

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 696 of 2015

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

1. Sweta Narendra, aged about 62 years, W/o Late Sudhir Narendra.
2. Akhil Kumar narendra, aged about 40 years, S/o Late Sudhir Narendra, AT/PO - Garhbalabhadrapur, PS - Kanas, Dist. - Puri, Odisha,

.....Applicants.

VERSUS

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Tar Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General, Odisha Circle, PMG Square, Unit-IV, Bhubaneswar, Dist. – Khurda. Pin – 751001.
3. The Assistant Director (CRC), Office of the PMG, Odisha Circle, Bhubanesswar.
4. The Senior Superintendent of Post Offices, Puri Division, Puri, Pin – 752001.
5. The Inspector of Post Offices, Jatni Sub Division, Jatni, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.J.M.Patnaik, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 1.3.2019

Order on : 11.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"Under the circumstances, the applicants pray that the Hon'ble Tribunal may graciously be pleased to quash the order of rejection dated 11.8.2015 (Annexure-A/11) and direct the respondents to consider/reconsider the case of the applicant No.2 for appointment on compassionate ground as per the law laid down in the cases of Y.V.Rangaiah & others vrs. J. Sreenivasa Rao & others- AIR 1983 SC 852 & P.Mahendran and others vrs. State of Karnataka and others- AIR 1990 SC 405"

2. The applicant No.1 is the wife of Sri Sudhir Kumar Narendra who while working as GDSBPM, Garhbalabhadrapur Branch Post Office, expired on 26.12.2011. The applicant No.1 submitted an application for appointment of the son of the deceased GDS (Applicant No.2) on compassionate ground. Vide

order dated 12.8.2013 (Annexure A/3) the respondents informed the decision of the Circle Relaxation Committee (CRC) that the compassionate appointment prayer of the Applicant No.2 has been rejected. Against the decision the appeal dated 30.10.2013 (Annexure-A/4) was filed before the respondent No.2. When no decision was taken the applicants filed OA 366/2014 which was disposed of by the Tribunal directing the respondent No.2 to consider the pending appeal,. Vide order dated 10.6.2014 (Annexure A/6) the appeal was rejected. On 17.6.2014 the applicant no.1 preferred another appeal (Annexure-A/7). A letter dated 23.6.2014 (Annexure-A/8) was issued to the Applicant No.1 to co-operate for collecting fresh synopsis of the family to consider the case. Vide order dated 25.7.2014 (Annexure A/9) the appeal dated 17.6.2014 was rejected.

3. Thereafter the applicant filed OA No. 617/2014, which was disposed of on 19.6.2015 (Annexure A/10) as being infructuous on the statement of the respondents' counsel that the case of the applicant would be placed before the next CRC meeting for consideration. Vide order dated 18.8.2015 (Annexure A/11), the case of the Applicant No.2 for compassionate appointment was rejected on the ground that his score was 30 merit points against 100 points merit scale as per the Government instructions regarding compassionate appointment. The applicant being aggrieved, has challenged this order dated 18.8.2015 in this OA.

4. The main grounds projected in the OA are that the case of the applicant No.2 was rejected in accordance with the instructions dated 9.3.2012, 13.4.2012 and 1.8.2011 and such rejection is bad in law and that the respondents have rejected the case without considering the situation after death of the father of the applicant No.2. The rejection order of the appeal of the applicant No.2 is cryptic. The circular dated 9.10.2013 was not applicable in the case of the applicant No.2 but it was applied while rejecting the case on the ground that the applicant No. 2 was married. The family members are stated to be continuing in financial distress and the result of delay in giving consideration to the case was fatal. It is stated that the case of the applicant No. 2 is fully covered by the judgments of the Hon'ble Apex Court in

Y.V.Rangaiah & others vrs. J. Sreenivasa Rao & others- AIR 1983 SC 852 & P.Mahendran and ors. vs. State of Karnataka and others-AIR 1990 SC 405.

5. The respondents have filed their counter stating that the merit point system with 100 point scale was adopted by the department and that as per the guidelines dated 1.8.2011 and 13.4.2012, that a candidate is required to score 50 merit points or above so that the case can be considered for compassionate appointment as a hard and deserving case. The case of the applicant No.2 along with other pending cases was considered in the CRC on 30.7.2013 as per the existing guidelines. It was found that applicant scored only 30 merit points as against required merit points of 50 or more for which his case could not be considered as a hard and deserving case for compassionate appointment. The representation dated 5.11.2013 was considered and the case of the applicant No.2 could not be considered as he was married and as per the prevalent instruction of the department his case was not to be considered. His representation dated 17.6.2014 has been disposed of. The case was further considered in the CRC meeting held on 9.6.2015 and was rejected as he could get 30 merit points for which his case was not considered to be a hard and deserving case.

