

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

JABALPUR

Original Application No.203/00667/2017

Jabalpur, this Friday, the 25th day of January, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Nitin Kumar Nitinware S/o Late Shri R.N. Nitinware
Ex-Postal Assistant, Aged about 32 years, Qr. No.1 Block
No.3 Sector -6 Street No.48 Bhilai, District Durg
Chhattisgarh 490008 (9329611327) -Applicant

(By Advocate –Shri Ravi Kumar Bhagat)

Versus

1. Union of India, Through the Secretary Ministry of Communication and Information Technology Department of Posts Dak Bhawan New Delhi PIN No.110001
2. The Chief Post Master General, Chhattisgarh Circle, Raipur Chhattisgarh 492001
3. The Deputy Director of Staff (Postal) Chhattisgarh Circle Raipur District Raipur Chhattisgarh 492001
4. The Superintendent Head Post Office, Durg District Durg Chhattisgarh 490008
5. Member Chhattisgarh State Scheduled Caste and Scheduled Tribe Commission Raipur Chhattisgarh 492001
6. Ratnesh Kumar Mishra S/o Late Shri Rajesh Kumar Ex. P. A. Pachripara Ward No.28 Durg Chhattisgarh 490008

(By Advocate –Shri Vivek Verma)

(Date of reserving the order: 24.09.2018)

O R D E R**By Ramesh Singh Thakur, JM:-**

In this Original Application the applicant has challenged the order passed by the respondent No.3 vide its order dated 16.04.2004 (Annexure A/1) and letter dated 31.07.2017 (Annexure A/2).

2. The applicant has sought of the following reliefs:-

“8.1 That this Hon’ble Court may kindly be pleased to call for entire records from the respondents.

8.2 That, this Hon’ble Tribunal after perusing the entire record be pleased to quash the termination order Annexure A/1 passed dated 16/04/2004.

8.3 That, this Hon’ble Court may kindly be pleased to issue an appropriate writ/order/direction in the nature of mandamus/certiorari for quashing the order impugned i.e. dated 31/07/2017 Annexure A/2.

8.4 That, Hon’ble Court may kindly be pleased to issue an appropriate writ/order direction in the nature of mandamus/certiorari directing the respondents to consider the petitioner for appointment under compassionate basis, as has been done in the case of respondent No.6 by the respondent-department.

8.5 Any other relief which this Hon’ble Court may deem fit and proper may also be passed in favour of the petitioner.”

3. The facts of the case is that the applicant is aggrieved and dissatisfied by the order passed by the respondent No.3 for not considering the applicant for compassionate appointment to the bereaved family. During service tenure applicant's father died in harness. The applicant's father was serving as Postal Assistant in the Department of Postal Services, under the jurisdiction of Head Post Office Durg and died in harness on 01.02.2000. The application filed by the applicant on 27.12.2000 for grant of compassionate appointment was considered and rejected by the respondents vide order dated 16.04.2004. Thereafter another representation dated 17.08.2004 was filed by the applicant's mother which was disposed of by the respondents vide their communication dated 16.02.2006, wherein it was stated that Circle Relaxation Committee (for short 'CRC') had considered his case and rejected it, about which applicant was informed vide their communication dated 16.04.2004 and 09.12.2004. The applicant's mother thereafter filed another application on

15.04.2011, asking respondents to reconsider the case. Accordingly the respondents reconsidered her case in terms of DoPT's OM dated 05.05.2003 and it was communicated to her that her case was reconsidered and no justification was found to put this matter before the next CRC committee. She was further informed that her case has been finally closed. Further the case of the applicant is that to the utter surprise of the applicant, one other employee Late Rajesh Kumar Mishra also died and in his case CRC in its meeting held on 27.05.2011 provided compassionate appointment to his 'son' (herein respondent No.6) vide appointment order dated 30.05.2011. Further the case of the applicant is that he approached Chhatisgarh State Scheduled Caste Commission, Raipur alleging discrimination against him in the matter of grant of compassionate appointment. The applicant has approached the Tribunal in O.A. No.203/1137/2015 and the same has been disposed of with liberty to the applicant to approach the respondents in

consequence of the order passed by Chhattisgarh State Scheduled Caste Commission recommendation dated 20.04.2015. Thereafter the applicant has preferred detailed representation to the respondent-department vide its letter dated 23.02.2016 and the same was not considered. The applicant has also preferred contempt case No.57/2016 which has been withdrawn. Now the respondent department has decided the representation made by the applicant vide letter dated 31.07.2017 (Annexure A/2).

