

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No 050/00352/2017
With MA 235/2017

Reserved on 14.03.2018
Pronounced on _ 22.03.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

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1. Sudhanshu Shekhar S/o late Sanjay Kumar C/o Nagendra Kumar B1-05,
Power Grid Township, Karbigahia, District-Patna

.....Applicants

By Advocate : Shri J.K. Karn

VERSUS

1. The Union of India through D.G. cum Secretary, Department of Post, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna-800001
3. The Asstt. Director (Recruitment), O/o the Chief Postmaster General, Bihar Circle, Patna-800001.
4. The Superintendent of Post Offices, Patna Division, Patna-800001.

....Respondents

By Advocate : Shri Kumar Sachin

ORDER

Per Jayesh V. Bhairavia, Member (J): The present OA has been filed by the son of late Sanjay Kumar, who was working as a Postal Assistant in Bankipur Head Post office, Patna. The said Sanjay Kumar Day in harness on 27.02.2010. the applicant has filed this OA for a direction to the respondents to re-consider his claim for appointment on compassionate ground and also prayed for setting aside the orders/letter dated 08.02.2016 (the impugned order referred as Annexure A/5), issued by the respondents whereby the claim of the applicant had been rejected. The applicant has sought for the reliefs in para 8 of this OA are as under :-

"[8.A] Letter No. : R & E-76/2013-23 dated, Patna 08.02.2016, issued by Asstt Director (Recruitment) Bihar Circle, Patna as contained in Annexure A/5, may be quashed and set aside.

[8.B] The respondent authorities may be directed to re-consider again the case of applicant and decide the same for appointment of applicant by awarding correct points to him.

[8.iii] 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 as submitted by the applicant is as under :-

- [i] This is 3rd round of litigation. Earlier, the mother of the applicant i.e the widow of late Sanjay Kumar had filed O.A No. 386/2013 for a direction upon the respondents to consider the application for appointment of her elder son i.e applicant Shri Sudhanshu Shekar, the said O.A was disposed of vide order dated 06.02.2014 (Annexure A/2 refers) with a direction to the respondents to consider the case of the applicant as per rule in next Circle Relaxation Committee (CRC). In response to it, the respondents had considered the case of applicant and vide communication dated 28.01.2015 (Annexure A/3), it was informed to the applicant that he has received only 64 merit points and as the cut of points for selection was 70 merit points and for consideration of his case against 13 vacancies, his case was not recommended by the CRC.
- [ii] Being aggrieved by the said decision, the applicant had approached this Tribunal by way of filing OA 407/2015. The said OA was disposed of by this Tribunal vide order dated 27.05.2015 (annexure A/4 refers) with a direction to respondents for a fresh consideration of the case of the applicant.
- [iii] In response to order dated 27.05.2015 passed in OA 407/2015, the respondents had considered the case of the applicant and vide communication dated 08.02.2016 (Annexure A/5), it was informed to the applicant that he has received 59 merit points and the cut of points for selection was 60 and above, therefore, his claim cannot be recommended for the appointment on compassionate ground. The said order is under challenge in this O.A.
- [iv] The learned counsel for applicant Shri J.K. Karn submitted that, earlier the applicant was given 10 merit points under the head of "no. of minor children" in total 64 merit points was given as per the decision dated 28.01.2015 (Annexure A/3 refers) but the cut of merit point was

stated to be 70 and the applicant was not recommended therefore, as per order passed by this Tribunal, the respondents have reconsidered the case and surprisingly the respondents have reduced 05 merit points from the head of no. of minor children erroneously as the brother of applicant namely Suman Kumar was minor at the time of consideration of applicant's case in the year 2015 as well as 2016. In the year 2015, the respondents had given 10 merit points and in the decision 2016 it was reduced to 05 under such head. In total the applicant was granted only 59 merit points his claim was rejected on grounds that the cut of marks for recommendation/selection was 60 and above. The said action of the respondents is absolutely erroneous, non application of mind and arbitrary therefore, deprived the applicant from a fair consideration of his claim just with a view to reject the legitimate claim of the applicant in view of the policy for compassionate appointment adopted by the respondents and therefore the applicant is compelled to approach this tribunal again against the order/letter dated 08.02.2016 (Annexure A/5).

