

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 514 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. Dambarudhar Surujal aged about 36 years, S/o Late Ainthu Surujal, Vill/PO – Kalapathar, PS – Birmaharajpur, Dist. – Sonapur.
2. Gulapi Surujal aged about 54 years, W/o Late Ainthu Surujal, Vill/PO – Kalapathar, PS – Birmaharajpur, Dist. – Sonapur.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Department of Posts, Government of India, Dak Bhawan, New Delhi – 110001.
2. Chief Postmaster General, Odisha Circle, At/PO-Bhubaneswar – 751001, Dist. – Khurda.
3. Postmaster General, Sambalpur Region, At/PO/Dist.- Sambalpur – 768001.
4. Superintendent of Post Offices, Bolangir Division, At/PO/Dist-Bolangir.

.....Respondents.

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 1.3.2019

Order on : 11.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(1) The OA may be allowed.
- (2) To quash the orders communicated under Annexure A/3 series and A/9.
- (3) To direct respondent No.2 to reconsider the case of the applicants and to give appointment to the applicant No.2 under compassionate ground within a stipulated period on re-calculation of merit points.
- (4) And, further, be pleased to pass any order/orders as deem fit to give complete relief to the applicant in view of reduced merit points which made the applicant eligible for appointment.”

2. The facts in brief are that the father of the applicant No.1 was the GDSMD, Kalapathar BO. He died on 29.3.2012 after which the application for compassionate appointment of the applicant No. 1 was submitted. The Circle Relaxation Committee (in short CRC) rejected the case of the applicant No.1 for

compassionate appointment on 17.11.2015. On 14.4.2016 the applicant moved a representation for re-consideration of the case. Finally the Post Master General (Respondent No.2) informed the applicant in his letter dated 7.12.2017 (Annexure A/9) that it was not permissible to re-open the case as it had already been rejected by the CRC as communicated vide letter dated 2.11.2015. This letter dated 7.2.2017 is impugned in this OA along with the letter dated 17.11.2015 (Annexure A/3).

3. Following main grounds have been averred in the OA:-

- (i) The financial condition of the family particularly the liability of marriage of younger daughter has not been considered by the respondents.
- (ii) The merit point wrongly calculated as 39. The applicant should have got 18 more points if the situation at the time of death of the applicant's father would have been taken into account. In that case total point would have been 57 and more than 51 and his case could have been considered.
- (iii) The threshold merit point for determining whether a case is hard and deserving was reduced to 36 vide circular dated 17.12.2015 (Annexure A/5) and at that point of time proposal for the applicant was under consideration. But it was wrongly rejected by the respondents vide order dated 7.2.2017 (Annexure A/9).

4. Counter has been filed stating that the CRC considered the case of the applicant on 26.10.2015 but could not approve the case as the applicant had secured 39 merit points against the minimum requirement of 51 merit points. It is further stated that the family has an income of Rs.45,000/- annual from agricultural source and one of the daughters is married.

5. We have heard learned counsel for the applicant. He pointed out to the synopsis of the family describing the financial status copy of which is at page 33 of the OA. Learned counsel for the applicant also submitted that the proposal was not sent to higher competent authority by the respondents vide letter dated 7.2.2017 which stated that the case of the applicant cannot be re-opened.

6. Learned counsel for the respondents submitted that there is a delay in filing the OA and that as per the circular at Annexure R/2 to the counter the cases which were settled prior to 17.12.2015 should not be re-opened after relaxation with regard to merit point threshold for hard and deserving cases to be 36 point in place of earlier threshold. But the case of the applicant was decided prior to 17.12.2015 by the CRC for which his case could not be considered again as per the circular dated 17.12.2015. A written note of argument has been furnished by the learned counsel for the respondents stating that the

legal heir certificate shows the marital status of both the daughters as married since the surname of the daughters are different.

7. I have considered the submissions by learned counsels as well as pleadings on record. Regarding the ground of delay raised by the respondents this does not have much force in view of the fact that the appeal of the applicant after rejection of his case vide order dated 17.11.2015 (Annexure A/3) was under consideration after issue of the circular dated 17.12.2015 (Annexure A/5) as would be revealed by the letter dated 2.5.2016 (Annexure A/16) and the same was rejected vide order dated 7.2.2017 (Annexure A/9) in which it was decided that the case of the applicant could not be re-opened. This shows that as on 7.2.2017 the representation/appeal of the applicant against the order of rejection was under active consideration of the respondents. Hence, the cause of action is considered to have arisen from 7.2.2017 and hence, there is no delay in filing this OA.

8. Regarding the ground that the applicant deserves to get 18 more points as stated in para 5(b) of the OA, in para 13 of the counter it is stated that since the younger daughter of the deceased GS employee had already been married at the time of preparation of synopsis papers, the merit point had been correctly given. This argument is flawed because the marital status of the daughters as on the date of death of the deceased GDS employee was required to be considered and not on the date on which the synopsis paper for the family was prepared. The marital status as per the legal heir certificate issued after the death was also not relevant. The circular dated 17.12.2015 clearly states that the merit points as on the date of death (cut off date) are to be considered. The date of preparation of synopsis of the family (copy at Annexure A/8) is shown to be 2017 in which total merit point was worked out to be 39. It is not mentioned if one daughter was not married as on the date of death of the deceased GDS. There is nothing on record to show that both the daughters were married as on the cut off date i.e. 29.3.2017.

9. The ground taken by the respondents in the impugned order dated 7.2.2017 that the past settled cases are not to be re-opened as per the letter dated 10.6.2016 (Annexure R/2) is not tenable since the appeal of the applicant against rejection of the case was under consideration as on 17.12.2015 as revealed from the letter dated 2.5.2016 (Annexure A/6) and dated 4.10.2016 (Annexure A/7). Hence the case of the applicant No.2 cannot be taken as a settled case as on 17.12.2015. The circular dated 17.12.2015 provides the following guidelines which are relevant for this case :

"3. Threshold for "hard and deserving cases" would be 36 points in place of existing 51 points.

4. Attention of all concerned is also invited to para 11 of this Directorate's letter No. 17-15/2001-GDS dated 21.10.2002 whereby it was provided that a dependent fulfilling the qualification could be considered for provisional engagement on interim basis for a period not more than one year pending decision of the CRC. This provision has since been reviewed and it has been decided that such provisional engagement is to allowed only in such cases where the dependent fulfils the threshold to fall under 'hard and deserving cases' pending approval of the CRC.

5. The revised provisions as per above will be given effect to taking the date of death of the GDS as cut off date where there is eligible member in the family on that date and date of consideration by the CRC in other cases."

From the above it is clear that the provision of the circular dated 17.12.2015 will apply to the cases which are under consideration of the respondents. The position of the merit point as on the cut off date i.e. date of death of GDS employee will be taken into account and merit point will be worked out as per the above circular. As on the cut off date in this case, the younger daughter of the deceased GDS employee was unmarried. Further, the merit point should have been worked out in this case as on the cut off date as stipulated in the circular dated 17.12.2015 (Annexure A/5) which will apply to this case since the applicants' appeal against rejection order was pending consideration as stated in the respondents' letters dated 2.5.2016 (Annexure A/6) and dated 4.10.2016 (Annexure A/7).

10. In view of the above, the case of the applicant No.2 deserves re-consideration. Accordingly, the impugned order dated 7.2.2017 (Annexure A/9) is set aside and quashed and the respondents are directed to re-consider the case of the applicant once again in the light of circular dated 17.12.2015 and pass a speaking and reasoned order to be communicated to the applicants within three months from the date of receipt of the copy of this order.

11. The OA is allowed as above with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath