

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 29th Day of March 2019)

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

Original Application No.330/01082 of 2017

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

Suresh Chandra son of Late Shri Dharampal Singh, Resident of Village Nagala Dagur, Post Mai (Subhash Gram) Beswan, Aligarh.

..... Applicant

By Advocate: Shri R.K Pandey

Versus

1. Union of India through its Secretary, Ministry of Communication Dak Bhawan Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General U.P. Circle Lucknow.
4. Senior Superintendent of Post Offices, Aligarh Division, Aligarh.

..... Respondents

By Advocate: Shri L.P Tiwari

O R D E R

1. The present O.A. has been filed under section 19 of the Central Administrative Act, 1985 by Suresh Chandra seeking the following reliefs:
 - "(i) Issue a suitable order or direction quashing the impugned order dated 09.09.2011 (Annexure no.1) passed by respondent No.2, which is contrary to the order dated 11.08.2011 passed by Hon'ble Central Administrative Tribunal in Original Suit No. 917 of 2006.

- (ii) Issue a suitable order or direction commanding the respondents concerned to consider the claim of the applicant for his compassionate appointment on account of his father's service in Indian Post Department.
- (iii) Issue any other and further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (iv) To award the cost of the present application to the applicant".

2. Case of applicant is that on death of his father Dharam Pal Singh on 01.10.2010 during the course of his employment as Post Man in Post Office, Hathras Junction, applicant fulfilling the formalities filed an application for appointment on compassionate ground, which was rejected by the respondents vide order dated 9.9.2011 which is contrary to the order dated 11.08.2011 passed by the C.A.T., Allahabad in O.A. No. 917 of 2006. The Tribunal vide order dated 11.08.2011 while setting aside the rejection of application remanded the case back to the respondents with a direction to inform the applicant about the marks secured by the applicant and also the marks secured by the candidates to whom appointment was given.

3. The impugned order dated 9.11.2011 reads as under:-

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226001

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I [; k %Hkrh@, e&5@81@2002@7 y[kum fnukd 9-11-2011

fo'k; I h , - Vh bykgkckn vks , - u0 917@2008 I jsk plnk
cuke Hkjr I sk o vU; ds I EcWk es

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16-09-2011-

d1k; k vki mijkDr fo'k; es vius I anHk i= dk I UnHk
xg.k djA ekuuh; I h , - Vh bykgkckn vks , - u0 774@2007
es i kjr vknk fnukd 08-08-2011 ds i kyu ds I EcWk es ; g
I spr gS fd ifje. Myh; f'kFkyhdj.k I fefr dh cBd
fnukd 10-11 o 12-03-2005 ds nkku folHkx es ejV lokbU
dh x.kuk djus dk i kku ugh gkck Fk] cfYd ml I e;
erd ds vlfJrk dh fLFkr tS s dh vfookgr i f; ks ds
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foRrh; fLFkr] vlfn rFk 5% I hfer fjdR; ks dh mi yCkrk
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tkrk FkA bl fy, o'k 2005 ds nkku ifje. Myh;
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vr%vki ekuuh; U; k; ky; es mijkDr fo'k; ds I EcWk
es iq% vksnu i= Qkby djks ; fn fdI h i i= dh
vko'; drk gks rks bl dk; ky; dks I spr djA ftI ls
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drs phQ i k VekVj tujy

m0 i0 ifje. My y[kum&226001".

4. In the counter affidavit, respondents have given the details of the family members of deceased Dharam Pal Singh and the terminal benefits paid to the family of deceased employee as well as the pension being given to the family of deceased, as well as the monthly income of the family members who were living in their own house besides having agricultural land. It is

