

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/809/2012

**Present : Hon'ble Mr.Gokul Chandra Pati, Administrative Member
Hon'ble Mr.Swaup Kumar Mishra, Judicial Member**

Nishikanta Gandhi, aged about 26 years, S/o. Late Arun Kumar Gandhi, GDSMD/MC Makidia BO in account with Hatigarh S.O. under Balasore Division, Dist-Balasore.

...Applicant

-VERSUS-

1. Chief Post Master General, Orissa Circle, Bhubaneswar-751001, Dist:Khurda.
2. Superintendent of Post Offices, Balasore Division, Balasore-756001.
3. Union of India represented through the Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi.

...Respondent

For the applicant : Mr.B.S.Tripathy-1, counsel

For the respondents: Mr.S.Behera, Sr. Counsel

Heard & reserved on : 10.12.2018

Order on : 27.12.2018

O R D E R

Per Mr. Gokul Chandra Pati, Member (A):

Applicant is presently working as GDSMD/MC, Makidia Branch Office in account with Hatigarh S.O. under Balasore Division. In this Original Application under Section 19 of the A.T.Act, 1985, he has prayed for the following reliefs:

- i) direct/order/command the respondent No.1 and 2 to first consider the case of the applicant for the post of GDSBPM, Raibania BO in Account with Hatigarh SO and in the event the applicant lacks the prescribed criteria of income/property/residence then the case of others may be considered;
- ii) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.

2. Facts of the matter in brief are that consequent upon the death of his father, the applicant was appointed as GDSMD/MC, Makidia Branch Office in account Hatigarh S.O. on compassionate grounds and he joined as such on 11.01.2011. While working as such, Respondent No.2, i.e., Superintendent of Post Offices, Balasore Division issued a notification dated 11.10.2012(A/4) inviting applications in the prescribed proforma for filling up the post of GDSBPM, Raibania BO in account with Hatigarh SO under Jaleswar Head Office. Aggrieved by the above the applicant has moved this Tribunal in the present O.A. seeking reliefs as already mentioned above.

3. It is the case of the applicant that his father while working as GDSBPM, Raibania B.O. passed away on 10.12.2007. During December, 2010, 48 cases of compassionate appointments were approved by the Respondent No.1. In the list of 48 candidates approved for compassionate appointment, the name of the applicant is at Sl.No.25 being posted against the post of GDSMD/MC, Makidia BO in account with Hatigarh SO under Balasore Division. Grievance of the applicant is that as he fulfills the eligibility criteria, such as, income, property, residence, etc., and as his father had been working as GDSBPM, Raibania BO by providing the accommodation for the Post Office, he should have been appointed as GDSBPM, Raibania BO on compassionate grounds inasmuch as out of 48 candidates listed for compassionate appointments vide A/2 dated 14.12.2010, candidates placed at Sl.Nos. 2, 4, 11,12, 13, 20, 23, 28, 32, 39 & 45 have been offered the same posts as held by the deceased employees. There being discrimination, the applicant immediately approached Respondent No.2 through representation dated 08.11.2011 claiming similar treatment and to allow him the post of GDSBPM, Raibania BO. However, Respondent No.2 asked him to join the post which had been approved by Respondent No.1 and to pursue his grievance for appointment as GDSBPM, Raibania BO. Accordingly, the applicant joined the post of GDSMD/MC, Makidia on 10.01.2011 in pursuance of communication made by the Inspector of Posts vide A/3 dated 11.01.2011. While the matter stood as such, Respondent No.2 issued notification dated 11.10.2012 (A/4) inviting applications from the open market for filling up the post of GDSBPM, Raibania BO. Hence, this Original Application.

4. The grounds urged by the applicant are that even in case of the deceased employees holding the post of GDSMD/MC, their dependents have been offered appointment on compassionate grounds in the post of GDSBPM and in most of the cases similar posts have been offered as held by the deceased employees to their dependents and in his case there has been a dissemination as he has been offered the post of GDSMD/MC whereas his father had been working as

GDSBPM. According to applicant, it was incumbent on the part of the respondents to at first consider his case for appointment to the post of GDSBPM, Raibania BO and in case he was not found eligible, to go for public notification.

5. The Respondents, opposing the prayer of the applicant have filed their counter. It has been submitted by the Respondents that at the relevant point of time when cases for compassionate appointment was considered, GDSBPM Raibania BO did not justify for recruitment statistically and therefore, although the applicant had fulfilled the eligibility criteria, i.e., income, property, residence etc., he could not be appointed as GDSBPM, Raibania BO and the work of said post was directed to be managed by the existing GDSMC of Raibania BO. In view of change of statistical consideration to that of functional/operational, it was recruitment to the post of GDSBPM, Raibania BO became feasible and therefore, by issuing notification dated 11.10.2012 the process of recruitment commenced. They have submitted that the applicant in his capacity as GDSMD/MC, Makidia can apply for the post in response to the notification and his case will be considered in accordance with the extant rules governing the selection. Therefore, they have submitted that issuance of notification for filling up the post of GDSBPM, Raibania is as per departmental rules.

6. We have heard the learned counsels for both the sides and perused the records including the rejoinder filed by the applicant.

7. The conditions under which the compassionate appointment can be given are clearly laid down under the scheme. The issues relating to the rights of the beneficiaries of compassionate appointment are already settled in a number of judgments of Hon'ble Apex Court. In the case of Umesh Kumar Nagpal vs. State of Haryana & Ors. (1994) 4 SCC 138, it is held by Hon'ble Apex Court as under:-

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution

and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution."

Regarding the right of the dependent of the deceased employee for a post commensurate with the post held by the deceased employee, it was held by Hon'ble Apex Court in the above case as under:-

"It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

8. It is held by Hon'ble Apex Court in the case of *Mgb Gramin Bank vs Chakrawarti Singh* (indiankanoon.org/doc/157325802) as under:-

"The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr.* (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

9. In the case of *State of Chhatisgarh vs. Dhirjo Kumar Sengar* reported in (2009) 13 Supreme Court Cases 600, it was held by Hon'ble Apex Court as under:-

"Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance. [In Steel Authority of India Ltd. v. Madhusudan Das and Ors.](#) [2008 (15) SCALE 39], this Court held:

"...This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the

constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

10. In the light of the legal principles as discussed above, we are of the considered view that the applicant, who was appointed as a GDSCMC on compassionate ground after death of his father, has no right to claim for the higher post of GDSBPM just because others were given the post similar to the deceased employees and in view of the settled law in this regard, we find the OA to be meritless and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath