

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/947 OF 2014

Cuttack, this the 19th day of December, 2018

CORAM

HON'BLE MR. G.C. PATI, MEMBER (A)
HON'BLE MR. S. K. MISHRA, MEMBER(J)

Sri Kishore Chandra Dhal, aged about 35 years, Son of late Harish Chandra Dhal, presently working as GDSBPM, Kendua B.O., of Vill. Chhelikani, PO.- Sanasarasposi, PS.-Kuliana, Dist-Mayurbhanj.

...Applicant

(By the Advocate- M/s. S. K. Ojha, S.K. Nayak)

-VERSUS-

Union of India Represented through

1. Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
3. Supt. of Post Offices, Mayurbhanj Division, Baripada, Dist-Mayurbhanj.

...Respondents

(By the Advocate- Mr. S. Behera)

ORDER

S. K. MISHRA, MEMBER (J):

In this Original Application under Section 19 of the A.T. Act, 1985, the applicant has sought for the following reliefs:

- i) To allow the Original Application.
- ii) To direct the Respondents to extend the benefit appointing him in PA cadre as has been done in case of similarly placed persons.
- iii) To direct the Respondents to extend the all service benefits as due and admissible to the applicant.
- iv) To pass any further order/orders as deem fit and proper in the facts and circumstances of the case.

2. Facts of the matter in a nut shell are that applicant's father while working as Class-III employee under the Respondent-Organization passed on

16.12.1996. Applicant's request for compassionate appointment was considered by the Circle Relaxation Committee, which recommended his appointment to the post of Postal Assistant. Accordingly, the applicant joined as P.A. in Mayurbhanj Head Office under the Department of Posts. On completion of training, vide letter dated 06.05.1998 issued by the Superintendent of Post Offices, Mayurbhanj Division, the applicant was posted in the cadre of P.A. to Baripada H.O. While continuing as such, an office order dated 23.12.1998 was issued by Respondent No.3 discontinuing applicant's service and similar other persons as per the directions issued in letter dated 8.12.1998 by the Director of Postal Services, Sambalpur. The applicant submitted a representation against this and in consideration of his representation, he was asked for his willingness for engagement in any other Ministry/Department vide letter dated 19.03.2001 and in response to this, applicant submitted his willingness on 23.03.2001. Since no action was taken by the respondents on his willingness, the applicant approached this Tribunal in O.A.No.111/2002. This Tribunal dismissed the said O.A. along with other identical matters vide common order dated 29.4.2003. Aggrieved by this, applicant and similarly situated persons approached the Hon'ble High Court in various Writ Petitions in various Writ Petitions. The applicant was the petitioner in W.P.(C) No.11077/2003 before the Hon'ble High Court. The Hon'ble High Court vide order dated 7.7.2009 allowed the Writ Petition filed by the applicant in the following terms:

"Heard learned counsel for the petitioner and learned counsel for the Union of India.

This writ application has been filed challenging the judgment and order of the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A.Nos.557 of 2001 and 111 and 138 of 2002.

The petitioner was the applicant in O.A.No.111 of 2002. The above three Original Applications were disposed of by the Tribunal in a common judgment. The applicant Shri Umesh Chandra Patnaik in O.A.No.557 of 2002 filed a writ application before this Court in W.P.(C) No.6812 of 2003 and the said writ applicant was allowed by this Court on 3.12.2008. The case of the petitioner is squarely covered by the aforesaid judgment. The case of the present petitioner has also been taken note of in the said judgment.

We, therefore, dispose of this writ application holding that the case of the petitioner in this case is covered by the judgment of this Court in W.P.(C) No.6812 of 2003 and, accordingly, direct the opposite parties to take immediate steps for giving appointment to the petitioner in any post for which he is considered suitable.

The writ application is accordingly allowed setting aside the impugned judgment".

3. In pursuance of the above direction of the Hon'ble High Court, the applicant was offered appointment as GDSBPM vide order dated 24.12.2009 and has been continuing as such.

4. Grievance of the applicant that one Deepak Ku.Naik who had been appointed as P.A. and had also been retrenched from service on the basis of the letter dated 23.12.1998 along with him, had approached this Tribunal in O.A.No.802/2005 and this Tribunal vide order dated 10.01.2009 disposed of the said O.A. with direction to respondents to consider appointment of Shri Deepak Ku. Naik in any one of the existing vacancies in the cadre of PA/Sorting Asst. and if it is not possible, as requested by the applicant to absorb him as Gramin Dak Sevak. This order was the subject matter of challenge before the Hon'ble High Court of Orissa and the Hon'ble High Court vide order dated 27.11.2008 in W.P.(C) No.9502/2008 confirmed the aforesaid order of the Tribunal. Since Shri Deepak Ku. Naik was appointed as GDSBPM vide order dated 19.12.2009 he challenged this appointment order before this Tribunal in O.A.No.364/2009. This Tribunal vide order dated 02.08.2011 disposed of the said O.A. with direction to respondents to verify

the vacancy position as has been indicated in the Original Application and if compassionate quota vacancy is available, consider the case of the applicant within a period of 60 days from the date of communication of order. However, the facts remains that Shri Deepak Ku. Naik was ultimately offered compassionate appointment in the cadre of Postal Assistant vide order dated 06.05.2014. The applicant having come to know about this and realizing that he has been discriminated against, submitted a representation dated 12.05.2014 to the Chief Post Master General requesting for appointment as against vacant post available in the Circle. Since, there was no response, he has moved this Tribunal in the present O.A. seeking relief as referred to above.

