

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00819/2015

Dated Thursday the 19th day of July Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)

K.Pandiselvam,
No. 17A, Sivan Street II,
Sellur, Madurai 625002.Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India rep by the
Director (Staff),
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan, Parliament Street,
New Delhi 110001.

2.The Chief Postmaster General,
Anna Salai,
Chennai 600002.

3.Senior Superintendent,
Railway Mail Service (RMS),
'MA' Division, Madurai 625001.

4.Head Record Officer,
RMS 'MA' Division,
Madurai 625001.Respondents

By Advocate Mr. J. Vasu

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "i. To call for the records of the 2nd respondent pertaining to his order which is made in memo no. REP/34-OA 963/2012 dt. 28.08.2014 and set aside the same consequent to,
- ii. Direct the respondents to appoint the applicant on compassionate grounds in any one of the posts on considering his educational qualification with all attendant benefits and
- iii. To pass such further orders as this Hon'ble Tribunal may deem fit and proper. "

2. The applicant is aggrieved by Annexure A6 order dated 19.06.2012 by which his request for compassionate appointment was rejected on the following grounds:

- i. Less indigent as per Relative Merit Points.
- ii. Non availability of 5% Direct Recruitment Vacancy.

It is submitted that the order was challenged in OA 963/2012 which was disposed of by this Tribunal on 06.06.2014 with a direction that the respondents should consider the case of the applicant for the vacancies of the subsequent years and decide on the prayer of the applicant for compassionate appointment and give priority to the case having regard to the fact that he had a differently abled brother to look after and also differently abled son which could not be captured by the Relative Merit Point (RMP) system and to that extent, the system had a limitation. The respondents were also directed to consider the fact that keeping in view the

penury of the family, the applicant was engaged as a casual labourer in the office of the 5th respondent from 2000 to 2007 and thereafter, as GDS(substitute) in which capacity he had been working till date. The authorities passed Annexure A8 order dt. 28.08.2014 in compliance thereof by which the applicant's case was rejected once again along with the observation that his case would be placed again before the next Circle Relaxation Committee meeting ie., when it met for the vacancies of the subsequent years along with other cases. Aggrieved by the said order, the applicant is before this Tribunal.

3. Learned counsel for the applicant would submit that indisputably, the applicant had two differently abled dependants to take care of and the family also lived in utter penury. It is on account of this that the applicant had been engaged as a casual labourer and then as GDS (substitute). The impugned order had been passed in violation of the direction contained in Annexure A7 order of this Tribunal dt. 06.06.2014 as it fails to consider and award merit points for dependency of two disabled persons in the family of the applicant, as also the fact that the penury of the family had been assessed at the relevant time in 1999 itself and it was only on being satisfied that the applicant had been granted appointment as casual labourer and later as GDS. It is submitted that the respondent department had suspended compassionate appointments during the period of 2000 to 2010 on the plea that the same was sub-judice and only in the year 2012 such

cases were considered. It is not the applicant's fault that inspite of being assessed to be in penury and to be entitled to compassionate appointment at the relevant time, he was not granted the same and therefore, the allocation of relative merit points on the basis of the current situation of the family was not correct. He would, however, fairly submit that the condition of the family had not undergone substantial change between 1999 and 2012 in terms of the number of dependent children or income from other sources and, therefore, the factors taken into account for awarding merit points could be considered to be reflective of the condition of the family even at that time.

4. Learned counsel for the respondents would, however, vehemently oppose the plea of the applicant pointing out that the applicant had secured only 61 relative merit points (RMPs) against 91 secured by the last selected candidate in the MTS cadre. There were 97 candidates between the last selected candidate and the applicant with relative merit points between 62 to 90. As such, any appointment to the applicant overlooking the claims of families in much worse financial condition would be a travesty of justice. As for the claim that the applicant had been engaged as casual labourer and GDS, he would submit that this by itself would not enhance the claim of the applicant as he could only be considered along with present claimants. In any case, the applicant's claim had not been finally rejected as

it would be placed before the CRC for the subsequent years and, therefore, no interference is warranted, it is submitted.

5. I have considered the facts of the case. It is not in dispute that the applicant had agitated the very same grievance in the previous round of litigation in OA 963/2012 which was disposed of by a detailed and reasoned order by this Tribunal. It was observed that in the facts and circumstances of the case and the legal position set out therein, it was not possible to give a direction to the respondents to appoint the applicant on compassionate grounds. However, keeping in view the withdrawal of time limit for compassionate appointments, the respondents were directed to consider the case of the applicant and decide on the prayer of the applicant for appointment by giving priority to his case having regard to the fact that he had a differently abled brother and a differently abled son which would not be captured in the RMP system and as such, the system had a limitation. It was also directed that the fact that it was the respondents themselves who in the light of the penury of the family had engaged the applicant as casual labourer in the office of 5th respondent from 2000 to 2007 and thereafter, as GDS (substitute) till date should be considered.

6. The applicant does not dispute the relative merit points awarded to him in terms of any change in the financial condition of the family between 1999 to 2012/2014. As such, it appears that even if the financial condition of the family as at the time of his application for compassionate

appointment was taken into account, he would not have scored higher RMPs. Further, even if as contended by the applicant, some merit points are awarded for two differently abled dependent persons, say 10 points for each, though not provided in the scheme, the applicant's aggregate RMP could only go up to 81 which would still be insufficient as the RMP of the last selected candidate was 91. Accordingly, I am of the view that the applicant's prayer for setting aside the impugned order could not be accepted.

7. At this stage, learned counsel for applicant would submit that while the respondents have failed to take into account the fact that the applicant was engaged as casual labourer initially and GDS(substitute) later for the purpose of granting compassionate appointment on the ground that there is no provision in the scheme for such consideration, the least they could have done was to at least continue him in that capacity. However, for the simple reason that the applicant filed OA 963/2012 seeking compassionate appointment, he was disengaged even as GDS (substitute) w.e.f. 22.04.2015, which order was issued after the disposal of OA 963/2012 by this Tribunal on 06.06.2014. Accordingly, the respondents be directed to re-engage the applicant as GDS (outsider), it is urged.

8. Learned counsel for respondents would, however, submit that it is not correct to say that applicant was disengaged because of the litigation initiated by him. He was only engaged as a GDS substitute. GDS

substitutes are not continued regardless of the need but appointed when there is vacancy and disengaged the moment the vacancies ceased to exist.

9. Looking at the facts and circumstances of the case and the clear observation of this Tribunal in the previous round of litigation that RMP system failed to capture such factors as differently abled dependents as also the fact that only on being satisfied about the penury of the family that the applicant was engaged as casual labourer /GDS (substitute), I am of the view that the respondents ought to give a serious consideration to re-engage the applicant on priority whenever a vacancy arises. The respondents shall, in any case ensure that no person who had been first engaged as a substitute after the date of engagement of the applicant is granted priority over the applicant when a need for such substitute arises.

10. OA is disposed of with the above observations. No costs.

(R. Ramanujam)
Member(A)
19.07.2018

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