

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/704/2016

Cuttack this the 30th day of August, 2018
CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Minmaya Kumar Palai, aged about 32 years, S/o. Late Sanjaya Kumar Palai, resident of Village-Kothiasahi, PO/PS-Kujanga, Dist-Jagatsinghpur

...Applicant

By the Advocate(s)-M/s.Namita Patnaik
D.P.Das

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communications, Department of Posts, Dak Tar Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Post Master General, Orissa Circle, P.M.G. Square, Unit-IV, Bhubaneswar-751 001.
3. Superintendent of Post Offices, Cuttack South Division, Cantonment Road, Cuttack-753 001.
4. Inspector of Post Offices, Kujanga Sub-Division, Kujanga, Dist-Jagatsinghpur.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty
ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of a deceased Government employee who was working as a GDS Packer and expired on 9.5.2006 while in service. The applicant had submitted a number of representations, but was not given compassionate appointment. He had filed O.A.No.868 of 2015 in this Tribunal which had passed the following orders on 23.12.2015.

"From perusal of materials on record, prima facie, it appears that the authorities in charge of giving compassionate appointment have sat over the matter notwithstanding the fact that a recommendation has been made by the Superintendent of Post Offices, Cuttack (S) Division in the year 2008. Therefore, at this stage, without entering into the merit of the matter, I would direct the CPMG, Orissa Circle (Res.No.2) to consider the recommendations made by Respondent No.3 as at A/5 as well as the representation made by the applicant no.1 on 15.1.2015 as per the extant rules and instructions and communicate a decision thereon to the applicants through a reasoned and speaking order within a period of sixty days from the date of receipt of this order'.

In compliance with the orders of this Tribunal, the Respondent No.2 passed the order dated 3.3.2016 and rejected the claim of the applicant for compassionate appointment on the ground that the family of the applicant was not in indigent circumstances. There was no liability of unmarried daughter and education of minor children and the family had 0.16 dec. of landed property and derived income of Rs.6000/- per annum from agricultural land and Rs.20,000/- from other sources. The applicant has challenged this impugned order dated 3.3.2016 (A/7) in the present O.A. and has prayed for the following reliefs:

- i) To direct the Respondent no. 2 & 3 to give compassionate appointment to the applicant in any suitable post in Postal Department as per recommendation vide Annexure-A/5 under compassionate ground quashing Annexure-A/7.
- ii) Pass any such order(s)/direction(s) as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case and allow the Original Application.

2. The applicant has based his prayer on the following grounds.

The Superintendent of Post Offices, Cuttack(S) Division (Res.No.3) had after taking into account all the relevant factors recommended the case of the applicant to the Assistant Director (CRC), O/. the CPMG, Orissa Circle, Bhubaneswar vide letter dated 7.2.2008 for appointment to the post of BPM, Tikanpur in account with Garadpur SO (A/5). He had also earlier recommended the case of the applicant for the post of GDSBPM, Bhutamundai Branch office which was subsequently cancelled vide letter dated 22.02.2017. However, the CPMG, Orissa Circle (Res.No.2) has arbitrarily and illegally rejected the recommendation of Respondent No.3. The assessment of income of Rs.6000/- from landed property and Rs.20,000/- from other sources is

without any basis and shows non-application of mind. As per the Income Certificate issued by the Additional Tahasildar, Kujanga (A/8) the applicant has only Rs.3000/- as income from agricultural land and Rs.10,000/- from other sources per year. The family of the applicant is in indigent condition and therefore, he deserves compassionate appointment.

3. The Respondents in their counter-reply filed on 8.2.2017 have submitted that the applicant's case was considered in the CRC Meeting held on 7/8.8.2008 and was rejected on the ground that his family was not found in indigent condition for the following reasons:

- i) The family consists of the widow aged 47 years and one son aged 25 years.
- ii) There are no liability of unmarried daughter.
- iii) There are no liabilities of education of minor children.
- iv) The family has 0.16 dec. of landed property and derives income of Rs.6000/- p.a. from agricultural land and Rs.20,000/- from other sources.

After a lapse of 7 years, the applicant filed O.A.No.868/2015 before this Tribunal which in its order dated 23.12.2015 directed the Respondent No.2 i.e., Chief PMG, Odisha Circle, Bhubaneswar to consider the recommendations made by respondent No.3 in his letter dated 7.2.2008 and also the representation dated 15.01.2015 and take a decision as per the extant rules. The applicant's representation was considered and rejected vide order dated 3.3.2016 (A/7). Although the applicant's case was recommended by the Superintendent of Post Offices, Cuttack (S) Division for the post of GDSBPM, Tikanpur B.O. the CRC rejected the case of the applicant in its meeting held on 07/08.08.2008 on the ground that the family was not found in indigent condition. It is the respondents' contention that while considering the request for appointment on compassionate ground a balanced and objective

assessment of the financial conditions of the family is made by the CRC taking into account the family's assets and liabilities and all other relevant factors such as, presence of earning members, size of the family, age of the children and essential needs of the family. The case of the applicant has been rejected by the CRC since his family was not found in indigent condition. The Respondents have cited the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Asha Ramachandra Ambekar & Ors.* [JT 1994(2) SC 183] in which it has been held that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground.

4. The applicant in his rejoinder filed on 20.12.2017 has reiterated that his claim was recommended for the post of GDSBPM, Bhutumundai Branch Office on 11.10.2006 and for the post of GDSBPM, Tikanpur Branch Office on 7.2.2008, but the Respondents have rejected his claim out of mala fide intention on the ground that the family of the applicant was not in indigent condition. The order of Respondent No.2 at A/7 suffers from total non-application of mind and non-consideration of materials on record.

5. The matter was heard on 2.8.2018. The applicant has also filed a written note of submission and enclosed a Memo of Citations. He has cited the following judgments to support his argument that appointment on compassionate ground should not be delayed and the general principle for providing compassionate appointment is that at the time of the death of the deceased whether the dependents are in indigent conditions.

- i) AIR 1989 SC 2976 (Smt.Sushama Ghosh vs. Union of India)
- ii) AIR 1991 SC 649 (Smt.Phoolwati vs. Union of India)
- iii) 2006 Suppl(1) OLR 660 (Dilip Kumar vs. Union of India)

- iv) 2014 (118) CLT 254 (Pabitra Mohan vs. Regional Co-operative Societies).
- iv) 2009(2) ILR 279 (Himanshu Kumar Kar vs. Chief G.M. SBI)
- v) 2010(1) OLR 642 (Union of India vs. Laxmi Rani Behera)
- vi) 2007(2) SCC 308 (Abhishek Ku. Vs. State of Haryana)
- vii) 2003(1) SCC 184 S.K. Mastan Bee vs. The General Manager, South Central Railway & Another).

6. The issue to be decided in the present O.A. is whether the applicant is eligible for compassionate appointment under the prevailing rules. On a direction of this Tribunal, the Respondents have furnished the minutes of the meeting of the CRC held on 07/08.08.2008. The case of the applicant is at SI.No.10 and under the Remarks Column it is mentioned as follows:

"The family has two dependants, i.e., widow-47 yrs. & 1 unemployed son 25 yrs. There is no liability in the family like marriage of unmarried daughter & education of minor children. The family has 0.16 Dec. of landed property 7 derives income of Rs.6,000/- p.a. from agricultural land and Rs.20,000/- from other sources. Not in indigent circumstances. Not recommended".

From the minutes of the CRC, it is found that the candidates who have been recommended for appointment on compassionate appointments are more deserving than the applicant. However, the case of the applicant deserves to be considered at least three times for the following reasons:

7. In a catena of judgments, the Hon'ble Supreme Court has firmly held that compassionate appointment is not a matter of right and cannot be a substitute for regular appointment. **V.Sivamurthy Vs. State of A.P. (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481.** In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138**, the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on merit.

However, in another set of judgments, the Hon'ble Apex Court has held that wherever candidates eligible for compassionate appointment file applications for the same it should be considered as per law and the mere fact of the deceased person's wife receiving terminal benefits will not stand in the way of consideration for compassionate appointment. In **Govind Prakash Verma vs. Life Insurance Corporation of India &ors. (2005) 10 SCC 289**, the Hon'ble Apex Court had held that the scheme of compassionate appointment is over and above whatever is admissible to legal representatives of the deceased employee as benefits of service which they get on death of the employee. Hence compassionate appointment cannot be refused on the ground that any member of family had received such benefits.

In **Balbir Kaur & Anr.Vs. Steel Authority of India Ltd. &Ors.(Civil Appeal No.11881/1996) and Smt.T.K.Meenakshi and Anr. Vs. Steel Authority of India Ltd. &Ors (Civil Appeal No.11882/1996)**, 2002 LAB I.C. 1900, the Hon'ble Supreme Court had held that benefit of compassionate appointment cannot be negated on the ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee.

