

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 050/00619 of 2017

Date of order reserved: 23.05.2018
Date of Order : 25.05.2018

CORAM

Hon'ble Shri Jayesh V. Bhairavia, Member [J]

Kanhiya Kumar, S/o of Late Muneshwar Singh, Resident of Village Santkabir Nagar Jarua and P.O. Hajipur, District – Vaishali.

.....Applicant

By Advocate : Shri S.K. Tiwary

Versus

1. The Union of India through the Secretary cum D.G, Government of India, Ministry of Communication & IT, Department of Posts, New Delhi -1
2. The Chief Post Master General, Bihar Circle, Patna. -1
3. The Assistant Director (Recruitment), Office of Chief Post Master General, Bihar Circle, Patna.
4. The Superintendent of Post Offices, Vaishali Division, Hajipur.

.....Respondents

By Advocate: Shri Deepak Kumar

ORDER

Jayesh V. Bhairavia, M [J]:- In the present OA, the applicant has sought relief for direction upon the respondents to consider his case for appointment on compassionate grounds, and as such, has prayed for the following reliefs:-

“(8.1) The letter dated 12.09.2017 issued by respondent No. 3 as contained in Annexure A/2 may be quashed and set aside.

(8.2) The respondent authorities may be directed to consider and decide the case of applicant for compassionate appointment on suitable post or GDS post as per circular dated 30.5.2017, by placing the case in the Review Special Circle Relaxation Committee and to provide appointment to applicant

on compassionate ground, to enable the family of the deceased employee to survive.

(8.3) Any other relief/reliefs as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice.”

2. The brief facts of the case are as under:-

(i) The applicant is the son of late deceased employee, Muneshwar Singh who died in harness on 8.11.2008, while holding the post of Mailman HRO, RMS PT Division, Patna. The copy of the death certificate is on record and referred to as Annexure A/1.

(ii) The deceased employee left behind his widow, two sons and one daughter.

(iii) The mother of the applicant submitted an application in March-April, 2009 praying for appointment on compassionate grounds in favour of the applicant.

(iv) Thereafter, the verification of assets and liabilities of the family of the deceased employee, including the on-spot enquiry was also made. It is stated that the matter was got delayed without any valid justification. The applicant and the family members of the deceased employee were expecting consideration for appointment of the applicant on compassionate grounds. They have not received any response. Therefore, the applicant made an enquiry about the status of the application in 2017. In response to it, vide letter dated 12.9.2017, the Assistant Director (Recruitment), Office of the Chief PMG, Bihar Circle, Patna, informed that the application for compassionate appointment by the mother of the applicant, which was received

on 15.9.2009, was considered by the Compassionate Committee on 19.10.2010 in which the committee found that the applicant had obtained 56 points, hence his application was rejected. It was also stated that vide letter dated 3.11.2010, the Superintendent of Post Offices, PT Division, was directed to inform the applicant about the decision of the committee. The said letter dated 12.9.2017 is now under challenge in this OA. Annexure A/2 refers.

3. The learned counsel for the applicant submitted that the applicant and his family members were never informed about the decision of the compassionate committee which was taken long back on 19.10.2010. It is further submitted that as per the policy laid down by the respondents in various O.Ms, such as OM dated 5.5.2003, 26.7.2012 and 30.5.2017. Annexures A/3, A/4 and A/5 refer. According to the applicant, his case ought to have been considered three times in a consecutive years, but his case has been considered only one time. The learned counsel for the applicant placed reliance on the order passed by this Tribunal in OA 122 of 2017 decided on 8.8.2017 and the order dated 19.2.2018 passed in OA 132 of 2018 in which this Tribunal had considered the issue about further consideration of application for compassionate appointment based on guidelines that the case of the applicant had received only one consideration, and it has been held therein that the applicant deserves second consideration in the present parameters of dispensation of point system. The learned counsel for the applicant, therefore, contends that the case of the applicant is also required to be granted the equal benefit for second time consideration by placing his case in the Review CRC for consideration.

4. In contra, the respondents have filed written statement and have denied the averments /submissions of the applicant. The respondents

have submitted that after the death of late Muneshwar Singh working as MTS in the Department, who died on 8.11.2008, the mother of the applicant was paid all pensionary benefits admissible under the rules. The mother of the applicant applied for appointment of her married elder son i.e the applicant herein for appointment on compassionate grounds. Her said application along with all necessary documents were forwarded to the chief PMG, Bihar Circle, Patna, vide office letter dated 14.9.2009. The Circle Relaxation Committee had examined her case and rejected the claim vide their decision dated 19.10.2010, which was communicated vide letter dated 3.11.2010. The applicant was informed vide letter dated 9.12.2010 by the Sr. Superintendent, RMS PT Dn. Patna. Annexure -1 refers.

