

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/423/2015

Date of Reserve:01.02.2019

Date of Order: 0103.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Ashis Kumar Mandal, aged about 28 years, S/o.Anil Kumar Mandal.
2. Smt.Bhabani Mandal, aged about 53 years, W/o. Anil Kumar Mandal.

Both are of At/PO-bad Palsa, Via-Bahalda, PS-Tiring, Dist-Mayurbhanj.

...Applicants

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda, PIN-751 001.
3. Superintendent of Post Offices, Mayurbhanj Division, Baripada, Mayurbhanj.

...Respondents

By the Advocate(s)-Mr.B.Swain

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Both the applicant Nos.1 and 2 are son and wife, respectively, of the deceased employee, Anil Kumar Mandal, who while working as Postal Assistant under the Department of Posts passed away on 18.11.2005. Applicant No.1's prayer for compassionate appointment was rejected vide communication dated 21.1.2013 (A/3) on the ground as under:

"The CRC met on 14.01.2013 considered your compassionate appointment case but could not approved because as per points obtained by you based on norms of the Department, you did not come within the zone of vacancies earmarked for compassionate appointment in Multi Tasking Staff cadre as communicated by the Circle Office, Bhubaneswar vide letter No.RE/CRC/2012(i) (Deptl.) dated 16.01.2013".

2. Thereafter, applicant No.1 submitted a representation for reconsideration of his case. Again his request was turned down vide order dated 7.2.2014 (A/4) inter alia on the grounds as under:

"Your compassionate appointment case was considered by CRC met on 28.01.2014, but could not be approved because as per points obtained by you based on norms of the Department, you did not come within the zone of the vacancies earmarked for compassionate appointment of PA/SA, Postman/Mailguard and MTS cadre".

3. Aggrieved with this, the applicants had approached this Tribunal in O.A.No.262 of 2014. This Tribunal vide order dated 24.04.2014 disposed of the said O.A. in the following terms:

"Taking into account the various submissions made by Ld.Counsel for both the sides and the fact that the case of the applicants has been considered twice, we dispose of this O.A. directing Respondent No.3 to consider the case of the applicants for one more time and communicate the result thereof to the applicants in a well reasoned order within a period of 60 (sixty) days from the date of receipt of a copy of this order".

5. As a measure of compliance of the aforesaid direction, the respondents passed an order dated 18.06.2014, the relevant portion of which reads as under:

"Since, the vacancy of 5% quota of CRC is being computed year wise i.e., for 2014, the next CRC for Departmental Cadre is likely to be held during January, 2015 for vacancy of 2014 so that the candidates who will apply for compassionate appointment where death occur during 2014 will not be deprived of the facility. The vacancy of 2014 has not been calculated so far. Therefore, the compassionate appointment case of Sri Ashis Kumar Mandal will be put up before the said CRC, one more time, for reconsideration to comply with the order of the Hon'ble Tribunal".

5. Thereafter, the applicant sought information under RTI Act regarding the merit points and in response to this, he was provided with the information

to the effect that the total merit points admissible was 49 as on 21.10.2014. Consequently, the applicant no.2 submitted a representation dated 28.10.2014 stating that the family ought to have secured an extra merit point raising it to 56. Since this representation was not considered, applicants approached this Tribunal in O.A.No.1101/2014. This Tribunal vide order dated 27.03.2015 disposed of the said O.A. as under:

“Taking into account the submission made by Mr.Mohanty,Ld. Counsel for the applicant, without expressing any opinion on the merit fo the case, I dispose of this O.A. at this admission stage by directing Respondent No.2 to consider and dispose of the representation dated 28.10.2014, if the same has been filed and is still pending consideration, in a well reasoned order and communicate the same to the applicants within a period of 60 days from the date of receipt of a copy of this order”.

6. In obedience to the aforesaid direction, the respondents issued an order dated 23.04.20014 (A/10), the relevant part of which reads as follows:

“Without awaiting the decision of the CRC regarding approval or otherwise to be held during January, 2015, Smt.Bhabani Mandal, mother of the applicant vide her representation dated 28.10.2014 addressed to the Chief Postmaster General, Odisha Circle, Bhubaneswar requested to provide extra point on number of minor children survived at the time of death of her husband and the applicant and her mother filed O.A.No.1101/2014 before Hon’ble CAT, Cuttack Bench, Cuttack praying to direct the respondents to consider the applicant’s case taking into account 56 points & provide an employment to the applicant No.1.

Her husband Anil Kumar Mandal expired on 18.11.2005 and at that time one of his sons Shri Debashish Mandal was minor with 17 years of age vide legal heir certificate No. Misc. Case No.1/2005 dated 012.01.2006 issued by the Tahasildar Bahalda. The scheme for compassionate appointment awarding relative merit points on ‘No. Of minor children’ came into force with immediate effect vide Postal Directorate letter No.37-26/2004-SPB-I/C dated 20.01.2010. So as on 20.01.2009, the age of Shri Debashish Mandal was 21 and on that date he was not a minor. While awarding merit points for compassionate appointment the applicant was given zero point under head “No. Of Minor children”. The stand of the mother of the applicant does not justify to award merit points under head “No. Of minor children” as there was no minor children. Accordingly total 51 merit points was awarded to the applicant.

