

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/00 132/2014

Date of Reserve:01.02.2019
Date of Order: 15.02.2019

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

Laxminarayan Pradhan, aged about 35 years, S/o. Late Siris Kumar Pradhan,
At/PO-Jamudalack PS:Champua, Dist-Keonjhar.

...Applicant

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-751 001.
3. Superintendent of Post Offices, Keonjhar Division, Keonjhar-758 001.
4. Asst. Superintendent of Post Offices, Keonjhar Division, Keonjhar-758 001.

...Respondents

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

ORDER

PER SWARUP KUMAR 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 quash the order dated 27.12.2013 of rejection under Annexure-A/4.
- ii) To direct the Respondents to consider the applicant's case in any GDS Post for the ends of justice.
- iii) To pass any other order/orders as deemed fit and proper in this case.

2. Brief facts of the matter are that the applicant's father while working as GDSBPM, Jamadalak BO under Champua SO passed away on 11.04.2011

leaving behind his widow, one son and one daughter. Consequent upon the death of his father, applicant submitted a representation for consideration of his case for appointment on compassionate grounds. The Respondents No.3 vide order dated 27.12.2013(A/4) rejected the request of the applicant for compassionate appointment on the ground that the applicant scored only 35 merit points which is below and less than 51 against 100 point scale as per the Directorate letter No.17-17/2010-GDS dated 13.04.2012 and therefore, he was not considered as hard and deserving one for approving compassionate appointment. Aggrieved with this, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as mentioned above.

3. The grounds on which the applicant has based his claim are that the respondents without due application of mind to the penurious condition of the family have rejected the prayer for compassionate appointment. Secondly, according to applicant, the rules governing compassionate appointment which were prevalent at the time of death of the applicant's father ought to have been taken into consideration whereas in the instant case, the respondents have taken into consideration the rules which came into force after the death occurred.

4. Respondents by filing a detailed counter have opposed the prayer of the applicant. They have submitted that the applicant got 35 merits points only in a scale of 100 points. The cases over and above 50 merits point can only be considered as hard and deserving. It has been submitted that as per the existing ruling issued by the Directorate in letter dates 01.08.2011 and 09.03.2012, the merit points are calculated. According to respondents, the plea of the applicant that as per "DG Posts Circular dated 14.12.2010(A/5) he

was eligible to get 53 points is not correct. The CRC considered has rightly rejected the case of the applicant.

5. Heard the learned counsels for the parties and perused the materials on record. I have also gone through the decisions of the Hon'ble Supreme Court in Canara Bank & Anr. Vs. M.Mahesh Kumar with Chairman & managing Director, Canara Bank & Ors. Vs. Santha & Anr. With Chairman & Managing Director, Canara Bank & Ors. Vs. A.K.Sheeba & Anr. Reported in 2015 AIR SCW 3212 and of this Tribunal in O.A.No.260/00122/2015 (Surendra Prasad vs. Union of India & ors.) disposed of on 29.04.2016 cited by the applicant in support of his case. In Canara Bank (supra), it has been held by the Hon'ble Supreme Court that the circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

6. In O.A.No. 260/00122/2015 (supra) the issue involved was whether the case of the applicant should have been decided as per the weightage point system of 2007 introduced by the NSNL, as has been done by the High Power Committee. The accompanying question was whether the case should have been considered in the light of GOP&T guidelines of 1998 which were adopted by the BSNL when the applicant's father died, and the application for compassionate appointment was submitted by the applicant. This Tribunal in the said order observed that –

"The ratio decided in Canara Bank case by the Hon'ble Apex Court is that the relevant scheme to be applicable is the one that was effective at the time of the cause of action. If there is a change in the scheme, or there is a different scheme at a later point of time, when actual consideration of the applicant is made, such consideration has to be made as per the scheme that was effective when cause of action arise. The decision of the Hon'ble Apex Court in May, 15, 2015, in the case of Canara Bank vs.Mahesh Kumar having been brought to the notice of the Tribunal now, the same cannot be ignored and would not be taken as binding upon the

Tribunal, despite the fact that in O.A.No.946 of 2013, involving similar facts a different view was taken based upon the ratio of decision of Hon'ble Apex Court in MGB Gramin Bank case.

21. In view of the discussions made above, I am of the opinion that there is merit in the prayer of the applicant that his case should be considered as per the scheme of compassionate appointment that was existing at the time of the cause of action in the year 2002 when the applicant submitted the application for compassionate appointment...."

7. It is an admitted fact that the death of the applicant's father took place on 11.04.2011. Therefore, following the *ratio decidendi* in O.A.No.260/00122/2015, while quashing the impugned order dated 27.12.2013 (A/4) in so far as applicant is concerned, respondents are directed to reconsider the case of the applicant as per the scheme for compassionate appointment that was prevailing in 2010 and communicate the decision to the applicant through a reasoned and speaking order. This exercise shall be completed within a period of 120 days from the date of receipt of this order. Ordered accordingly.

8. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUPKUMARMISHRA)
MEMBER(J)

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