5. It is further contended that the application was considered and rejected long back in the year 2010 and now in 2017, the applicant has made an enquiry about the status of the application made in the year 2009-10. In response to his application, the respondents issued letter dated 12.9.2017 informing that his application for compassionate appointment was considered on 19.10.2010 and as his case was awarded only 56 points, it was not found suitable for recommendation for compassionate appointment. Therefore, after a span of 7 years, the claim of the applicant for compassionate appointment cannot be considered at this point of time. The learned counsel for the respondents have further submitted that the CRC did not find it appropriate to consider the case of the applicant again as the same has attained finality. It is further submitted that the committee had taken into account the availability of vacancy for compassionate appointment, and comparatively not found suitable based on liabilities, family size, age of the children, financial conditions, terminal benefits, income and availability of own house etc. Further, the application of the applicant was not kept pending. Therefore, the applicant is not entitled to claim for any benefits as sought for herein.

6. Heard the parties and perused the records.

7. In the instant OA, it is an admitted fact that father of the applicant had expired on 8.11.2008 and subsequent thereto, an application made by the mother of the applicant for appointment on compassionate grounds submitted in the year 2009 was considered by the respondents, and vide their decision dated 19.10.2010, the claim of the applicant was rejected due to lesser number of points for qualifying to be recommended for compassionate appointment. The said decision was communicated vide letter dated 9.12.2012 to the applicant and thereafter, the applicant in 2017 suddenly awoke and made enquiry about the status of the application submitted in 2009-10. The respondents, vide letter dated 9.12.2010 informed the applicant about the decision in the 3.11.2010. The said communication cannot be said to be erroneous and contrary to the facts. Therefore, the first prayer of the applicant for quashing and setting aside the letter dated 12.9.2017 is hereby rejected. So far the claim of the applicant for reconsideration of his case as per various circulars/O.Ms, issued from time to time is concerned, it will not be out of context to observe here that the applicant has got no vested right to claim compassionate appointment at any point of time. In the case of Union of India and anr vs. Shashank Goswami and anr, reported in (2012) 11 SCC page 307, the Hon'ble Apex Court has observed as under:-

" The claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

In the present case, it is seen that the claim of the applicant was considered in the year 2010 and not found fit to be recommended for compassionate appointment. Thereafter, the said decision was communicated to the applicant in December 2010 itself. Since then the applicant was sitting idle and only in the year 2017, he made an enquiry about the status of his application which was suitably replied to by the respondents. After a lapse of seven years from the passing of the said decision, the applicant filed the instant OA praying for reconsideration of his application in accordance with the guidelines issued by the respondents. Such belated claim cannot be entertained at such distant point of time. The Circle Relaxation Committee did not find appropriate to keep the application pending for reconsideration, meaning thereby that the matter has been closed in the year 2010 itself and does not need to be revived again in 2017.

8. It is noted that vide O.M dated 26.7.2012, in view of judgment dated 07.05.2010 in Civil Misc. Writ petition no. 13102 of 2010 passed by Hon'ble High Court of Allahabad, the respondents have withdrawn the instruction contained in OM dated 5.5.2003 whereby the time limit of three years were prescribed for considering cases of compassionate appointment. The applicant cannot claim any benefit of O.M. which actually does not exist. The claim of the applicant to extend the benefit of guidelines issued under OM dated 30.5.2017 is also not tenable in the facts and circumstances of the present case. It is noticed that the revised scheme dated 30.5.2017 is relating to the dependents of deceased GDS and not to the dependents of MTS employee like the applicant. Moreover, the scheme has come into force from the date of issue of the said O.M, and will be applicable to all cases pending and arising on or after the said date. According to the said O.M dated 30.5.2017, the cases which

have already been settled will not be reopened. The applicant's case was already settled in the year 2010. In this view of the matter, the applicant is not entitled to claim the benefits of revised scheme dated 30.5.2017.

9. The orders of this Tribunal passed in OA 122 of 2017 and OA 132 of 2018, as relied upon by the applicant, is not helpful to the applicant in the facts and circumstances of the present case. There was no delay in both the referred cases, whereas the present case suffers from gross delay of more than seven years.

10. The purpose behind compassionate appointment is to provide immediate succour against destitution to the family of the deceased employee. In the present case, the father of the applicant died in harness on 8.11.2008. The application for compassionate appointment was considered and rejected on 19.10.2010. It will be appropriate to refer to the observations made by Hon'ble Apex court in the case of Haryana State Electricity Board vs. Naresh Tanwar reported in (1996) 8 SSC 23 as under:-

" It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this court in Jagdish Pd case, it has been also indicated that the very object of appointment of the dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years"

11. In view of the discussions made hereinabove, as also in the light of the law laid down by the Hon'ble Apex Court, the compassionate appointment cannot be granted after a long lapse of reasonable period and such cases cannot be allowed to be reviewed against the very object of compassionate appointment. In the result, I find no merit in this OA which is accordingly dismissed with no order as to costs.

(Jayesh V. Bhairavia) M [J]

/cbs/