4. The respondents have filed their reply in the preliminary submissions and it has been submitted by the replying respondents that Shri R. N. Nitinware Ex.Postal Assistant Durg Division died on 01.02.2000. He was due for his superannuation retirement on 31.07.2000. He left one son of 18 years and daughter of 24 years and his wife. All the two children were unmarried. Applicant is studying in Class 10. The family pension of Rs.4771/- is being paid. As such the family is not found to be in an indigent condition in comparison to 91 cases placed before the

CRC meeting held on 13.02.2004. The applicant has applied for the compassionate appointment in 2001. The case of compassionate appointment of the applicant was considered by CRC in its meeting held in February 2004 and rejected on the grounds that (i) terminal benefits of Rs.383127/- was paid to the family; (ii) the family is getting pension Rs.4471/- per month; (iii) MIS interest is getting Rs.1080/- per month; (iv) there was no minor children dependent in the family. So, the family is not found in indigent condition as compared to 91 more cases kept for consideration before the CRC. The vacancy for compassionate appointment quota was only one in Group D and two in Group C and as such the case of the applicant was not found as most deserving case among 91 cases kept for consideration. So the applicant could not find place for selection on compassionate ground. Therefore the decision of the CRC not accepting his claim for compassionate appointment was communicated to the applicant vide office letter dated 16.04.2004. It has been further

submitted by the replying respondents that the applicant who is not in a condition to write even an application, who merely signs such appeals/complaints drafted by a habitual complaint writer.

5. It has been further submitted by the replying respondents that the applicant approached the CAT in the same case and filed an O.A. No.203/1137/2015. The CAT decided the O.A. on 18.12.2015 and disposed of with liberty to the claimant to approach the respondents-department in consequence of the order passed by the Chhattisgarh State Scheduled Caste Commission in the matter. The applicant then submitted an application dated 23.02.2016 in order to comply with the order dated 18.12.2015 passed by the CAT. The case of the applicant was reconsidered by the CRC meeting held on 24.07.2017. The committee reconsidered the case as per the recommendations given by the Chhattisgarh State Scheduled Caste Commission. The Committee observed that the earlier claim of the applicant was considered by

the CRC in its meeting held on 13.02.2004 in accordance with the prevailing rules and the instructions issued by the Department of Personnel & Training (DoPT) and his case was rejected. It has been submitted by the replying respondents that as per rules/instructions on the subject, only 5% of the direct recruitment quota vacancies were to be filled up on compassionate ground from amongst the most deserving claimants. The committee does not recommend the claim of the applicant and was communicated to him vide office letter dated 31.07.2017. The replying respondents has further submitted that the case of the applicant was considered in the year 2004 and was duly intimated to the applicant vide order dated 16.04.2004. Further, the authority vide letter dated 6.02.2006 intimated to Smt. Vimala Nitinware regarding the case of the applicant which was already disposed of. The authority again vide letter dated 06.05.2011 intimated that the case of the applicant has already been disposed of. It has been submitted by the replying respondents that the

applicant again filed representation before the authority on 17.08.2004 which was disposed of and communicated to him on 06.02.2006. It has been submitted by the respondents that the applicant was silent from 09.12.2004 to till 2010 and again made an application on 15.04.2011 for reconsideration of his case and the respondent-authority informed the applicant that his case is duly considered. It has been further submitted by the replying respondents that CRC meeting was held on 27.05.2011 at Circle Office Raipur for appointment on compassionate ground for 6 vacancies available and total 22 applications were received for compassionate appointment including the respondent No.4 i.e. Shri Ratnesh Kumar Mishra and as per the weightage secured/relative merit point allotted to the applicant's case and on the basis of criteria framed by department and as per the eligibility of applicant the CRC has recommended the most deserving cases of the applicant and respondent No.4 secured 60 marks and thereafter the case of the applicant has been considered on

