

O.A.No.350/1286/2016

Date of order : 02.02.2017

Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member

For the applicant : Mr. B. Chatterjee, counsel
Mr. K. Mishra, counsel

For the respondents : Mr. S. Banerjee, counsel

O R D E R(ORAL)

Heard Mr. B. Chatterjee, Id. counsel for the applicant and Mr. S. Banerjee, Id. counsel for the respondents.

2. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the refusal and/or denial on the part of the respondent authorities in appointing the applicant on compassionate ground pursuant to the demise of his father, Kripa Sindhu Singh, who died in harness on 6th October, 2009 while in service. Subsequent to demise of her father, an application was submitted to the respondent authorities seeking compassionate appointment of the applicant No.2 and the applicant No.2 was also recommended for such appointment. It is stated by the applicant that on an illogical interpretation of the relevant provisions regulating compassionate appointment at the material point of time under the Ministry of Communications and Information Technology(Department of Post), Government of India, the applicant was denied the appointment sought for as per rules prevailing on the date of death of father. Even that the applicant was also not allotted requisite numbers/merit points in accordance with the procedure/guidelines evolved by the respondent themselves on and from 20.01.2010 to judge the eligibility of a candidate seeking compassionate appointment. On or about 29.08.2014, the applicant was

informed that his case cannot be considered against vacancies of Postal Assistant Cadre since in terms of the relevant guidelines, the applicant had not allegedly been found eligible to be appointed on compassionate ground. While considering the candidature of the applicant for appointment on compassionate ground, the respondents applied a wrong test of law and omitted to take note of the fact that the notification relied upon to exclude the applicant from the zone of consideration had already been superseded and/or replaced by a subsequent notification. But the authorities are reluctant to consider the applicant No.2 against the vacancy of PA Cadre. But they were inclined to attach him against Postman cadre of compassionate appointment where there is very less number of vacancies in comparison to number of applicants and thereby prospect of compassionate appointment is very much dark. In view of the notification of 2015 the applicant no.2 is very much eligible for compassionate appointment in PA Cadre compassionate vacancy.

3. In this O.A. the applicants have sought for the following reliefs:-

- "a) The communication dated 29.08.2014 by respondent no.3, being Annexure –J be quashed and set aside;
- b) The respondents and each one of them be directed to forthwith to appoint the applicant No.2 on compassionate ground as per rules prevailing in 2009 appoint the applicant as a Postal Assistant in Group 'C' cadre on compassionate ground;
- c) The respondents be directed to rectify the merit points of applicant No.2 in strict compliance to the norms evolved on and from 2010;
- d) Costs of and incidental to this application be borne by the respondents;
- e) Such further and/or other order be passed and/or direction or directions be given, as to this Hon'ble Tribunal may deem fit and proper;
- f) Leave may be granted to file this joint petition under Rule 4(5)(a) of CAT(Procedure) Rule, 1987."

4. By drawing my attention to the notification dated 21.05.2015, Mr. Chatterjee, Id. counsel for the applicants submitted that the earlier notification issued by the Government of India on 27.01.2014 has already been superseded but ironically basing on the said notification dated 27.01.2014 the case of the Applicant No.2 for appointment on compassionate ground has been rejected whereas the very said notification dated 27.01.2014 has been superseded by another notification dated 21.05.2015.

5. On being questioned regarding the departmental remedy the applicant has availed after the notification was made on 21.05.2015, Mr. Chatterjee, Id. counsel for the applicant fairly submitted that he could not make any such grievance petition before the respondents.

6. Section 20 of the Administrative Tribunals Act provides as under :-

“20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.”

7. On examination of documents available on record I find that the applicant has not made any such representation/appeal to the appropriate authority for consideration of his case in view of the subsequent notification dated 21.05.2015 which undisputedly superseded the notification dated 27.01.2014. Therefore, in my considered view this O.A. can be dismissed being hit by the provisions Section 20 of the Administrative Tribunals Act.

8. Ld. counsel for the applicants wants to withdraw this O.A. with liberty to file a comprehensive representation to Respondent No.2 pinpointing the applicability of the notification dated 21.05.2015 in his case within a period of 2 months from today.

9. I do not find any justification to keep the matter pending. Therefore, as prayed by Id. counsel for the applicant, the O.A. is disposed of being 'withdrawn' by granting liberty to the applicant to make a comprehensive representation/appeal to Respondent No.2 marking a copy to Respondent No.3 within a period of two weeks from today enclosing this order and if such representation is filed within two weeks, the same may be considered and disposed of by the Respondent No.2 or any other competent authority by way of a well reasoned order within a period of 2 months from the date of receipt of a copy of this order and the result be communicated to the applicant forthwith. It is made clear that if the applicant's case is found to be genuine and he is found eligible to be considered as per notification dated 21.05.2015, then the same may be done expeditiously within a period of 3 months from the date of taking decision in the matter.

10. As prayed by Mr. Chatterjee, a copy of this order along with the paper

book may be transmitted to the respondent No.2 and 3 by speed post by the Registry for which Mr. Chatterjee undertakes to deposit the cost by 7th of February, 2017.

11. With these observations the O.A. is disposed of. No cost.

(A.K. PATNAIK)
Judicial Member

sb