The case was put up before the CRC held on 28.01.2015 but could not be approved by the CRC as points scored by the applicant did not come within the zone of vacancy earmarked for compassionate quota i.e., 5% of the vacancy in Departmental cadre which is 9 nos. of posts and the last applicant who was approved got 63 points”.

7. Being aggrieved, applicants have approached this Tribunal in the instant

O.A. praying for the following reliefs:

- i) To quash the order dated 21.1.2013, order dated 7.2.2014 and order dated 23.04.2015 under Annexure-A/3, A/4 & A/10.
- ii) To direct the Respondents to consider the applicants case taking into account 56 merit and vacancies for the year 2014 points & provide an employment to the applicant No.1 retrospectively for the ends of justice;
- iii) To pass any other order/orders as deemed fit and proper in this case.

8. The applicants in support of their claims have mainly urged the following grounds:

- i) The impugned orders of rejection are cryptic and unreasoned.
- ii) As per instructions issued by the Government of India from time to time, while considering the cases for compassionate appointment, a balanced and objective assessment of the financial condition of the family has to be taken into account including the assets and liabilities whereas while rejecting the case of the applicant no.1, the CRC confined its decision to the synopsis submitted and therefore, the rejection orders suffer non-application of mind.
- iii) Even though there existed 513 vacancies for the year 2014, the case of the applicant no.1 for compassionate appointment was rejected stating that the vacancies under compassionate appointment quota were 8.
- iv) Indigent condition of the family is writ large in view of awarding of 56 points to the applicants and therefore, rejection of compassionate appointment is against the aims and objects set out in this regard.
- iv) Although having regard to the number of dependant family, left over service of the deceased, landed properly, monthly

income of the family, movable property, minor children at that relevant point of time and the education qualification of the applicant no.1 merit points 56 should have been awarded, respondents vide A/10 awarded only 51 points.

- v) According to applicants, since the family is indigent, compassionate appointment should be provided to the applicant no.1 to meet the financial crisis comes up due to death of the sole breadwinner in the family.

9. On the other hand, contesting the prayer of the applicants, respondents have filed a detailed counter. According to respondents, after the death of applicant no.1's father in the year 2005, his request for compassionate appointment was kept for consideration since there was no vacancy in Gr.D post for which the applicant no.1 was eligible. In the meantime, Gr.D posts was renamed as MTS and upgraded to Class-III by the Government and as such recruitment to Gr.D post was postponed till receipt of new recruitment rules. After receipt of new recruitment rules, applicant no.1's case was considered in the CRC meeting held on 11.10.2011 and since his merit points did not come within the zone of selection keeping in view the vacancies earmarked for compassionate, the same was rejected. Further, as per the direction of the Postal Directorate, the case of applicant no.1 was reviewed in CRC meeting held on 14.01.2013 and since the applicant no.1 secured 49 points in 100-point scale fixed by the Department vis-a-vis the last candidate securing 84 merits points, his case could not be recommended. However, as per the decision of the competent authority, applicant no.1's case was again put up before the CRC held on 28.1.2014 along with other 41 cases and this time also, the CRC could not recommend his case since he secured 49 merit points, the last candidate having secured 64 merit points in the 100-point scale. Aggrieved by this, the applicant approached this Tribunal in O.A.No.262/2014

and in compliance with the orders this Tribunal dated 24.04.2014 in the said O.A., it was decided to put up his case before the CRC to be held during January, 2015. Being not satisfied, the applicants again approached this Tribunal in O.A.No.1101/2014 and this Tribunal vide order dated 27.03.2015 while disposing of the said O.A. directed the Respondent No.2, i.e., CPMG, Odisha Circle, Bhubaneswar to consider and dispose of the representation dated 28.10.2014 in a well –reasoned order and communicate the same to the applicants.

10. Respondents have pointed out that when the employee died in the year 2005, the applicant no.1 was minor being 17 years old. The scheme for awarding relative merit points on the number of minor children came into force with effect from 20.01.2010 by which time, the applicant no.1 had attained 21 years of age and thus was not minor. Respondents have also brought to the notice of the Tribunal the vacancies coming under compassionate quota which were considered from time to time during which the case of the applicant no.1 had also been taken into consideration.

11. We have heard the learned counsels for both the sides and perused the records. We have also considered the grounds urged by the applicants in support of his contentions. Admittedly, applicant no.1's case has been considered by the CRC case for compassionate appointment. In view of the fact that he secured less merit points in the 100-points scale vis-a-vis the candidates recommended for such appointments, applicant no.1 could not be recommended for compassionate appointment by the CRC. This apart, there being no minor children in the family, no point was awarded on that score. Be that as it may, this Tribunal all through is observing that the applicant no.1 at any point of time during consideration of his case by the CRC has secured

less merit points that what has been fixed the Department. In view of this, the element of indigent condition of the family which is the prime consideration in the matter of providing employment assistance on compassionate ground still exists. Therefore, considering the facts and circumstances of the case, this Tribunal directs Respondent No.2 to look into the matter in the light of the observations made above and consider his case when CRC next meets for compassionate appointment and in such eventuality, they shall pass an appropriate orders within a period of thirty days from the date the CRC meets and consider the case of the applicant no.1 including other eligible candidates in the zone of consideration.

12. With the aforesaid observation and direction, this O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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