In **Sudhir Sakharam Joshi vs. Bank of Maharashtra & Anr. 2003(1) Mh.L.J.** the Nagpur Bench of Hon'ble High Court of Bombay had directed the respondents to give an appointment to the petitioner in clerical cadre since his application for compassionate appointment was rejected without assigning any valid reasons. The Hon'ble High Court had held the fact that retiral benefits given to the deceased cannot be a good ground for such rejection and no material was produced to show that any detailed inquiry was made in order to determine the financial condition of the deceased family. In

Arun Kumar vs. Union of India & Ors. 2002 LAB I.C. 3196, the Hon'ble

Himachal Pradesh High Court had held that grant of family pension or the fact that the family of the deceased employee was receiving benefit under various welfare schemes cannot be a ground to deny compassionate appointment. In

Swati Chatterjee vs. State of West Bengal &ors. (W.P.S.T. No.21/2010 decided on 02.02.2010) the Hon'ble Calcutta High Court had held that wife

of the deceased employee was entitled to compassionate appointment and family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment. Similarly,

in **OA No.1005/2005 in Akeel Ahmed Khan vs. General Manager, State Bank of India &Ors., 2003(4) MPHT 167**, the Hon'ble High Court of Madhya

Pradesh had held that if an appointment on compassionate ground is rejected on the grounds of gratuity and provident fund amount received by the family, it will frustrate the entire purpose of compassionate ground appointment. In

Aparna Narendra Zambre & Anr.Vs. Assistant Superintendent Engineer, Sangli &Ors. 2011(5) Mh.L.J., WP No.1284/2011 decided on 01.08.2011,

it was held by the Hon'ble Bombay High Court that the fact of receipt of family pension cannot be the basis to deny benefit of compassionate appointment. In

the case of **Director General of Posts &ors. vs. K.Chandrasekhar Rao, Civil Appeal No.9049/2012 arising out of SLP (C) No.19871/2009 decided on 13.12.2012** and similar Civil Appeals the Hon'ble Apex Court had laid down

the principle that the 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely titled in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. In **Nirmala Saha & Anr. Vs. Union of India &Ors.**,

2010(124) FLR 88, the Hon'ble Calcutta High Court had observed that by merely placing the application for compassionate appointment in three consecutive years from the date of filing the application irrespective of the fact that there were no vacancies will result in the applicant being deprived of the benefit under the scheme.

In Haryana SEB vs. Naresh Tanwar (1996) 8 SCC 23, Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481, Haryana SEB vs. Krishna Devi (2002) 10 SCC 246, State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412 and National Hydroelectric Power Corporation vs. Nanak Chand (2004) 12 SCC 487, the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs.

8. Keeping this in mind, the government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application against certain laid down criteria. Such criteria include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable

expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most deserving will be offered appointment on compassionate ground.

In 2012, the Government issued the DOPT OM No. F. No. 14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. The OM dated 26.07.2012 and the subsequent clarification dated 04.10.2012 read as follows:

"The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs. M. Selvanayagam @ Kumaravelu has observed 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 & 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".

2. This Department's O.M. No. 14014/6/ 1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. *Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003."*

Clarification dated 04.10.2012:

Sub: Clarification for consideration of compassionate appointment cases reg.

Sir,

In continuation of Board's letter of even number dated 03.08.2012 on the above mentioned subject and to say that with reference to the DOP&T instruction contained in their OM No. 14014/3/2011-Estt.(D) dated 26.07.2012 a reference was made them to clarify whether the cases of compassionate appointment already decided and closed after expiry of 3 years in terms of their OM dated 5.5.2003 are required to be re-opened/examined or not.

2. *The DOPT has now clarified that "with issue of instructions dated 26.07.2012, there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case".*

3. *The above decision may please be brought to the notice of all concerned for information, guidance and compliance."*

Inasmuch as the intent of the Government is to consider the cases for compassionate appointment without any time limit, the obvious implication is that it can be considered multiple times. It is also quite clear that although an applicant has no right for getting an appointment on compassionate grounds, he certainly has a right to be considered for the same vis-a-vis other applicants. In the present O.A., the case of the applicant has been considered only once in the CRC meeting held on 07/08.08.2008. In view of the above mentioned position, his application for compassionate appointment therefore deserves to be considered two more times.

9. Having considered the facts of the case and points of law involved and the law laid down by the Hon'ble Apex Court, I am of the opinion that the case of the applicant deserves to be considered for two more times vis-à-vis the claim of the other applicants and if his claim is found to be stronger than others, he deserves to be considered for appointment. The Respondents are directed to reopen his case and consider it for two more times in the next Screening Committee meetings as per rules.

8. With the aforesaid observation and direction, this O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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