

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00557/2016

Date of CAV : 24-09-2018
Date of Order : 04-10-2018

Between :

Asampally Thilak S/o late Rajesham,
(EX-Postal Assistant, Peddapalli HO),
Aged about 32 years, R/o H.No.4-2-140/6/N/2,
S.C. Colony, PEDDAPALLI-505172,
District Karimnagar.

....Applicant

AND

1. The Union of India, rep by The Director General,
Posts, Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-110001.
2. The Chief Postmaster-General,
A.P.Circle, Hyderabad-500001.
3. The Postmaster-General,
Hyderabad Region, Hyderabad-500001.
4. The Superintendent of Post Offices,
Peddapalli Division, Peddapalli-505172,
District Karimnagar, T.S.
5. The Inspector, Posts,
PeddapalliSub Division,
Peddapalli-505172,
District Karimnagar.

...Respondents

Counsel for the Applicant: Mr. B.Gurudas
Counsel for the Respondents : Mr.A.VijayaBhaskar Babu, Addl.CGSC

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A. T. Act, 1985, for the following relief : -

- (a) To call for the records pertaining to the impugned orders (i) No. IP/PDPL/Correspondence/2014, dated 09.06.2014 of the 5th Respondent and (ii) BI/CA/AR/15, dated 26.05.2015 of the 4th Respondent rejecting the case of the applicant for compassionate appointment inspite of bringing the provisions contained in various O.Ms. issued by the DOP&T and Ministry of Communications & IT, Department of Posts, on the subject, and set aside the impugned Orders (i) No. IP/PDPL/Correspondence/2014 dated 09.06.2014 of the 5th Respondent and (ii) No. B1/CA/AR/15, dated 26.05.2015 of the 4th Respondent, rejecting the claim of the applicant for compassionate appointment declaring the same as arbitrary, illegal, unwarranted, misconceived and in violation of Articles 14 and 16 of the Constitution of India;
- (b) to direct the Respondents to consider the case of the applicant for grant of compassionate appointment to the applicant on the basis of extant rules existing as on date, in view of the eligibility of the applicant ;
- (c) with all the consequential benefits;

and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. Brief facts of the case are that, the father of the applicant late A.Rajesham appointed as Postal Assistant on 9.11.1981 died in harness on 15.3.2013 while working as Postal Assistant at Peddapalli HO in Peddapalli Division due to heart attack(Cardiac arrest) being a diabetic patient, leaving behind the wife, one daughter and one son. Wife of the deceased expressed her consent for appointment of the applicant on compassionate grounds. The only daughter of the deceased employee, who is the elder

sister of the applicant, though married but living with her deceased father due to accident of her husband who suffered multiple injuries fracturing his right leg and hands and underwent surgery, and as such, the daughter of the deceased was also dependent on the deceased along with her husband. As on the date of death of the deceased employee, the applicant is married but divorced person.

3. The applicant submitted application dated 2.9.2013 for compassionate appointment along with all required documents to the 2nd Respondent. The Inspector, Posts, Peddapalli Sub-Divisin, Peddapalli, conveyed to the mother of the applicant that 4th Respondent, intimated that married son is not a dependant on the Govt., Servant and instructed the mother of the applicant to submit representation for any other family member, vide memo dated 9.6.2014. Against the said letter, the mother of the applicant had explained vide her representation dated 17.3.2015 to the 5th Respondent to provide compassionate appointment to her son for the reasons that (i) she is suffering from prolonged illness; (ii) her daughter though married is living with her husband due to indigent conditions of her family.

4. The applicant submitted another representation on 7.2.2015 to 2nd Respondent in the prescribed proforma under copies to 4th & 5th Respondents for grant of compassionate appointment to him. Instead of considering the same, the 4th Respondent intimated vide impugned letter dated 26.5.2015 rejecting the case of the applicant stating that the case of the applicant is not considered as per the orders contained in R.O. letter

dated 22.4.2015 as per the latest FAQ received from Directorate, that the compassionate appointments already settled with respect to FAQs dated 30-05-2013 may not be re-opened.

5. The applicant further submits that, the Dept. of Posts, Gol issued further orders vide letter dated 9.10.2013 once again reiterated in Point No.2 of the said circular that “married son” is not considered as dependent on a deceased official. Revised instructions were issued by the Gol, Min of Communications & IT, Department of Posts (GDS Section) vide OM No.17-39/3/2012-GDS, dated 14.1.2015 clarifying that :

“Considering the recommendations made by DKS Chauhan Committee, which was constituted to look into the various aspects related to Gramin Dak Sevaks, it has now been decided by the Department that “a married son” shall also be considered as one of the dependents of the Sevak for the purpose of compassionate engagement where the married son resides with his grandparents / parents, along with his wife and children and is dependent on the parents for livelihood and other needs provided he possesses the required educational qualification including computer knowledge.”