[v] The learned counsel for applicant further submitted that the respondents had considered the application only for 13 vacancy for the year 2016-17 for compassionate appointment. The cut of merit points was fixed total 55 merit points. The learned counsel for applicant placed reliance on respondent's letter dated 01.11.2017 (placed on record) addressed to one Shri Pintu Kumar and based on that it is submitted that as the applicant is eligible to receive 64 points which erroneously reduced 05 points in the decision impugned and granted only 59 merit points therefore the applicant's case is required to be reconsidered by the respondents.

3. The respondents has filed their written statement and denied the claim of the applicant without any cogent reason. The respondents have admitted to justify their decision impugned herein by submitted that the applicant does not has any fundamental right to claim for appointment on compassionate ground and after lapse of a reasonable period such case cannot be considered again as there is no

vested right of the applicant for claiming the appointment. Moreover, applicant's case did not match with the criteria fixed by the respondents for compassionate appointment, he received less merit points therefore, his claim was not recommended by the CRC. However the I/c for respondents fairly submitted that it is not clear under which circumstances the CRC had reduced 05 points from head of "no. of minor children" in the case of applicant while considering the case of the applicant in the year 2016.

4. Heard the parties and perused the records.

5. Considering the factual matrix and submission as stated hereinabove, it is noticed that the decision of the respondents dated 08.02.2016 whereby the application of the applicant was rejected on the ground that the applicant did not secure the minimum requisite merit points of 60 for recommendation for appointment on compassionate grounds. It is also noticed that the respondents have failed to show any justification for reducing 05 points from the head of "numbers of minor children" whereas in a previous year, the CRC had, under the same heading, granted 10 points under the head of "numbers of minor children". In the year 2015, the applicant was given 64 points, including the 10 points under the said head i.e. "numbers of minor children" vide their decision dated 28.1.2015 whereas in the year 2016, the CRC had granted total 59 points by reducing five points under the head of "numbers of minor children". It is an admitted fact that at both the CRC meeting, the brother of the applicant was of minor age. Under this circumstances, it is crystal clear that while considering the case of the applicant on 8.2.2016 the CRC had not reduced any point which was considered and granted in their previous assessment vide order dated 28.1.2015 except the calculation of points under the head of " numbers of minor children" and reduced five merit points without any reason or any justification. The said decision dated 8.2.2016 of the respondents cannot be said to be based on proper assessment, the same is found to be contrary to the material on record. It is apt to note that the date of birth of minor brother of the applicant is 05.09.2001, and as stated hereinabove, at both the occasions of consideration of the case of the applicant by the CRC, the said brother of the applicant remained minor only. Therefore, under what circumstances the CRC/respondents have applied different yardsticks to determine

the merit points for consideration of the application for compassionate appointment of the applicant. The respondents have failed to explain the said discrepancy, hence; it cannot be said that respondents have considered the case of the applicant in fair and just manner.

Once the respondents had adopted a policy to grant appointment on the compassionate ground to the legal heir/dependent of the employee who died in harness, it is expected from the respondent authorities to consider the application of such dependents like applicant in a fair manner. However, it is noticed that the respondents, while considering the case of the applicant, have not followed the "just and fair evaluation method" in deciding the case of applicant and deprived him of his right from "fair consideration".

6. In view of what is stated hereinabove, the OA is allowed and the impugned order/letter dated 08.02.2016 is quashed and set aside with a direction upon the respondents to re-consider the case of the applicant for his compassionate appointment in the next CRC meeting in the light of observation made hereinabove. The whole exercise be completed within a period of four months from the date of receipt of this order. No order as to costs.

(Jayesh V. Bhairavia)
Member (Judl)

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