6. Rejoinder has been filed by the applicants. It was stated that as per the judgment of the Hon'ble Apex Court the case of compassionate appointment will be considered as per the scheme which was in vogue at the time of death of the concerned employee.

7. The OA was heard. Learned counsel for the applicants filed a written note of submission enclosing a copy of the circular dated 30.5.2017 in which it is mentioned by the Directorate of Post and Telegraph that the revised scheme for merit point system has been dispensed with and the scheme is for only missing GDS employees. It was further pointed out that the grievance of the applicant will be addressed if fresh consideration is given without grading system as per letter dated 30.5.2017. The judgment in the case of **Canara Bank & Anr. vs. M. Mahesh Kumar** in Civil Appeal No. 200/2008 is filed with the Written note filed by the applicant's counsel.

8. Learned counsel for the respondents submitted that as per the counter the copy of the guidelines dated 1.8.2011 annexed at Annexure R/1 series of the counter, states that the term 'hard and deserving cases' would mean cases over and above 50 merit points. It was submitted further that the applicant No.2's father expired on 26.12.2011 when the guidelines dated 1.8.2011 were in force and hence, the guidelines relating to the provision of 50 merit points for hard and deserving cases will apply. The subsequent circular dated 9.3.2012 was issued in which the criteria of 50 merit points for hard and deserving cases was reiterated vide the corrigendum issued in letter darterd 13.4.2012 (Annexure R/1 series). It was argued by learned counsel for the respondents that the case of applicant No.2 is to be considered with regard to the criteria for hard and deserving cases with the score of 50 or more merit points and the applicant No.2 failed to score more than 50 or more marks.

9. One of the argument relied upon by the learned counsel for the applicant was that vide order dated 30.5.2017 the point system has been dispensed with by the respondents. Learned counsel for the applicants also enclosed copy of the judgment of Hon'ble Apex Court in the case of M. Mahesh Kumar (supra) along with the written note of submission in which it was held that a compassionate appointment case is to be considered as per the rule or the scheme which was in force at the time of the death of the employee. In the case of Y.V. Rangaiah (supra) cited in the OA, it was held that in a case where there is a mandatory provision to have selection for a particular post against vacancy every year, the rule that was applicable at the time of the occurrence of the vacancy will apply for selection. In the case of P.Mahendran (supra), the question that was decided related to a case where the amendment to the recruitment rule was done when the selection process was continuing. This case pertained to recruitment through the Public Service Commission and hence, it is factually distinguishable from the present OA.

10. The sum and substance of the main argument of the learned counsel for the applicants was that on the date of death of the father of the applicant No. 2, the guideline on minimum merit point of 50 was not in force and hence, his

case should not have been rejected on that ground. The second argument was that as per the guidelines of the respondents the merit point system has been abolished and hence, the case of the applicant deserves to be re-considered without applying the merit point system in his case.

11. The arguments of the learned counsel for the applicants as above are not convincing, since as per the guidelines at Annexure-R/1 series to the counter, the circular dated 1.8.2011 stated that : "The term hard and deserving case would mean cases over and above 50 merit points". The date of death of the father of the applicant no. 2 was 26.12.2011 when the guidelines in the circular dated 1.8.2011 were in force. Hence, the merit point system stating that cases with 50 or more merit points are to be considered as hard and deserving cases, will be applicable to the case of the applicant no. 2. Regarding the circular dated 30.5.2017 abolishing the merit point system, it is seen that the said circular is not applicable retrospectively. In fact the para 3 of the circular dated 30.5.2017 stated as under:-

"3. The scheme will come into effect from the date of issue of the letter and will be applicable to all cases pending and arising on or after the said date. The cases which have already been settled will not be reopened."

Moreover, there is nothing on record to show that the cases with less merit points have been considered by the respondents for compassionate appointment while ignoring the case of the applicant No.2 or the case was not considered in accordance with the direction of the Tribunal or the guidelines for the scheme.

12. In view of the above discussions, I do not find adequate justification to interfere in the matter. The OA is therefore is liable to be dismissed and hence, it is dismissed with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