As per the revised guidelines issued by the DoP&T, the applicant is eligible to be considered for award of the merit points as worked out below :

(a) Family pension	16 points
(b) Terminal benefits	--
(c) Monthly Income of Earning member	5
(d) Movable/Immovable property	10
(e) No of dependents	15
(f) No of unmarried daughters	--
(g) No of Minor children	--
(h) Left over service	--

	48 points

6. In the light of the eligibility criteria declared by the Respondents that

the minimum cut off points are 36, the applicant who secured more than the required points, had fulfilled the conditions of indigent conditions of the family of the deceased and is entitled to be considered for compassionate appointment. Hence this application.

7. Respondents have filed reply statement stating that wife of the deceased employee submitted a representation dated 22.7.2013 requesting the 4th respondent to provide appointment to her son on compassionate grounds. Since 'married son' is not eligible for compassionate appointment as he is not considered as a dependent on a Government servant vide Sl.No.13 of FAQ of DoP&T letter dated 30.5.2013, the 4th respondent has intimated the 3rd respondent that "the applicant has already submitted application for compassionate appointment vide his representation dt. 2.9.2013, that as per the existing rulings at that time on compassionate appointment, married son could not be considered as dependent of the deceased family, and hence the representation of said applicant was returned to the 5th respondent, directing him to obtain documents from the eligible family member vide letter dated 4.4.2014. The 3rd Respondent has inform the 4th Respondent vide letter dated 22.4.2015 that "as per latest FAQ received from the Postal Directorate, New Delhi it was clearly stated that the compassionate appointments already settled with reference to FAQs dated 30.5.2013 may not be reopened". Accordingly, the 4th respondent has informed the applicant vide letter dated 26.5.2015.

8. The Respondents also placed reliance on the judgment of Hon'ble Apex Court dated 7.8.2013 in CA No.6348/2013 between MGB Gramin Bank

Vs. Chakrawartti Singh held as follows :

“13. 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 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 ie 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.”

With the above said submissions, Respondents pray for dismissal of the O.A.

9. The applicant has also filed rejoinder reiterating the contentions raised in the OA. The applicant also relies on the DoP&T OM dated 5.9.16 (Annexure RJ 1) and stated that the application for compassionate appointment solely rejected on the ground of marital status of the son of the deceased employee may be reopened and reconsidered against the vacancies occurring at the time of issuance of the said letter. It has been mentioned in the said letter at para-3 that the earlier FAQ No.13 dated 30.5.2013 and FAQ No.60 dated 25.2.2015 stands withdrawn from the date of their issue. It was further mentioned at para-4 of the said letter that the applications rejected solely on the ground of marital status in terms of FAQ No.13 dated 30.5.2013 to 25.2.2015 in respect of ‘married son’ may be re-opened / reconsidered against vacancies occurring during the issuance of the said OM. Therefore the rejection of the application of the applicant for appointment on compassionate ground for the reason that he is ‘married son’ cannot be sustained. The subsequent rejection of the application of

the applicant as per letter dated 26.5.2015 vide Annexure A-II is on the ground that the compassionate appointments already settled with reference to FAQ dated 30.5.2013 cannot be reopened. In view of the OM dated 5.9.2016 and the sequence of events, there was no justification on the part of the Respondents to reject the application of the applicant on the ground that the case has already been settled. The applicant further contends that the authorities ought not to have treated the case as 'closed'. In the present case the CRC is the competent authority to consider the application of the applicant for appointment on compassionate grounds to suitable post, it was submitted by the learned counsel for the applicant that the applicant is a Graduate. Learned counsel for the applicant also placed reliance on the letter dated 28.12.1994 and also on the order passed in OA No.021/1063/2014 & MA.800/2016, dated 28.2.2017 by the Hyderabad Bench of CAT in support of his contentions.

10. Respondents have also filed additional reply statement refuting the contentions of the applicant.

11. We have heard Mr.B.Gurudas, learned counsel for the applicant and Mr.A.Vijaya Bhaskar Babu, learned Standing Counsel for Respondents, perused the material placed on record.

12. In the present case, the father of the applicant died on 15.3.2013. The applicant submitted his application for compassionate appointment on 2.9.2013. At that time married son was not eligible to get compassionate

appointment. Subsequently as per letter of DoP&T dated 5.9.2016, filed as Annexure RJ-1, and in view of the order passed in OA No.021/1063/2014 & MA. 800/2016, dated 28.2.2017, this Tribunal directs that the case of the applicant for appointment on compassionate grounds be placed before CRC and to consider the same in accordance with law and along with the findings given by this Tribunal and to dispose of the said application by passing a detailed reasons order within a period of three months from the date of receipt of a copy of this order. While doing so, the Respondents are to give reasonable opportunity to the applicant to produce all relevant materials before them in this regard.

13. O.A ordered accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 4th October, 2018.

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