

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/020/1142/2016

**Reserved on: 03.04.2019
Order pronounced on: 04.04.2019**

Between:

M. Venkatesu,
S/o. Late M. Subbarayudu,
Aged 25 years, Occ: Cooly,
R/o. Lingareddipally B.O.,
a/w Yellanur S.O., Anantapuram Division,
Anantapuram – 515 001.
Anantapuram District, (A.P.)

...Applicant

And

1. Union of India rep. by
The Chief Postmaster General,
A.P. Circle, Abids,
Hyderabad – 500 001 (T.S.)

2. The Post Master General,
Kurnool Region,
Kurnool – 518 002
Kurnool District (A.P)

3. The Superintendent of Post Offices,
Anantapuram Division,
Anantapuram – 515 001.
Anantapuram District (A.P.)

...Respondents

Counsel for the Applicant ... Mr. B. Gurudas

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for not granting compassionate recruitment to the applicant.
3. Applicant's father died while working for the respondents organisation in 2010. On the demise of his father, applicant represented for compassionate appointment which was rejected by the compassionate relaxation committee on 15.5.2012 for securing less than 51 merit points. Aggrieved applicant approached the Tribunal in OA 882/2012 wherein it was directed to reconsider the case of the applicant. Respondents reconsidered the case and rejected the same on 12.8.2016. Counteracting the rejection the OA has been filed.
4. The contentions of the applicant are that an incompetent authority who is the Asst Director in the o/o Post Master General, Kurnool has issued the order of rejection. The applicant father has died on 19.11.2010 and hence rules prevailing on that date has to be applied and not those issued on 14.12.2010. Even as per the revised rules the applicant has got 37 points which is more than the threshold level of 36 points and hence rejecting his request is against rules. The applicant contends that he has no land nor house and that he is living in indigent circumstances by working as a daily coolie to take care of his mother and himself.
5. Respondents confirm that that the request of the applicant was initially negated on 15.5.2012 because he got 36 merit points against the minimum of 51 merit points required. When the applicant contested the decision in OA 882/2012

it was reconsidered as per the orders of the Tribunal and rejected on 12.8.2016 stating that the instructions pertaining to compassionate appointment issued on 17.12.2015 reducing the cut off marks from 51 to 36 marks, cannot be made applicable to cases already settled prior to 17.12.2015.

7. The legal aspects which need to be attended to, for resolving the dispute the issue are as follows.

1. Can a benefit available be denied with retrospective effect ?

The respondents have issued the circular dt 17.12.2015 reducing the points to be secured to be considered for compassionate appointment from 51 to 36. The request of the applicant was reconsidered on the directions of the Tribunal on 15.7.2016. Hence the instructions prevailing on the date of reconsideration have to be followed. Not doing so is surprising to note. This is a well settled principle of law. Hon'ble Supreme Court has observed in ***High Court of Delhi & anr v A.K. Mahajan & ors*** in CAs No.6397-6398 of 2001, that:

23. The law regarding the retrospectivity or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone such rules would not be permissible to the extent of retrospectivity.

The revised relaxed guidelines were issued on 17.12.2015. The order prohibiting consideration of closed cases was issued on 12.8.2016 retrospectively denying a benefit extended by the Ir dt 17.12.2015. Therefore the action of the respondents is against the Supreme Court observation cited.

2. Can one claim compassionate appointment as a matter of right ?

Definitely not. However, the claim of the applicant to be considered for compassionate appointment cannot be denied. Hon'ble Supreme court in MGM Gramin Bank Vs. Chakrawarti Singh in Civil Appeal No. 6348/2013 observed as under:

"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 a 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 i.e. 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."

The last part of the judgment cited above, is supportive of the cause of the applicant in that the provisions of the revised guidelines issued on 17.12.2015 have to be applied, which is indeed the request of the applicant. Therefore, based on the above observations of the Hon'ble Supreme Court request of the applicant for compassionate appointment requires consideration.

3. Besides the respondents pointed out that the applicant in his representation dated 8.1.2011 has informed that his mother died on 25.12.1985 and therefore the representation made in the name of the mother on 17.10.2016 is not genuine. This was answered by the applicant in the rejoinder that his father remarried after his mother died in 1985 and that the step mother has represented for compassionate recruitment of the applicant.

Therefore based on the above, the action of the respondents is not as per law.

Hon'ble Supreme Court judgment in *Umesh Kumar Nagpal v State of Haryana & Ors.*,

[1994] 4 SCC 138 has observed that compassionate recruitment has to be offered based on the financial conditions of the family. The applicant is eking out his living as a coolie. The wages so earned would not be adequate to make both ends meet. Nevertheless, only a submission of the applicant will not do, but it has to be verified by deputing a responsible officer.

8. Considering the facts expounded above and as per law, the applicant has made out a case which succeeds. The impugned order dated 12.8.2016 is quashed. Consequently, the O.A. is allowed and respondents are directed to consider the case of the applicant as under:

- i) To depute a responsible officer to assess the indigent circumstances in which the applicant is placed and the report submitted be placed for consideration of the circle relaxation committee as per extant rules in vogue.
- ii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iii) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

pv