

**Central Administrative Tribunal
Madras Bench**

OA/310/01779/2014

Dated 12th day of October Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. P. Madhavan, Member(J)
&
Hon'ble Mr. T.Jacob, Member(A)**

C.Chandrakala
D/o late C.Jayaraman,
No.10, Vivekananda Nagar 8th Street,
Gummudipoondi,
Gummudipoondi-Taluk & Post,
Thiruvallur District 601 201. .. Applicant

By Advocate **M/s.GiriRajan**

Vs.

1. Union of India, rep by the
Director(Staff),
M/o Communications & IT,
Department of Posts,
Dak Bhawan, Parliament Street,
New Delhi 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
3. The Postmaster General,
Tamil Nadu Circle,
Chennai 600 002.
4. The Senior Superintendent of Post Offices,
Tambaram Division,
Tambaram Head Post Office,
Tambaram, Chennai 600 045.
5. The Assistant Superintendent of Post Offices,
Tiruvottiyur Sub Division,
Chennai 600 019. .. Respondents

By Advocate **M/s.C.Kulanthaivel**

ORDER

Pronounced by Hon'ble Mr.T.Jacob, Member(A)

The applicant has filed this OA seeking the following reliefs:

- i. To call for the records of the 1st respondent pertaining to the scheme which is made in No. 37-36/2004/SPB-i-I/C dated 20.01.2010 and the order of the 4th respondent which is made in No. B2/10-2/RRR/12 dated at Tambaram 600045 the 13.08.2012 and set aside the same and consequently to
- ii. Direct the respondents to appoint the applicant on compassionate ground in any one of the post in the 5th respondent office on considering her educational qualification with all attendant benefits and
- iii. To pass such further orders as this Hon'ble Tribunal may deem fit and proper.”

2. Learned counsel for the applicant submits that the applicant is the widowed daughter of Mr.C.Jayaraman who was working as Postman under the respondents and died on 21.1.2008 while in service leaving behind him, his wife, 2 sons and 1 daughter. The applicant submitted a representation dated 21.5.2008 to the 2nd respondent, seeking appointment on compassionate grounds in relaxation of Recruitment Rules which was rejected by the 4th respondent by Annexure A13 impugned order dated 13.8.2012. It is further submitted that the pension amount is the only mode of income for the family to survive. The terminal benefits of the deceased employee was insufficient to meet the various liabilities the family had. Hence, she has filed this OA seeking the aforesaid reliefs.

3. The respondents have filed a reply in which it has been stated that the claim for compassionate appointment complete in all respects with full fledged documents was received only in November 2011. The claim of the applicant for compassionate

appointment was examined applying merit point system introduced by the Postal Directorate on 20.1.2010. The applicant got only 50 points as per the records and documents submitted by her. The relative merit point for the last selected candidate in Postman cadre was 75 and MTS cadre was 91. As there were more candidates who got more relative merit points than the applicant, her case was not approved by the CRC. Further, the case of the applicant along with similar other cases were considered against 5% DR vacancies of 2010 and 2011 by the Circle Relaxation Committee convened in March 2012. 96 candidates were examined by the CRC-2013 against 5% of DR vacancies of the year 2012 and the 5% DR vacancies of the year 2013 in PM/MTS cadre was utilized for regularizing the services of excess approved candidates, as per the orders of Hon'ble Supreme Court/High Court and as per Dte's direction. Accordingly, it is submitted that the case of the applicant was placed before the CRC held on 28.7.2015 and not recommended due to non-availability of DR vacancy under RRR quota and less indigent as per Relative Merit Points under RRR quota. It is further submitted that the case of the applicant would be examined again in the forthcoming CRCs on merit, as per DoPT's instructions dated 26.7.2012, withdrawing the time limit of 3 years in considering the cases of compassionate appointment. Therefore, irrespective of the position of the family at the time of death of the employee, the claim for compassionate appointment would be processed only with reference to the condition of the family prevailing at the time of processing the case. Hence, they prayed for dismissal of the OA.

4. On perusal, it is seen that this Tribunal, on the basis of the submission made by

the respondents that the candidature of the applicant would be considered in the ensuing CRC, disposed of the OA by order dated 04.4.2016 with a direction to the respondent authority to consider the case of the applicant for compassionate appointment under the then existed scheme as on the date of the death of the applicant's father by placing it before the ensuing Circle Relaxation Committee and communicate the result to the applicant immediately thereafter. Against the said order of this Tribunal dated 04.4.2016, the respondents filed WP No.1362/2017 before the Hon'ble High Court of Madras which by its order dated 02.6.2017 set aside the order of this Tribunal and remitted back the OA with a direction to consider the matter afresh on merits and as per law within a period of three months from the date of receipt of a copy of the order.

5. Learned counsel for the applicant argued that the applicant is challenging the scheme dated 20.1.2010 (A8) on the following grounds:-

1. As per the scheme, the points given under the caption "minor children" is not justifiable because when children are minor the widow of deceased employee would claim appointment on compassionate ground.

2. If points are given to number of dependents the question does not arise to give points under the caption "number of unmarried daughters" and "number of minor children."

3. When the widow of deceased employee is not literate enough to get appointment, then normally her child after attaining majority would claim appointment. The claimant would lose 15 points available to the widow of the employee.

4. When the children are minors the appointment on compassionate ground would be denied to the eligible members of the family after attaining majority on the reason of belated claim.

5. The points given under the caption “terminal benefits” is not acceptable and not a logical one as they may spend the entire amount of terminal benefits towards medical treatment to the deceased employee.

