

**CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI
CIRCUIT BENCH SITTING AT NAGPUR**

ORIGINAL APPLICATION NO.2244 OF 2016

Dated this Monday, the 05th day of March, 2018

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)

Amol S/o Viswanath Mashakhetre,
Aged about 40 years,
Occupation - unemployed,
C/o Shri Dipak Meshram,
132, Grind Well Colony,
near ERA International School,
I.A. Butibori 441 122
Distt - Nagpur.

...Applicant

(By Advocate Shri A.N.Dighore)

Versus

1. Union of India,
through it's Secretary,
Department of Posts,
Ministry of Communication and IT,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai 400 001.
3. The Postmaster General,
Pune Region,
Pune 411 001.
4. The Sr. Superintendent of Post Offices,
Pune City East Division,
Pune 411 037.

...Respondents

(By Advocate Shri R.G.Agarwal)

OA filed on 02.08.2016

OA reserved on 21.02.2018

OA pronounced on 05.03.2018

O R D E R

The applicant, who is son of the deceased employee Shri Viswanath Mashakhetre, who was working as Sub Postmaster under respondent No.4, has grievance regarding rejection of his claim for compassionate appointment on death of his father. He, therefore, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8(i). Quash the impugned orders Annexure A-1, Annexure A-2 and Annexure A-3.

8(ii). Direct the Respondents to appoint the Applicant on the post of Postal Assistant.

8(iii). Grant any other reliefs which are deemed just and proper in the interest of justice.”

2. The fact of the case run in a small compass. While in service the applicant's father died of prolong illness on 24.07.2008 vide his death certificate Annexure A-5. Thereafter, the terminal benefits of ₹4,27,949/- was sanctioned in addition to the monthly family pension to the widow of the deceased employee. It is stated that out of the said amount of the terminal benefits, the applicant was required to repay hand loan

amount of ₹2,60,000/- incurred by the family towards medical treatment of the deceased employee.

3. On 26.08.2008, the applicant since was eligible for appointment on compassionate ground submitted application for the post of Postal Assistant to the respondent No.4. Since nothing was heard, he submitted another representation on 15.01.2009 (Annexure A-9). It is stated that the Circle Relaxation Committee nominated by the respondents has considered pending applications, in its meeting held between 06.07.2009 to 10.07.2009 and made recommendations vide Annexures A-1 to A-3. However, the applicant's claim was rejected vide impugned order dated 25.02.2010, which was communicated to him on 01.03.2010. It is stated that the applicant's case was found to be not relatively indigent and hence, he is not entitled to compassionate appointment.

4. It is stated that after submitting the application for compassionate appointment, the applicant had undergone two major brain surgeries during the period from

07.08.2009 to 16.11.2009 vide medical case papers collectively marked as Annexure A-8, for which he incurred ₹4,00,000/-. After receiving the impugned order, the applicant submitted a representation dated 15.06.2010 (Annexure A-11) for reconsideration of his claim. However, since nothing was heard, he filed the present OA on 20.08.2016.

5. Along with OA, MA No.2222/2016 for condonation of delay is filed mainly on the ground that after submitting the application, he suffered major brain surgeries and was unaware about the legal steps to be taken against the impugned order. The family was also suffering from financial problems and hence there is delay of five years and five months in filing the present OA, which is liable to condoned.

6. The reliefs sought are based on following grounds as mentioned in paragraph No.5 of the OA, which are reproduced here for ready reference :-

“5.1. That after death of the father of the applicant there were 5 dependent members behind him named 1) Smt. Vidhya aged 57 years and house wife, 2) Amol and applicant son (D.O.B 19.02.1976), 3) Prafulla and younger son (D.O.B 08.10.1976), 4) Ku. Manjusha &

daughter (D.O.B 25.04.1978) and 5) Amit & youngest son (D.O.B 04.11.1979). As on the date of death of the father of Applicant, there was nobody in the job. Presently also nobody is on the regular job. The education and marriages of all the children were outstanding. Out of terminal benefits of Rs.4,27,949/- an amount of Rs.2,60,000/- were required to be refunded towards hand loans taken for treatment of father of the applicant (Annex. A-9). By no stretch of imagination, it is possible to discharge the above liabilities of marriages out of the above remaining amount. The Circle Relaxation Committee has not taken this factual account before coming to the decision of rejection. Therefore the decision of C.R.C. is not fair and cannot be maintained under the law.

5.1. That the father of the applicant was patient of chronic Asthma and was under constant treatment. An amount of about Rs.2,60,000 was required to be refunded towards hand loans taken by the father of the Applicant for his treatment. This was made clear to the authority who has prepared the document PRI (P) (Annex. A-9). This amount was refunded out of the terminal benefits of Rs.4,27,949/- received by the family. This fact was made aware to the respondents though the report of P.R.I (P) Pune City East Division. The Circle Relaxation Committee should have taken this into account.