5. The main thrust of the O.A. is that the applicant has been discriminated against. According to him, whereas Shri Deepak Kumar Naik a similarly situated person has been offered appointment on compassionate ground in the cadre of Postal Assistant, he has been offered the post of GDS and hence, a sheer discrimination has been meted out to him.

6. Opposing the prayer of the applicant, Respondents have filed a detailed counter. According to Respondents they have not received any such representation stated to have been submitted by the applicant ventilating his grievance. While narrating the background of the case, they have submitted that consequent upon his willingness applicant was appointed in GDS cadre and in no way he has been discriminated against. It is the case of the respondents that Shri Deepak Kumar Naik was appointed as P.A. in pursuance of the orders of this Tribunal dated 20.03.2014 passed in C.P. No.38/2012 (arising out of O.A.No.364/2009). They have, amongst other things, submitted that the O.A. being devoid of merit should be dismissed.

7. Heard the learned counsels for both the sides and perused the pleadings of the parties including the rejoinder filed by the applicant.

8. From the pleadings of the parties, a short point that emerges for consideration is whether the applicant has been discriminated against in so far appointment on compassionate ground is concerned.

9. Admittedly, applicant along with one Deepk Kumar Naik had been appointed as Postal Assistant and they were subsequently retrenched from service. Aggrieved by the above action, the applicant had approached this Tribunal and this Tribunal vide common order dated 29.04.2003 dismissed all the OAs. This order of the Tribunal was carried in appeal to the Hon'ble High Court. So far as applicant is concerned, his Writ Petition W.P.(C) No. 11077/2003 was disposed of by the Hon'ble High Court vide order dated 07.07.2009 and as quoted above, the Hon'ble High Court directed the opposite parties (respondents herein) to take immediate steps for giving appointment to the petitioner in any post for which he is considered suitable. In compliance with the aforesaid order, the applicant was appointed as GDSBPM vide order dated 24.12.2009. Thus, with this appointment, the issue of providing compassionate appointment in favour of the applicant came to an end. So far as Shri Deepak Kumar Naik is concerned, it is admitted that even though he was retrenched from the cadre of P.A. in the year 1998 along with the applicant, he did not approach the Tribunal and in the year 2005, he approached this Tribunal belatedly in O.A.No.802/2005. This Tribunal vide order dated 10.01.2008 disposed of the said O.A. with direction to respondents to consider the applicant for appointment in any one of the existing vacancies in the cadre of PA/Sorting Asst. and if it is not possible, as requested by the applicant, to absorb him as Gramin Dak Sevak. This order of

the Tribunal was challenged before the Hon'ble High Court and the Hon'ble High Court vide order dated 27.11.2008 in WPC No.9502/2008 upheld the orders of this Tribunal. Thereafter, the applicant was offered appointment in the post of GDS which he challenged before this Tribunal in O.A.No.464/2009 and this Tribunal vide order dated 02.08.2011 disposed of the said O.A. with direction to respondents to verify the vacancy position as has been indicated in the O.A. and if compassionate quota vacancy is available, consider the case of the applicant within a period of 60 days from the date of communication of the order. As it reveals, the aforesaid direction having not been complied with by the Respondents, C.P.(C) No.38/2012 was filed by the applicant and during pendency of this C.P., respondents passed an order dated 06.05.2014 offering appointment in the cadre of P.A. to Shri Deepak Kumar Naik. From the above narration of facts, it cannot be said that the applicant has been discriminated against. Because, having accepted the offer of appointment on compassionate ground, the applicant is estopped under the law of acquiescence to turn back and lay a claim that one Deepak Kumar Naik, a similarly situated person has been offered appointment as P.A. cadre whereas he was offered GDS cadre and hence a discrimination has been meted out to him. It is well settled principle of law that compassionate appointment is not a matter of right to be exercised at any point of time. Once the respondents have offered appointment and the applicant has accepted the same, the object behind such appointment comes to a halt. In our considered opinion, in the instant case, discrimination would have come to play had both the applicant and Shri Deepak Kumar Naik been considered within the scope and extent of the same zone of consideration, the rules or instructions applied to their cases being the same. It is brought out from the fact that whereas Shri

Deepak Rout was appointed to GDS post vide order dated 19.12.2008, he did not accept the same and challenged the legality of providing him appointment on compassionate appointment in the post of GDS cadre before this Tribunal. But the applicant was offered GDS appointment on 24.12.2009 and he accepted the same without demur. At this juncture, we may note that the Hon'ble High Court while disposing of W.P.(C) No. 11077/2003 vide order dated 07.07.2009 directed the opposite parties (respondents herein) to take immediate steps for giving appointment to the petitioner (applicant herein) in any post for which he is considered suitable and in the opinion of the respondents the applicant was selected to be chosen in the post of GDS cadre. Therefore, it is farfetched for the applicant to raise a point of discrimination after about lapse of about five years of his appointment on compassionate ground.

10. For the reasons discussed above, the O.A. being devoid of merit is dismissed. No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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