

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

Original Application No. 20/163/2017

Date of Order: 19.02.2019

Between:

P. Mallikarjuna, S/o. late P. Seshedri,
Aged 45 years, Occ: GDS MD, Upparapalle,
BO, Tuggali SO, Kurnool Division,
Kurnool District, AP.

... Applicant

And

1. Union of India, Rep. by
The Director General (Posts),
Department of Post, Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle, Dak Sadan, Abids,
Hyderabad – 500 001.
3. The Postmaster General,
A.P. Southern Region, Kurnool,
Kurnool – 518 002.
4. The Superintendent of Post Offices,
Kurnool Division, Kurnool – 518 002.
5. The Sub Division Inspector,
Dhone Sub Division, Dhone, Kurnool, A.P.

... Respondents

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

Counsel for the Respondents ... Mr. T. Hanumantha Reddy, Sr. PC for CG

CORAM:

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

ORAL ORDER

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

2. Applicant aggrieved for not being considered for compassionate recruitment has filed the OA.

3. Applicant's father while working for the respondents organisation left for the heavenly abode on 26.5.2012 leaving behind four of his loved ones. With the breadwinner's demise, applicant represented on 1.7.2012 for compassionate appointment as Grameen Dak Sevak Mail Delivery Agent (GDSMDA) which was rejected by the respondents vide lr dt 12.6.2013 on grounds that he secured less than 51 marks, the bench mark set to be appointed on compassionate grounds. Disheartened on being rejected, applicant knocked the door of this Tribunal vide OA 982/2013 wherein respondents were directed to reconsider the case of the applicant. Once again Circle Relaxation Committee (CRC), which is the competent body to process compassionate cases met and rejected the request of the applicant on 10/11.1.2017. Applicant claims that this decision is against the orders of the Tribunal dt 28.7.2016. Left with no other alternative, the applicant has re-approached this Tribunal seeking succour and relief.

4. Applicant asserts that the order of this Tribunal in OA 982/2013 to apply the revised guidelines contained in lr. dt 17.12.2015 and consider him for compassionate recruitment was disregarded. Impugned order is unreasonable. Therefore, he prays for justice to be rendered.

5. Respondents inform that the applicant is working as a daily worker with an annual income of Rs 45,000. He has a brother who is paralytic. The family of the deceased employee does not have any movable or immovable property. Applicant is presently working as substitute GDS in Upparapalli Branch Post

Office and continues to work in the said post in view of an interim order of this Tribunal 03.03.2017. His application for compassionate appointment was rejected by the CRC on 12.6.13 as he secured only 36 points against the required 51 points on relative merit basis. Also there is no provision for awarding marks towards medical expenses while considering for compassionate appointment, as sought by the applicant. Awarding of points for various attributes prescribed is as per rules on the subject. Respondents further inform that the applicant's request was reconsidered as per directives of the Tribunal in OA 982/2013 by the CRC on 10.1.2017 and rejected it based on Directorate letter dt 10.6.2016 which postulated that the relaxed provisions of letter dt. 17.12.2015 will not be applicable to cases closed prior to 17.12.2015. As per Hon'ble Apex Court judgment in MGB Gramin Bank v Chakrawarti Singh in SLP No.13957/2010, applicant is precluded to claim compassionate recruitment as a matter of right. Besides, in case a 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 of cause of action ie death of applicant's father. In such a situation the case under the new scheme has to be considered. Hence there is no merit in the case and the OA deserves forthright dismissal.

6. Heard both the counsel whose arguments resonated the written submissions made. Perused the records and the material papers submitted.