the basis of the criteria framed by the respondents. A copy of the minutes of meeting dated 27.05.2011 is attached as Annexure R/2. It has been submitted by the replying respondents that the applicant has filed the Office Memorandum dated 24.11.2002 issued by the Government of India, Ministry of Personnel/Public Grievance and Pension (DoPT) regarding appointment on compassionate ground/termination of service and other scheme for compassionate appointment on relative merit points and procedure for selection dated 20.01.2010 has been circulated. The replying respondents has also submitted that the Chhattisgarh State Scheduled Caste Commission Raipur has only recommended the case of the applicant for reconsideration and the applicant has also preferred O.A. No.203/1137/2015 and the same has been disposed of by the Tribunal on 18.12.2015 with liberty to approach the respondent in consequence of the order passed by the Chhattisgarh State Scheduled Caste Commission. Subsequently the authority in compliance of the order

dated 18.12.2015 passed by the Tribunal the case of the applicant was placed before the CRC meeting dated 24.07.2017 and rejected the application of the applicant which was communicated to him on 31.07.2017.

6. The replying respondents have further submitted that the impugned order dated 27.05.2015 is as per the criteria fixed by the Government of India and respondent No.6 got the secured 60 merit point and thereafter the case of the respondent No.6 was considered. It has been specifically submitted by the replying respondents that the applicant has not secured minimum merit point as per the scheme. The replying respondents have denied the discrimination in getting compassionate appointment because the matter in respect of compassionate appointment has been placed before the CRC committee, then the committee used to decide the case of each applicants as per the criteria fixed by the Government of India.

7. We have heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

8. In the pleadings, it is clear that the father of the applicant died on 01.02.2000. There is no dispute that the father of the applicant has left one son of 18 years and daughter of 24 years and his wife. It is also clear from the reply that the family of the applicant has received the terminal benefits, family pension, MIS interest etc. There is no dispute regarding the application for appointment on compassionate ground by the applicant. It has come in the reply of the replying respondents that the respondents have considered the case of the applicant along with more 91 cases kept for consideration before the CRC. The decision of the CRC was taken and the case of the applicant was not accepted for compassionate appointment which was duly communicated to the applicant vide letter dated 16.04.2004. It is also not disputed by the parties that the applicant has approached the Chhattisgarh State Scheduled

Caste Commission in the matter and the commission vide letter dated 20.04.2015 (Annexure A/7) has sent the case to the replying respondents for reconsideration for appointment on compassionate ground. It is also admitted fact that the applicant had earlier filed O.A. No.203/01137/2015 before this Tribunal which was disposed of with liberty to the applicant to approach the respondents in consequence of the order Annexure A/4 passed by the Chhattisgarh State Scheduled Caste Commission in this matter. From the reply itself it is very clear that the respondent-department has reconsidered the application dated 23.02.2016 submitted by the applicant in order to comply the order dated 18.12.2015 passed by this Tribunal in O.A. No.203/1137/2015. It has come in the reply that an amount of Rs.383127/- was paid to the family as a terminal benefits, Rs.4471/- per month is being paid as a family pension and MIS interest of Rs.1080/- per month is also being paid to the applicant. On reconsideration of the case of the applicant, the claim of

the applicant was rejected and was communicated to the applicant on 31.07.2017. As per Annexure A/2, the respondent-department has passed the order and the applicant was communicated to the fact that the case of the applicant was considered in the meeting held on 24.07.2017 and the committee has not recommended the case of the applicant for compassionate appointment. The respondent department has also clarified the position regarding the CRC meeting which was held on 27.05.2011 and it has been specifically submitted by the replying respondents that Shri Ratnesh Kumar Mishra (respondent No.6) was recommended as per the weightage secured/relative merit point allotted to him. On the basis of criteria firmed by the department and as per the eligibility of applicant the CRC has recommended the most deserving cases of the applicant and respondent No.6 secured 60 marks.

9. The applicant has failed to proof the fact that there is wrong calculation regarding the merit point on behalf of

the respondents. So, the presumption lies in the favour of the respondents that the selection process made by the respondent-department on the recommendation made by the CRC is correct until and unless it is challenged and proved arbitrary or malafide.

10. In view of the above we do not find any reasons to interfere with the action of the respondent-department.

11. Resultantly this O.A. is dismissed. No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

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**(Navin Tandon)
Administrative Member**