***MGB Gramin Bank vs. Chakravarti Singh (AIR 2013 SC 3365)*** has categorically held that “in case the scheme does not create any legal rights, a candidate cannot claim that his case has to be considered as per the scheme existing on the date of cause of action.” So this Tribunal finds merit in the arguments put forward by the respondents in this case.

11. Hence, the applications lack merit and OAs stands dismissed. No costs.

(P.Madhavan)
Member(J)

12.09.2018

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