7. A. If a memory recall of the instructions issued by the 1st respondent is made, it would be crystal clear that as per clause 3 & 5 of the revised guidelines of compassionate recruitment issued vide lr dt 17.12.2015, the cut off date will be date of death of the GDS if there were to be an eligible member in

the family on the date of death of the employee. More importantly, the revised threshold to be considered for appointment was fixed as 36 points. Applicants father breathed his last on 26.5. 2012 and on that date the applicant was eligible to be considered. Accordingly this Tribunal ordered for reconsideration of the case of the applicant for compassionate appointment in OA 982/2013 on 28.7.2016 as per extant guidelines contained in letter dt.17.12.2015. Instead of doing so, respondents again negated the request on 10.1.2017 by taking recourse to the letter of 1st respondent dt 10.6.2016, wherein it was adduced that cases closed prior to issue of lr dt 17.12.2015 shall not be reopened. The case of the applicant was not closed as there was a directive from the Tribunal to reconsider the case afresh on 28.7.2016. The proper course open to the respondents was to reconsider the case of the applicant as per the revised guidelines. True to speak, respondents are estopped from rejecting the case based on the rejection letter of the respondents dt 12.6.2013. Doctrine of estoppel effectively operates against them. This was a conspicuous error committed by the respondents due to lack of proper appreciation of the order issued by this Tribunal. In a way, it would tantamount to contempt of this court. Nevertheless, we construe it as an honest mistake in understanding the import of the order of this Tribunal and therefore would not like to delve on it further.

B. That apart , Hon'ble Supreme Court has observed in its judgment dt. 15.05.2009 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 10.6.2016 retrospectively denying a benefit extended by the letter dt 17.12.2015.

C. Thus the action of the respondents in not considering the request of the applicant in accordance with revised norms laid out in letter dt 17.12.2015, is in violation of the above stipulated legal principle. We agree that the compassionate recruitment cannot be claimed as a matter of right as pointed by the respondents quoting Honourable Supreme Court judgment in MGB Gramin Bank v Chakrawarti Singh. At the same time, it has to be pointed out the applicant has every right to be considered for appointment. This right has been denied to the applicant by quoting the letter dt 10.6.2016. This is illegal. As per Honourable Supreme Court observation in R.S. Mittal Vs. UOI reported in 1995 SCC (Suppl.) (2) 230, JT 1995 (3) 417, the applicant has no vested right to be appointed to post, but he has a right to be considered for appointment.

D. Based on the above observation of the Honourable Supreme Court, the applicant's undeniable right to be considered has to be respected. More so, when this Tribunal has ordered to do so in OA 982/2013 on 28.7.2016. In fact, 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.”

Above decision is supportive of the cause of the applicant as the provisions of the revised guidelines issued on 17.12.2015 have to be applied, which is indeed the request of the applicant.

E. Besides, this Tribunal in an identical case has directed the respondents in OA 1140/2016 to reconsider the request for compassionate recruitment applying the relaxed provisions of the lr dt 17.12.2015 of the 1st respondent. Hence the case is fully covered warranting an assertion that the decision of the respondents to reject the case does not possess legal legs to stand.

F. Resultantly, based on the aforesaid facts and the legal principles laid down by the Hon'ble Apex Court stated in paras supra, the applicant has made out a case which fully succeeds. The action of the respondents is arbitrary, illegal and unreasonable. Hence the respondents are directed:

- i) To reconsider the request of the applicant as per revised guidelines of Director General Of Posts orders issued vide letter No. 17-17/2010-GDS dt. 17.12.2015 by taking into consideration the respondents submission in the reply statement that the applicant has secured 36 points.
- ii) If found fit to be selected for the post of Gramin Dak Sevak Mail Delivery Agent, as per the new guidelines dt.17.12.2015, the notional seniority of the applicant shall be fixed from 10.1.2017, the date on which the earlier CRC met and issued the impugned order. His pay shall be fixed as per notional date of appointment. No back wages need to be paid to the applicant from 10.1.2017 till the date of his joining the said post, on being considered and cleared by the CRC.

- iii) Time permitted to implement the order is confined to 60 days from the date of receipt of this order, in view of the fact that the present OA being the second round of litigation.

G. Before parting, it would be pertinent to advise the respondents to carefully and cautiously study the orders of the Tribunal before taking a decision, in view of the serious folly we have observed in the respondents understanding of the essence of the judgment of this Tribunal in OA 982/2013.

H. With the above observations the OA is allowed. Parties will bear their own costs.

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

Dated, the 19^h day of February, 2019

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