

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/01061/2016

&

M.A 180/1361 of 2016

Wednesday, this the 2nd day of January, 2019

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Jyothi.C.S, aged 30 years
 D/o (late) C.C.Sudhakaran
 Pallathu Veedu, Ala P.O
 Chenganoor, Alapuzha District
 Pin -689 126

.....

Applicant

(By Advocate – Mr.T.C.G Swamy & Ms.Kala T.G)

v e r s u s

1. Superintendent of Post Offices
 Pathanamthitta Division
 Pathanamthitta, Pin – 689 645

2. The Chief Post Master General, Kerala Circle
 Thiruvananthapuram-695 033

3. Union of India
 Rep. By the Secretary
 Department of Posts
 New Delhi

.....

Respondents

(By Advocate – Mr.N.Anilkumar,SCGSC)

This Original Application having been heard and reserved for orders on 19.12.2018, the Tribunal on 2.1.2019 delivered the following :

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/01061 of 2016 is filed by Smt.Jyothi.C.S, D/o (late) C.C.Sudhakaran who passed away while working as a Postal Assistant on 19.7.2012. Impugned, is the order issued by the office of the second respondent rejecting her request for compassionate appointment. The reliefs sought in the Original Application are as follows:

“(i) Call for the records leading to the issue of A1 and quash the same;

(ii) Declare that the applicant is eligible to be considered for an appointment on compassionate grounds irrespective of the reasons stated in A1 and direct the respondents accordingly;

(iii) Direct the respondents to consider the applicant for an appointment on compassionate grounds under the respondents ignoring the reasons stated in A1 and direct further to grant an appointment within a time frame as may be found just and proper by this Tribunal with all consequential benefits thereof;

(iv) Award costs of an incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. After the passing of her father, the applicant's widowed mother had been granted family pension. However, on 9.5.2013 the applicant's mother also passed away. Although the applicant is married, her husband is stated to be unemployed. The applicant claims that she had been living entirely dependent on her parents and the unexpected demise of both her parents has thrust her into abject poverty. She had filed an application for compassionate

level appointment, a copy of which is available at Annexure A-4.

3. As no decision was forthcoming, the applicant filed Original Application No.253/2014 before this Tribunal and the same was disposed of on 8.4.2014 directing the respondents to take a decision on her application expeditiously in accordance with law. A copy of the order is available at Annexure A-5. However, the order at Annexure A-1, which is purportedly in compliance with the directions contained in Annexure A-5 judgment, is bad in law and does not take into consideration the penurious circumstances in which the applicant is forced to live.

4. As grounds, the applicant maintains that the decision of the Circle Relaxation Committee is without proper justification and does not rest on any legal foundation. It is maintained that the said order has been issued in disregard to various Office Memoranda issued by the DoP&T and orders of various judicial fora. The applicant submits that she is eligible for employment under the scheme. She possessed the required qualification of SSLC at the time of consideration. She assails the decision conveyed through Annexure A-1 order on the ground that it is based on the sole consideration that her mother had been granted pensionary benefits.

5. Applicant has also filed M.A 180/1361 of 2016 seeking condonation of delay of 305 days. It is stated therein that the impugned order having been

issued on 13.2.2015 and therefore, the Original Application ought to have been filed on or before 13.2.2016. Thus it is admitted that there has been a delay of 305 days in filing the Original Application. The justification advanced by the applicant in the said M.A is that the delay had occurred on account of the difficult situation that the applicant is faced with. It was impossible for her to approach this Tribunal immediately after Annexure A-1 order was issued. She pleads that the said delay was unavoidable as she took some time to select a counsel at Ernakulam and also tracing out various orders of DoP&T which state that the case for compassionate appointment can be considered without any limitation on number of chances.

6. The said M.A is strongly opposed by the respondents. It is stated that the applicant had already filed O.A 253/2014 and apparently knew about the procedures involved in filing an Original Application and in several judicial pronouncements it has been reiterated time and again that there has to be reasonably satisfactory reasons for condoning the delay. The applicant has not put forth any such justified reasons, the respondents assert.

