

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 02nd Day of January 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/01505 of 2016.

(U/S 19, Administrative Tribunal Act, 1985)

Satya Prakash Dixit adopted son of Late Shri Virendra Dixit, Resident of Village Karnehua, Ucchhua, Pargana Kerakat, Tehsil Kerakat, District Jaunpur.

..... Applicant

By Advocate: Shri Upendra Kumar Pandey

Versus

1. Union of India through its Secretary, Ministry of Post and Telegraph Department of India New Delhi.
2. Chief Post Master General of U.P Circle Lucknow.
3. Post Master General, Gorakhpur Region, Gorakhpur.
4. Superintendent of Post Office, Deveria District Devaria.
5. Superintendent of Post Office, Jaunpur District Jaunpur.

..... Respondents

By Advocate: Shri R.K. Srivastava.

ORDER

1. The present Original Application has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by applicant Satya Parkash Dixit seeking the following relief:

“(i) The Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 28.03.2016 passed by respondent No.2, Chief Post Master General of U.P Circle Lucknow (Annexure NO.) with direction to appoint the applicant on compassionate ground under dying in harness rules.

- (ii) to grant any order direction to respondent No.2 to consider the claim of applicant again properly and appoint him on compassionate grounds".

2. Applicant's case is that he was born on 13.08.1984 and was adopted by Virendra Nath Dixit on 17.04.1985 at the age of 8 months by way of a registered adoption deed (Annexure No. 1). Said Virendra Nath Dixit while in service of respondents-department expired on 26.04.1985 and after his death, the name of applicant was mutated in the revenue record being the adopted son of said deceased and also is a recipient of family pension from the respondent-department evidenced by annexure No.3.
3. The petition filed by applicant seeking appointment on compassionate basis was rejected by respondent No. 2 vide order dated 28.03.2016 on the ground that it is more than 30 years old belated case. Applicant avers that it is the department which is responsible for the delay in considering his claim for compassionate appointment for the reasons mentioned below:
 - 1) On obtaining the age of majority, he contacted the respondents for compassionate appointment;
 - 2) Vide letter dated 14.08.2006 (Annexure No. 7), respondent No. 6 sought record and clarification regarding compassionate appointment;
 - 3) Vide letter dated 05.10.2006 (Annexure No. 8), respondent No. 4 sought documents and records from respondent No. 5;
 - 4) Since no further action was initiated by respondents on the question of his appointment on compassionate basis, applicant filed O.A. No. 1132 of 2009 which was disposed vide order dated 13.09.2010 directing the respondents to

pass a order not later than 6 months from the order of disposal on the claim of applicant for compassionate appointment;

- 5) Vide letter dated 15.02.2011 (Annexure No. 11) addressed to respondent No. 2, the date of birth applicant mentioned in the Adoption Deed is correct; (Note: In the order dated 13.09.2010 in O.A. No. 1132 of 2009, it comes out that the date of birth of applicant in the High School Certificate is 20.12.1986 which as per the respondents means that applicant was not even born on the date of death of Virendra Nath Dixit).
 - 6) Applicant on 11.05.2011 moved an application to Secretary, Board of High School and Intermediate Education, U.P., Allahabad seeking re-conciliation of his date of birth but nothing was done by the said authorities;
 - 7) Vide letter dated 07.09.2011 (Annexure No. 14), direction was given by competent authorities/P.M.Gs, Gorakhpur to advise applicant to get his two dates of birth reconciled from the Education Board and also to submit the case of applicant for compassionate appointment immediately on the basis of date of birth as mentioned in the adoption deed;
 - 8) Vide impugned order dated 28.03.2016, respondent No. 2 rejected the claim of applicant for compassionate appointment.
4. In this background, applicant seeks quashment of order dated 28.03.2016 and direction to respondent No. 2 to consider the claim of applicant for compassionate appointment by way of present O.A.
 5. In the counter affidavit filed by respondents it has been averred that Virendra Nath Dixit died on 26.04.1985. The date

of birth of applicant adopted son of Virendra Nath is different in birth certificate issued by the Municipality Deoria (13.08.1984) and in High School Certificate (20.12.1986). In pursuance to order dated 13.09.2010 of the Tribunal in O.A. filed by applicant, respondent No. 2 vide letter dated 07.09.2011 (Annexure – 2 to the CA) advised applicant to get his date of birth corrected in the record of Board of High School and Intermediate Education UP, to which applicant vide application dated 05.12.2011 (Annexure- 3) expressed his inability to do so. It is the further case of respondents that the Circle Relaxation Committee (CRC) in its meeting held on 22.03.2016 did not recommend the case of applicant on the ground that (1) case of applicant is more than 30 years old and applicant submitted his application form for compassionate appointment on 07.10.2011; (2) the very facts that family of deceased has been able to manage since 1985 (death of employee) is proof enough that family has adequate means of subsistence. The decision of CRC was communicated to applicant vide impugned order dated 28.03.2016. It is the case of the respondents that the O.A. being meritless deserves to be dismissed.

6. In the rejoinder affidavit, applicant while reiterating the pleas raised by in the O.A. has also averred that CPMG, Lucknow has considered the issue of appointment only on paper work and under the pressure of order dated 29.02.2016 of Tribunal in a very haste manner without assessing the assets of applicant.
7. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record. Both the counsels during the arguments have reiterated the pleas taken by them in their respective pleadings in support of their contentions on merits of the case.

8. Before proceeding further, reference may be made to the impugned order dated 28.03.2016, the relevant parts of order reads as under:

“2.1 Terminal Benefits paid to the family of the deceased official are as under:-

- (i) Terminal Benefits Rs. 16,261/-
- (ii) Family pension – Nil.

