

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA**

O.A./350/00042/2015
MA/350/00095/2016



Date of orders : 23rd Nov., 2017

CORAM

HON'BLE MRs. BIDISHA BANERJEE, MEMBER (J)

1. Smt. Kalpana Singha, son of Late Narayan Chandra Singha.
2. Sri Bidyut Singha, son of Late Narayan Chandra Singha, both are of Village – Braham Gram, Post Office – Bankati, Burdwan – 713148.

.....applicants

By Advocate : Mr. A. De.

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, Parliament Street, New Delhi – 110001.
2. The Chief Postmaster General, Department of Posts, West Bengal Circle, Yogayog Bhawan, Kolkata – 700002.
3. The Assistant Director of Postal Services [Rectt.], Department of Posts, West Bengal Circle, Yogayog Bhawan, Kolkata – 700002.

..... Respondents.

By Advocates: Mr. M.K. Ghara

ORDER

Per Bidisha Banerjee, Member (J):- The MA has been filed seeking condonation of delay in preferring the OA, the delay being 945 days. It has been submitted that Shri Narayan Chandra Singha who was the sole bread earner of the deceased family, has died in harness as far back as on 11.07.2000. Since then the applicants have diligently pursued the claim for an employment on compassionate ground before the authority concerned and also approached this Tribunal by filing OA No.659/2005 [disposed of on 17.04.2005], OA 1332/2005 [disposed of on 05.10.2007] and OA No.55/2009 [disposed of on 17.02.2010] for amelioration of their grievances. In the process, whatever insufficient fund the applicants possessed have exhausted in persuasion of their claim for an employment on

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compassionate ground. The applicants could not challenge the impugned memo dated 03.06.2011 within the period as prescribed under Section 21 of the Administrative Tribunals Act, 1985 since they are suffering from indigence and could not accumulate fund to approach this Tribunal earlier than 08.01.2015. The applicants without having any ostensible source of income the fetch means for survival are solely dependent upon the mercy of the near relatives and goodwill of the family friends for their sustenance and hence could not take recourse to law to challenge the validity and/or legality of the impugned memo dated 03.06.2011 within the period prescribed under the Statute.

2. Since in fact, the applicant has been diligently pursuing her claim by filing repeated OAs one after another for amelioration of her grievance, the MA is allowed.

3. From the pleadings in the OA, it is noticed that had as an earlier occasion, this Tribunal had directed the Chief Postmaster General, West Bengal Circle, Kolkata to consider the application of the applicant for appointment on compassionate ground in accordance with DOPT instruction invoked on the date of submission of the application, offering quota prescribed for the purpose without taking into consideration the family pension and terminal benefits received by the family, although the employee died in harness on 11.07.2000, the respondents while issuing the speaking order dated 11.10.2008, had informed as follows :

"the CRC members have gone though the case once again and observe that

[i] The applicant has approached the CAT a second time for redressal of his grievances challenging the speaking order issued by this office dated 26.10.2005.

[ii] The daughter of the deceased official was already married when the application for compassionate appointment was submitted by the widow [on 01.08.2001] requesting for her son's compassionate appointment. The son was 26 years old when the official died and he is also married. There was no liability at the time of the death of the official either of marriage of daughter or education of son.

[iii] The official had his own house [Baslu Barl] where the family is at

present residing.

[iv] The DOPT's instruction regarding compassionate appointment as was in vogue up to the year 2005 and also the instructions dated 05.05.2003 were also gone through by the CRC and after careful consideration, the CRC find that the case of Sri Bidyut Singha is not deserving.

Considering the above, the committee has felt that the case of compassionate appointment of said Shri bidyut Singh is not justified. Thus the judgment of the Hon'ble CAT in OA No. 1332/2005 dated 05.10.2007 is complied with."

4. The order was assailed in OA 55 of 2009 with a prayer to consider in terms of the DOPT's OM dated 05.05.2003. On 3rd June, 2011 applying DOPT's OM dated 05.05.2003, it was decided that the case would not be considered as it was placed before the CRC three times earlier, i.e. 25.10.2005, 11.01.2008 and 08.04.2011. The 5th May, 2003 OM came to be reviewed by the Department of Posts and was done away with, vide circular of 2012. Therefore, the present applicant deserves consideration in terms of the Scheme of 1998, which was operating in the field as on the date of death of the employee.

5. Learned counsel for the applicant vehemently argued that the applicant deserves re-consideration in terms of the Rules that was operating in the field as on the date of making application. Dispelling this, the learned counsel for the respondents would argue that in view of the decision rendered in Chief Engineer [Naval Works] and Anr. Vs. A.P.Asha, [2015] 15 Supreme Court Cases 310 [2016] 2 Supreme Court Cases [L&S] 206, the applicant do not deserve any further consideration as her was rejected thrice. It has been noted in recent decision it has been succinctly held by the Hon'ble Apex Court in the case of Canara Bank & Anr. Vs. M. Mahesh Kumar report in [2015] 2 SCC [L&S] 539 : { [2015] 7 SCC 412, that compassionate appointment cases have to be considered in terms of the rules operating in the field as on the date of making application. In the present case, it could be noticed that the claim has been rejected by applying subsequent circulars, which goes against the tenor as cited supra.

6. Accordingly, it is directed that the case of the applicant be considered

afresh in terms of 1998 Compassionate Appointment Scheme untranelled by the fact that it was considered thrice. Let appropriate orders be issued within three months from the date of communication of this order. No costs.

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[Bidisha Banerjee]
Member (Judicial)

mps/-