7. The respondents have also filed reply statement to the contentions raised in the Original Application. It is stated that in line with the orders of this Tribunal at Annexure A-5 dated 8.4.2014, the Circle Relaxation Committee had considered her application dated 24.2.2014 on merit. It was not recommended by the Circle Relaxation Committee as the Committee

resolved that there was no immediate indigence in the family of the deceased official. It is maintained in the reply statement that the scheme is meant to ameliorate the suffering of a dependent family due to the sudden passing away of the bread earner. The very reason that the applicant has chosen to approach the authorities after a significant amount of time reveals that she is not faced with serious indigence. The Hon'ble Supreme Court in ***M.G.B.Gramin Bank v. Chakrawarti Singh*** reported in **2013(6) SLR 227 (SC)** lays down that appointment under dying-in-harness could not be claimed as a matter of right as no right would vest with anybody on the death of an employee in harness.

8. With a view to dispassionately assess the indigence of the concerned relative/family, the respondent department had formulated a detailed scheme, based on which a duly constituted Circle Relaxation Committee assesses each application. It is to be understood that employment under compassionate grounds is restricted to 5% of Direct Recruitment. The respondents in the additional reply statement states that the Circle Relaxation Committee which met on 31.12.2014 had considered 35 cases for employment under the said scheme while the vacancies available were only 16. The most meritorious case had secured 89 Relative Merit Points (RMPs for short) and the last one selected had secured 40 RMPs as is seen from the minutes of the Circle Relaxation Committee at Annexure R-1. Further, as per O.M No.14014/19/2002-Estt(D) dated 5.5.2003 (Annexure R-3) it has been

laid down that the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year.

9. Heard Mr.T.C.G Swamy, learned counsel for the applicant and Mr.N.Anilkumar, SCGSC, learned counsel for the respondents and perused the records.

10. The case involves grant of appointment under compassionate grounds. The scheme is meant to help persons who are faced with indigence on account of passing away of the bread earner. From this perspective, utmost consideration and sympathy should be extended to this case. Hence, this Tribunal allows the M.A No.180/1361/16 for condonation of delay.

11. As regards the merits of the case, it is seen that the respondents, through impugned order at Annexure A-5, have rejected the representation of the applicant on the ground that she had secured only 34 RMPs. In the additional reply statement it has been submitted that the last selected candidate possessed 40 RMPs and the applicant having secured lower points and was adjudged not eligible. On scrutinising the said order, it is seen that the applicant's mother had received a sum of Rs.7,98,965/- as terminal

benefits and thereby as per the graded slab indicated in the said order, the applicant was awarded 0 points. It has been brought to the notice of the Tribunal that as per the decision of Hon'ble Supreme Court in ***Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.***, (2000) 6 SCC 493, it is held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. In ***Govind Prakash Varma v. Life Insurance Corporation of India & Ors*** (2005) 10 SCC 289 the Hon'ble Supreme Court held that compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the rules. In so far as objection of the respondents is concerned, the Hon'ble Supreme Court in ***Canara Bank & Anr. v. M. Mahesh Kumar*** (2015) 7 SCC 412 had ruled "*grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance*".

12. It is seen that the relief ordered in the Hon'ble Apex Court's judgments referred above squarely covers this case. The Original Application Succeeds. This Tribunal directs further re-consideration of the applicant's representation ignoring the 'attribute' of terminal benefits and ultimately to arrive at a decision. This shall be done within two months from the date of receipt of a copy of this order. No costs.

**E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

SV

List of Annexures

Annexure A1 - A true copy of letter bearing No.Rectt./7-17/Dptl/2014 at Thiruvananthapuram-33 dated 13.2.2015.

Annexure A2 - A true copy of the death certificate of the applicant's father dated 19.7.2012

Annexure A3 - A true copy of the death certificate of the applicant's mother

Annexure A4 - A true copy of the representation submitted by the applicant

Annexure A5 - A true copy of the order in O.A No.253/14 rendered by this Tribunal dated 8.4.2014

Annexure A6 - A true copy of the Secondary School Leaving Certificate of the applicant

Annexure A7 - A true copy of DoP&T order bearing F No.14014/3/2011-Estt.(D) Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) dated 26th July 2012

Annexure A8 - A true copy of the order in O.A No.195/2014, dated 27.1.2016, rendered by this Tribunal

Annexure A9 - A true copy of Certificate No.1190/2013 dated 23.10.2013 of the Village Officer

Annexure A9(a) - A true English translation of Annexure A9

Annexure R-1 - True copy of the Annexure A to the minutes of the Circle Relaxation Committee convened on 31.12.2014

Annexure R-2 - True copy of DOPT OM No.14014/6/94-Estt(D) dated 9.10.1998

Annexure R-3 - True copy of DOPT OM dated 5.5.2003

Annexure R-4 - True copy of the Directorate letter dated 13.1.2016

...