2.2 The family has own House value Rs.65,000/- and agriculture land value Rs. 17,49,600/-. Total value of immovable property Rs. 18,14,600/-“.

9. Learned counsel for applicant argued that the respondents have not considered his case as per the directions given by this Tribunal. The grounds taken by respondents to reject his plea for compassionate appointment are illegal, arbitrary and unconstitutional. The delay in the consideration of his application is solely attributable due to inaction of the respondents and he cannot be faulted for the delay. The applicant states that mere rejection of his case on compassionate grounds without assigning any justifiable reasons leaves no option but to approach this Tribunal for quashing and setting aside the impugned order dated 28.03.2016 and therefore the respondents may be directed to consider his case for granting appointment on compassionate grounds in accordance with his qualification etc with all consequential benefits.

10. Per contra, LC for respondents argued that the case of the applicant for compassionate appointment was considered, as per, rules and the same was turned down by the committee constituted for this purpose. During the course of consideration, it was found by the committee that there is delay in the applicant approaching the respondents for compassionate appointment. The financial condition in terms of house and agricultural land of the applicant's family as

coming out in the impugned order which has not been denied by the applicant, thus, the applicant could not be selected for compassionate appointment. It is argued that applicant is also getting a pension and other than him, there seems no one else in the family whom he has to take care of. It is further argued by LC for respondents that Virendra Parkash expired in 1985, after the death of the applicant's father, nearly 30 years have passed and the Hon'ble Apex Court as well as the Hon'ble High Court have laid down the law in clear terms that the claim for compassionate appointment cannot be allowed to stand for indefinite wrong period. The purpose of providing the compassionate appointment is to bring out the deceased family from immediate financial difficulties arising due to the death of the bread earner of the family. It is clear that after a long period of more than two decades, it cannot be presumed that there is sudden crisis and financial distress arising out of the death of the deceased employee.

11. Considering the grounds raised by the applicant, the respondents submit that the case of applicant was considered in the CRC meeting but keeping in view that the applicant is possessing a residential house and agricultural land and is also getting monthly pension, the case of the applicant was not found to be one of deserving cases and therefore he could not be considered for grant of appointment on compassionate grounds. Therefore, the grounds raised by the applicant have no substance and the same cannot be relied upon. Learned counsel for respondents further argued that even in the rejoinder affidavit, it has not specifically denied that applicant does not own the immovable property mentioned in the impugned order.
12. It is further submitted by learned counsel for respondents that as held by the Hon'ble Apex Court and other Hon'ble High

Courts in catena of judgments on the issue of compassionate appointment, the same cannot be claimed as a matter of right and therefore there is no violation of Article 14 and 16 of the Constitution of India as the case of the applicant has been considered by the screening committee in its meeting, keeping in view various parameters and accordingly the case of the applicant was rejected.

13. On going through the facts of the case, I find that the father of the applicant died 30 years ago. The scheme of compassionate appointment has been introduced by the Government of India to provide immediate financial assistance to the family of the deceased government employee to overcome the financial crisis, after the death of sole bread earner. The applicant's case has to be considered as per the guidelines and spirit on account of which this Policy was framed. The family of the deceased fortunately has survived for the past 30 years and certainly cannot be said to be in an indigent condition which would elicit reconsideration of the case of the applicant, under the Compassionate Appointment Scheme. In fact, in the impugned order, there is mention of family of applicant having immoveable property worth Rs. 18 Lakhs in shape of house and agricultural land which has not been denied by the applicant, as such, it cannot be said that he is a destitute person having no source of income, more so, when he is getting a pension, as per, Annexure No. 3 which is payable to him and suggest that there is no other family member he has to look after. Regarding the mention of immoveable property in the impugned order, applicant in his O.A. has not denied the same. However, he challenges the same in his rejoinder affidavit which shows it is an afterthought and cannot be relied upon.

14. Applicant avers that he moved the respondents for compassionate appointment by way of representation in the 2005 on attaining age of majority. However, there is nothing on record to show that he had filed the representation in 2005. Even so, as per the adoption deed, date of birth of applicant is in year 1984, and then he would have attained age of majority in 2002. This contradiction also raises a question as to when he approached the respondents for appointment. This apart, by way of annexure No. 14, he was advised by the respondents to get his DOB corrected in the High School certificate which he has been unable to do so. This action of the respondents was in pursuance to order dated 13.09.2010 of the Tribunal in O.A. No. 1132 of 2009 filed by the applicant and the relevant part of the order reads as under:-

“10. The respondent No.2 is directed to conduct necessary verification on the claim of the applicant regarding the date of birth which was considered adequate and sufficient at the time of granting him family pension and if such claim is found to be correct and verifiable then the respondent NO.2 himself or through any other authority competent in this behalf may pass a reasoned and speaking order as per rules on the claim of the applicant for compassionate appointment. Since it is beyond the purview of this Tribunal to give a finding on the real date of birth of the applicant, the respondents' authority may consider to advice the applicant to get declaration from a competent forum as to his correct date of birth”.

So, the inaction of the applicant and his inability to correct the same in his school certificate is also a reason which leads to rejection of his case.

15. From the perusal of the impugned order dated 28.03.2016, it is clear that it is a reasoned and speaking order passed by the respondents and entire case of applicant was considered and after perusal of the same, the respondents had not found it feasible to accede to the applicant's request for appointment on compassionate grounds. Therefore, I cannot interfere in the said impugned order, as it is just and proper and therefore the same does not deserve to be quashed and set aside.
16. In view of the observations made above, the OA is accordingly dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

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