5.2. That out of the remaining amount the widow was to complete the marriages of all dependents i.e. 3 sons and one daughter. It was quite impossible to discharge the liabilities for a family where no one was earning hand on the date of death. That the mother of the Applicant had made the Respondents aware about this situation vide her application submitted to the Respondent No.2 on 15.01.2009 which is placed on record as (Annexure A-9).

5.3. The family of the Applicant was already debt ridden. The family has to undergo another blow that the Applicant himself was required to undergo two major operations of brain tumor throwing the family to huge expenditure to the tune of Rs.4 Lakhs. These operations were made during the period 07.08.09 to 16.11.09. These facts were also reported to the Respondents. Relevant case papers are collectively placed on record as (Annex. A-8).

5.4. That the claim of the Applicant came to be rejected for reasons that the case of the Applicant is not found relatively indigent. In fact the respondents have not devised any formula to ensure the fair selection of the

candidates. Therefore there had been many occasions to indulge discrimination on part of the Respondents. Therefore the applicant has called copy of minutes of the C.R.C dated 06.07.2009 to 10.07.2009. Which has been received on 10.07.2016 (Annex. A-12).

5.5. After comparing the details of the some of the selected candidates it has been revealed that the selected candidates are financially sound and liability point of view are in better position as compared to the Applicant. The Applicant intend to file a comparative data of self and some selected candidates (Annexure A-13) along with the relevant pages of C.R.C minutes. From the close look to it, Applicant has noticed out of that selected candidates at sl.(1) Shri Mayur C. Shende had only 1 dependent member and has own house and also getting more pension (Rs.8625/-). The selected candidates at sl.(2) Ms. Sweta S. Gharat has got only 2 dependent members. Both of these candidates have been selected as Postal Assistants. Thus it shows on face of record that Respondents were not fair while weighing the indigency and selection of candidates.

5.6. The Applicant, in whose family there were 5 dependent members with no person on regular job and having hut admeasuring about 225 sq. ft. feet in slum area and with an amount of Rs.2,67,000/- in hand to discharge liability of marriages of all children, is certainly in relatively more indigent condition. Therefore the decision of Circle Relaxation Committee is not fair and smacks of perversity which need to be intervene by this Hon'ble Tribunal."

7. On 25.11.2016 notice was issued to respondents both on OA as well as on MA. In response to it, the respondents filed common reply on 30.06.2017, in which the claim is denied. The impugned order is justified as legal and proper. The grounds stated for condonation of delay are also denied as not sufficient to condone the same. It is stated that the Circle Relaxation Committee has

considered the applicant's claim as per the guidelines and since the family received the terminal benefits and family pension was also granted, coupled with the fact that the deceased has left three major sons and left out service was only one year prior to his death, the family was found to be not indigent. The impugned order is, therefore, perfectly legal, proper and correct which calls for no interference. Since the applicant's claim was already rejected, there was no need to consider his subsequent representation dated 15.06.2010. The OA is, therefore, liable to be dismissed both on merit as well as on the ground of limitation.

8. On 21.02.2018, when the matter is called out for final hearing, I have heard Shri A.N.Dighore, learned Advocate for the applicant and the reply arguments of Shri R.G.Agarwal, learned Advocate for the respondents.

9. I have carefully gone through the pleadings of the parties and the documents produced on record by the applicant in support of his claim.

FINDINGS

10. The only controversy involved in this OA for resolution of this Tribunal is whether delay is liable to be condoned in approaching this Tribunal and if yes whether the applicant is entitled to the relief sought by holding that the impugned order of rejection of claim is illegal, improper or incorrect in exercise of power of judicial review vested in this Tribunal.

11. It is, therefore, necessary to consider the issue regarding limitation first before proceeding to consider the applicant's claim on merit. It is obvious that as per the provisions of Section 21 of the Administrative Tribunals Act, 1985, period of one year is prescribed to approach this Tribunal by aggrieved person against the impugned order by which claim is denied / relief refused and if the said period lapse then there is a provision to file the OA with application for condonation of delay by assigning cogent and convincing reasons. While considering the aspect of the limitation, it is necessary to consider when

the cause of action arose to approach this Tribunal in order to calculate the period of one year as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Thus the date of accrual of cause of action is crucial to determine limitation to approach this Tribunal.

12. In the present case, the cause of action firstly arose on 25.02.2010 when by the detailed order Annexure A-1 the claim is rejected by the Circle Relaxation Committee in its meeting held between 06.07.2009 to 10.07.2009. However, the period of limitation will commence only when the impugned order is served / communicated to the applicant. It is stated that it was actually communicated to the applicant on 01.03.2010 and thus, it was necessary for the applicant to approach this Tribunal till 01.03.2011 for challenging the said order. However, it was challenged on 02.08.2016. Hence, there is delay of five years and five months in approaching this Tribunal.