further averred in the CA that keeping in view the aforementioned conditions of the family of the deceased, the C.R.C. rejected the case of applicant for compassionate appointment vide order dated 3.5.2005 which was set aside by the C.A.T., vide order dated 11.8.2008 with the direction to the respondents to inform the applicant about the marks secured by him as well as by the candidates who were so appointed. In these circumstances, vide impugned order applicant was informed that at the time of holding the meeting of C.R.C in March 2005 there was no provision to calculate the merit points and the criteria to give compassionate appointment was based on conditions like assets and liabilities, minor children, daughter of deceased, financial condition, aged parents etc. and limited to 5% of the vacant posts. These facts were brought to the notice of the C.A.T. by way of review application which was dismissed. The Department filed writ petition No. 7535 of 2015 in the Hon'ble High Court, Allahabad wherein the Hon'ble Single Bench observed that "it is not possible to intimate the merit point given to the applicant and number given to other candidates who have been approved by the Circle Relaxation Committee Lucknow for recruitment under relaxation because there was no provision of merit points in the year 2005" and filed a supplementary affidavit showing the chart of the candidates examined and approved/not approved for appointment and that the writ petition is subjudiced before the Hon'ble High Court. It is the case of respondents that taking into account the inter se merit of all the candidates, the case of applicant was not recommended for appointment by the C.R.C. and that the procedure to calculate merit points for compassionate appointment came into force from January 2010. {Paragraph 3 (I) to (L) of the counter affidavit}.

5. Rejoinder affidavit has been filed by the applicant wherein the applicant has averred in paragraph No.2 that "That, the contents of paragraph No. 3(A), 3 (B), 3 (C), 3 (D), 3 (E), 3 (F), 3 (H), 3 (I), 3 (K), 3 (L), 3 (M) of the counter affidavit are admitted to the extent which is based on record".
6. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
7. The limited question in this O.A. is whether the order dated 9.9.2011 is contrary to the order dated 11.8.2011, of the Tribunal passed in O.A. No. 917/2006 (details of both the orders have been given above). Applicant seeks the details of marks secured by him as well as the candidates appointed on compassionate basis in the year 2005. However, the case put forth by the respondents is that in the year 2005 there was no point system and the merit of the candidates for compassionate appointment was evaluated on a hosts of points like financial condition, family members, assets and liabilities etc. of family of deceased. This has been enumerated in the paragraph No. 3 of the counter affidavit filed by the respondents as detailed above and has not been specifically denied by the applicant in his rejoinder affidavit (see paragraph 2 of the rejoinder affidavit). So the observation of the Hon'ble High Court quoted in the counter affidavit that "it is not possible to intimate the merit point given to the applicant and number given to other candidates who have been approved by the Circle Relaxation Committee Lucknow for recruitment under relaxation because there was no provision of merit points in the year 2005" has not been disputed by the applicant.
8. From the facts of the case as detailed above, at the time of consideration of the application of applicant, there was no point system to consider the candidature of the applicants for appointments on compassionate basis and the entire

procedure was based on consideration of certain conditions. So, respondents cannot be expected to do something which is impossibility – they cannot give details of the points secured by the candidates when the point system did not exist in the year 2005. In this regard, reference may be to Shah Alam vs Central Administrative, 2006 (1) ESC 296 (All) DB wherein the Hon'ble High Court held that:

"5. The Court has to consider the scope and application of doctrine of "lex non cogit at impossibilia" (the law does not compel a man to do what he cannot possibly perform) and "impossibilium nulla obligatio est" (the law does not expect the party to do the impossible). The scope of the said doctrines have elaborately been considered and applied by the Hon'ble Supreme Court in Chandra Kishore Jha v. Mahaveer Prasad and Ors. ; and Mohammed Gazi v. State of M.P. and Ors. (2000) 4 SCC 342. These maxims which have also been expressed as *impotentia excusat lege* must be understood in the qualified sense that *impotentia excusat* when there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law *Nemo Tenetur ad Impossibilia* (no one is bound to an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. (Vide *Eagar v. Furnivall* 17 Ch. D. 115).

6. In Gujarat Assembly Election Matter, the Hon'ble Apex Court observed as under:-

The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad*

impossibilia. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse.

7. The law is understood to disclaim all intention of compelling to impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases. Therefore, there are implied obligations not to force a person to do something which is rendered impossible by causes beyond his control. (Vide *Hick v. Rodocanachi* 1899 (2) QB 626)"
9. Applying the law enunciated in the *Shah Alam* case (Supra) and looking to the facts of the case, respondents cannot be directed to do something which is an impossibility.
10. In view of the facts and circumstances of the case as detailed above, I am of the view that the relief sought by the applicant cannot be granted, as such, the O.A. being meritless, is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

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