

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.290/00092/2018

Reserved on : 10.01.2019
Pronounced on : 15.01.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Gaurav Chauhan s/o Late Shri Shaitan Singh Kharwal, aged about 21 years, resident of 21-E/164, Chopasni Housing Board, Jodhpur- 342008, his late father was last employed as Sorting Assistant in RMS HRO ST Division, Jodhpur.

...Applicant

(By Advocate: Shri J.K.Mishra)

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communication and IT Dak Bhawan, Sansad Marg, New Delhi- 110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur- 302007.
3. The Superintendent RMS, ST Division, Jodhpur- 342001.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

(i) That impugned order dated 14.9.2017, passed by 3rd respondent, annexing 2nd respondent's dated 13.9.2017, (Annexure A-1) may be declared illegal and the same may be quashed. The respondents may be directed to re-consider the case afresh of applicant for appointment on compassionate grounds, on a suitable post, in accordance with the rules and guidelines in force especially in relation to the attributes of moveable/immoveable property as per the verdict in case of P.Chinna and Anr. vs. The Senior Superintendent of Post Offices and Ors. and he may be allowed consequential benefits.

2. Brief facts of the case, as stated by the applicant, are that father of the applicant died in harness due to cancer on 5.6.2016 leaving behind his widow, two sons and two daughters. Out of these, one son and one daughter were minor. One daughter was already married during the life time of the deceased employee. Applicant is studying in B.Sc. and is unemployed. It is the case of the applicant that nobody is employed in the family and the family is left in indigent condition having no source of income except meagre family pension granted to the mother of the applicant. The family is only having a small ancestral house of about 150 square yards, which is in the name of the father of the deceased, who had four children. Father of the deceased employee also had 1/3 share in the landed property including a constructed house. The mother of the applicant owns a house which is valued at Rs. 10,44,453. It is averred that an amount of Rs. 19,98,345 was paid as terminal benefits i.e. DCRG, GPF, Insurance etc. and Rs.

35,000 as Insurance to the mother of the applicant. The mother of the applicant has been sanctioned family pension of Rs. 24,500 per month. Since the mother of the applicant is illiterate lady, she is unable to seek any employment. Therefore, mother of the applicant has submitted an application to respondent No.2 for considering the present applicant for compassionate appointment, but the case of the applicant has been turned down vide letter dated 13.9.2017. It is further averred that the applicant has secured 47 points and the last recommended candidates by the Circle Relaxation Committee (CRC) for PA/SA, Postman and MTS cadre secured 50 points, 50 points and 48 points respectively. It is the grievance of the applicant that under the head moveable/immoveable property, the applicant has been given zero points whereas he should have been allotted 5 points and in case the said 5 points are added, the applicant would definitely get 52 points, but the respondents under the caption of total property valuation have shown zero points, which is completely unfair and unjustified. It is further stated that at the time of death of the deceased, two minor children were there but only one has been shown and awarded only 5 marks. Therefore, he has filed the present OA with the prayer that his case may

be reconsidered afresh by the respondents for compassionate appointment.

3. The respondents have filed their reply dated 5.7.2018 and have stated that the CRC considered the case of the applicant along with 56 such cases against 11 vacancies of PA/SA, 03 vacancies of Postman and 06 vacancies of MTS cadre on 28.8.2017 for the year 2016-17. The CRC though considered the case of the applicant, but has not recommended the case of the applicant and the said decision has been conveyed to the applicant vide letter dated 14.9.2017. It is the case of the respondents that they have correctly assessed the case of the applicant and have shown that the family has its own house having value of approx. 10,44,453 and land value of Rs. 6,39,824. It is the case of the respondents that Directorate letter dated 20th January, 2010 clearly provides that if the value of moveable/immoveable property is above 10 lakhs, then the marks should be given zero. In the present case, moveable/immoveable property of the applicant's family is 16,84,277 which is above 10 lakhs, therefore, zero marks has been provided to the applicant under the head moveable/immoveable property. It is also made clear by respondents that the marks have been awarded on the

basis of valuation of moveable/immoveable property and not on the basis of earning from the property land. Therefore, according to the respondents, there is no infirmity in considering the case of the applicant by the CRC. The CRC has taken into consideration several factors and thereafter have come to the conclusion about not recommending the case of the applicant.

4. Heard Shri J.K.Mishra, learned counsel for the applicant and Shri K.S.Yadav, learned counsel for the respondents and perused the material available on record.

5. Besides reiterating the submissions made earlier, the grievance of the applicant is that had there been at least granted marks under the caption of total property valuation, then the applicant could have got 52 marks instead of 47 marks and his case could have been considered for compassionate appointment. Therefore, his grievance is that the respondents should reconsider the case of the applicant afresh for a suitable post in relation to the marks allotted for moveable/immoveable property. The applicant has relied upon the judgment dated 30th May, 2017 passed in OA No.652/2015 by the Ernakulam Bench of the Tribunal in the case of P.Chinnu and Anr. vs. Senior

Superintendent of Post Offices and Ors. and specific reliance is drawn on para-8 of the said judgment in relation to moveable/immoveable property. He, therefore, states that in case 5 marks are given to him by the respondents, then his case can be considered for compassionate appointment. Further case of the applicant is that while considering the case of the applicant, the CRC has not awarded the points correctly under the clause (g), "No. of Minor Children", since at the time of death of the deceased employee, there were two minor children and accordingly, he should have been granted 5 more marks in the said attribute.

6. On the other hand, the respondents have clarified that marks granted under various attributes are as per the Directorate letter dated 20th January, 2010 and, therefore, since the valuation of the moveable/immoveable property is above 10 lakhs, zero marks has rightly been awarded to the applicant. The CRC also taken into consideration various factors while assessing the financial condition of the family and, therefore, the marks have rightly been attributed to the applicant. The respondents have relied upon the judgment of Punjab National bank & Ors vs. Ashwimi Kumar Janeja (Civil Appeal No.5256/2004), State Bank of India and Ors. vs. Somvir Singh (Civil Appeal No.743/2007) and

Umesh Kumar Nagpal vs. State of Haryana and Ors., JT 1994 (3) SC 525. The respondents have also relied upon the judgment in DB Civil Writ Petition No.562/2009 decided on 10.5.2018 – Narendra Singh Rajawat vs. UOI and Ors.- wherein the Hon'ble High Court dismissed the Writ Petition stating that the marks allotted by the CRC are justified and the order of the Tribunal was upheld. The respondents have further contended that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds, but can merely direct consideration of the claim of such an appointment and that compassionate appointment cannot be claimed as a matter of right.

7. Considered the rival contentions of both parties.
8. It is not disputed that father of the applicant expired on 5.6.2016 and while considering the case of the applicant for compassionate appointment, most of the marks allotted to the applicant under various heads are not in dispute, except that of total property valuation and number of minor children. It is case of the applicant that the immoveable property belongs to the father of the deceased employee which is about 150 Sq. Yd. and the share of the applicant

was notionally valued at Rs. 6,39,824/-. It is also the fact that the mother of the applicant owns house, which is valued at Rs. 10,44,453. In this regard, the grievance of the applicant seems that if the ancestral property is divided into 4 parts including his father, then his family share would be only $1/4^{\text{th}}$ and, therefore, the respondents are not justified in allotting zero marks to the applicant. In support of his contention, the applicant has relied on the case of P.Chinnu (supra), wherein the Tribunal was of the view that if the applicant has own house only and no land of their own, the respondents ought to have awarded 5 points to the applicant as per the scheme. Further contention of the applicant is that if the respondents have awarded more points under "No. of minor children", he could have been selected for appointment on compassionate grounds. Considering the above facts and circumstances, I am of the view that it would be appropriate, if the respondents re-consider the case of the applicant in the next meeting of the CRC on the basis of vacancies, in accordance with the provisions and rules on the subject. So far as the case of Narendra Singh Rajawat cited by respondents is concerned, on going through the judgment, it is clear that in the said judgment, though the family was having its own house, but

was also having landed property and they were deriving income from the same, which is not in the present case, therefore, the Hon'ble High Court while agreeing with the view of the Tribunal found no infirmity in the impugned order and accordingly, the W.P. was dismissed. But in the present case, the family except its own house has no agriculture income from the land.

9. Accordingly, on the basis of the observations made above, the OA is disposed off with a direction to the respondents to reconsider the case of the applicant as per rules on the subject in the next meeting of the CRC along with other such cases, and pass appropriate orders.

10. The OA stands disposed off in above terms with no order as to costs.

(HINA P.SHAH)
Judl. Member

R/