6. When the leftover service is more than 20 years the dependent of deceased employee would be minors and, therefore, giving points under the caption “the left over service” is not correct.

The Learned counsel also submitted that the annexure A8 circular is different from the scheme for granting of appointment on compassionate grounds issued by the DoPT, Government of India and hence Annexure A8 is ultra vires, illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India. He also relied on the decision of the Ernakulam Bench in OA No 180/00230/2016 dated on 06.06.2017.

6. Learned counsel for the respondents on the other hand vehemently opposed the averment of the applicant stating that the Postal Directorate in letter No.37-36/2004-SPB-I/C dated 20.1.2010 has prescribed a system of allocation of points to various attributes such as family pension, terminal benefits, monthly income of earning members, movable and immovable property, number of dependents, number of unmarried daughters, number of minor children and leftover service etc. besides 15 points for widow. It is submitted that the above system was introduced in order to have objectivity and to ensure complete transparency and uniformity in the selection process. According to the scheme, the penury condition of the family depends on the government servant who dies in harness can be judged considering the minor children to be educated and brought up/daughter to be married also besides the widow of the deceased. The indigence of the dependents which can be determined on the basis of

minor children to be brought up, marriage of daughters for which financial position is a must. Irrespective of the position of the family at the time of death of the employee, the claim for compassionate appointment would be processed only with reference of the family prevailing at the time of processing the case. It is submitted that the in the order passed by the Guwahati Bench of this Tribunal in OA 157/2011 has held that minor children at the time of death of government servant are entitled to claim for compassionate appointment after attaining the age of majority. Further, when the widow of the deceased employee is not literate enough to get appointment she would not be disqualified but considered for the post of MTS after relaxing her education qualification by the Circle Relaxation Committee. It is further argued that unless relative merit points are provided for terminal benefits it would not be possible to assess the indigency of each case. It is also submitted that the manner in which the terminal benefits is not a criteria. Since compassionate appointments are to be considered only against 5% of vacancies while there are more applicants without applying points on various attributes, more deserving applicant cannot be determined. In order to consider the indigency, points are allotted suitably for the service leftover by the deceased.

7. Counsel for the respondents would further submit that the compassionate appointment scheme does not give any right to the applicant. It is submitted that the formulation of the scheme of Merit Point, was insisted upon by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal vs. State of Haryana (1994 (2) SLR 677). According to the counsel for the respondents, the RMP procedure was introduced

only for making the procedure for ascertaining indigency transparent and it is not a scheme in itself.

8. We have considered the submissions. The applicant's case for compassionate appointment had been rejected on the ground that the applicant failed to get adequate Relative Merit Points(RMP), awarded on the basis of various parameters to assess the financial condition of the family. Her RMP was lower than the cut off for the posts of Postman and MTS. The counsel would content that the respondents ought to have allowed the application and they should have considered the application. According to him, the RMP procedure came into existence only on 20.1.2010 and this should not have been adopted for rejecting the application and, therefore, the said scheme is liable to be set aside, it is contended.

9. On a careful examination of the submissions made and the pleadings before court, it is clear that the present system only brings a qualitative change in the weightage system which is objective and a more appropriate system. It takes away arbitrary power of concerned official. It brings in a yardstick for measurement of indigency. In short, it is merely a continuation of earlier process. The only difference is that a new weightage system is to make it more objective. Thus, it can be seen that the view canvassed by the applicant is against constitutional process of articles 14, 15 and 16. Therefore, going by the above proposition which now stands finally established, we do not think that it would be appropriate to interfere in the matter especially since the RMPS has proven itself to be valid and eliminate corruption and nepotism. Further, the instructions issued by 1st respondent vide order No. 37-

36/2004-SPB I/C dated 20.1.2010 has been upheld by the Hon'ble Tribunal, Bombay in the order dated 2.12.2011 in OA No. 437/2010. However, it could be seen that the applicant has not produced any record to show that she had made representations till the year 2010, though the applicant would contend that she made many representations for appointment on compassionate grounds. The CRC has considered all aspects of the indigency of the applicant and came to the conclusion that the applicant is less indigent than other applicants who have come up before CRC. In *State Bank of India & Others vs. Jaspal Kaur* (2007) 9 SCC 571 the Hon'ble Supreme Court has held that the matter of compassionate appointment should be decided within the parameters of scheme prevailing when the application for compassionate appointment filed. In this case, the application for compassionate appointment was made only in the year 2011 and, therefore, the scheme prevailing at that time only could be taken into consideration. The RMP scheme has not changed the compassionate appointment scheme as such. It had only made the procedure more transparent and to avoid unnecessary considerations creeping in the selection of the persons who are most indigent and in need of support. It is evident that the applicant's case was duly considered but not recommended by CRC and the respondents passed the impugned order dated 13.8.2012 after taking each and every attributes into consideration according to the documents submitted by the applicant. Therefore, there is no merit in the arguments raised by the applicant. However, the right of the applicant to be considered again in subsequent years is not taken away. If there are posts other than those included in the aforesaid two categories for which the

applicant possesses the requisite qualification and if adequate number of such posts are available under the 5% quota for compassionate appointment, there is no reason not to consider her name for such posts along with the other similar claimants in terms of their RMP in the subsequent years.

10. In the result, the OA is devoid of merit and it is dismissed accordingly. No costs.

(T.JACOB)
Member(A)

(P.MADHAVAN)
Member(J)

12.10.2018

/G/ SKSI