13. The grounds for delay stated in the application namely that the applicant

suffered two major brain surgeries and that he could not seek proper legal advice to approach this Tribunal and further that family was financially distressed can safely be said to be sufficient to condone the delay. It is also obvious from record that within one year of submitting the application and before the decision on it was taken by the respondents and communicated to the applicant, he had undergone major brain surgeries. In such circumstances of the case and since the applicant appears to be the eldest son and claim is for compassionate appointment the delay is liable to be condoned, although the applicant is Post Graduate in Commerce and must have been doing some job for maintenance of his family. In such circumstance of the case, the delay is liable to be condone and the same is accordingly condone especially when the claim for compassionate appointment needs to be decided on merit.

14. Now turning to the merits of the case in the impugned order while rejecting the claim, the following reasons are recorded in

paragraph Nos.4 and 5 thereof. The same are reproduced here for ready reference :-

“4. The committee has not recommended your case of appointment on compassionate basis on the following grounds -

“The ex-official late Shri V P Mashakhetre expired at the age of 59 years. Left out service was only one year. Three sons are aged 33, 29 and 26 years. Eldest son is M.Com and doing private job. Own a small house measuring 12' x 12' at Yerwada, Pune. Terminal benefit received by the family of Rs.4,27,949/- and family pension of Rs.8,455/-. The case is not found relatively in indigent condition as other severe indigent cases were in hand. Hence the CRC considered and rejected the case for compassionate appointment.”

5. A very small fraction of vacancies i.e. 5% of the Direct Recruit vacancies (in terms of instructions contained in the Directorate DOPT No.14014/8/2000-Estt. (D) dated 22-6-2001) were to be filled up while the number of applications were several times more. Hence, the persons whose indigence need assessed as relatively more severe can be only be recommended by the Committee within the prescribed ceiling of 5% of the Direct Recruitment vacancies.”

15. It is obvious from perusal of the consolidated guidelines framed for compassionate appointment that it cannot be claimed as a matter of right in the sense it is as good as backdoor entry for the wards of the employee, who died in harness. Hence, strict rules and procedure is required to be followed while considering such request. Further, it is the settled law that in the matter of compassionate appointment, it is to

be considered if the family left by the deceased employee on account of his sudden death became indigent, in the sense that they have no source of income for their survival, which was available during lifetime of the employee by way of monthly salary and other benefits.

16. It is also obvious from record that only 5% quota of total sanctioned strength is prescribed for being filled by way of direct recruitment on compassionate ground. The Circle Relaxation Committee has to consider all the aspects of the case and particularly the main focus will be if family was residing in penurious condition after death of breadwinner of family and in order to save it from starvation or residing in indigent condition. In the present case, it has come on record that the deceased had three major sons and unmarried daughter and as such, it cannot be said that they were wholly dependent on deceased employee at the time of his death. Being major sons they must have been doing some work for maintenance of the family. Beside this the widow of the

deceased was sanctioned monthly family pension of ₹8,455/-.

17. Further it appears that the applicant along with his mother and two brothers are residing in a small room perhaps in hut mate area and they may be encroachers on Government land, still they may not be required to pay any rent for the same. The applicant might have incurred expenses for his medical treatment and that of his father prior to his death and they might have raised some hand loan to meet the exigencies. It is also obvious from record that the deceased employee was 59 years of age at the time of his death and left out service of only one year and hence, it was found that the applicant's case was not relatively indigent in comparison to other candidates considered by the Circle Relaxation Committee for appointment on compassionate ground.

18. In this respect, the learned Advocate for the applicant by referring Annexure A-13 comparative data of candidates rejected or selected by Circle Relaxation Committee that the wards of late Shri S.S.Gharat and Shri

C.S.Kende were recommended for compassionate appointment, although number of dependents were stated to be two or one respectively, in comparison to the applicant where number of dependents are stated to be five inclusive of one unmarried daughter. These five dependents includes the widow, three major sons of the deceased employee, the applicant and unmarried daughter. As stated earlier, widow is getting substantial amount of family pension and the three major sons are not stated to be dependent on her and they must have been doing some private job for their sustenance. Further, the left out service in case of applicant's deceased father was only one year, whereas the left out service for the parents of other two selected candidates is more. Hence, their case is distinguished and a rational decision is taken by Circle Relaxation Committee that the applicant is not relatively indigent. Said decision in such circumstances of the case cannot be said to be illegal, improper, arbitrary, discriminatory or irrational. Further considering the fact that the OA has been

filed after the period of more than five years from the date of rejection of the claim, adverse inference will have to be drawn that the family no longer is in indigent condition.

19. From the above discussion, it cannot be said that there is any force in the contention of the learned Advocate for the applicant that he is entitled to get the compassionate appointment and that the decision taken by the Circle Relaxation Committee is liable to be set aside.

20. In the result, this Tribunal does not find any merit in the present OA. The OA, therefore, stands dismissed.

21. The parties are, however, directed to bear their respective cost of this OA.

22. Registry is directed to forward certified copy of this order to both the parties at the earliest.

Place : Mumbai
Date : 05.03.2018

(Arvind J. Rohee)
Member (Judicial)

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