

-Central Administrative Tribunal

Madras Bench

OA/310/00315/2016

Dated 3 day of June, Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. T. Jacob, Member(A)

P. Murali,
GDS MM,
SRO-RMS-M Dn,
Gandhi Nagar,
Vellore 632 006.
By Advocate **M/s. K.C.Karl Marx**

.. Applicant

Vs.

1. Union of India, rep by the
Chief Post Master General,
Tamil Nadu Circle,
Chennai 600 002.

2. The Superintendent of Post Offices,
RMS 'M' Division,
Chennai 600 031.

By Advocate **Dr. G. Krishnamurthy**

.. Respondents

ORDER

[Pronounced by Hon'ble Mr. T. Jacob, Member(A)]

The applicant has filed this OA seeking the following relief:-

"To call for the records pertaining to the orders passed by the 2nd respondent in No.C.15/Rectt/Relax/dlgs/10 dated at Chennai 600 008 the 17.4.2012 and set aside the same and consequently direct the respondent to consider the applicant's application for appointment on compassionate grounds on par with his juniors w.e.f. the date of his initial appointment with all service benefits.

To pass such further or other orders as this Tribunal deems fit and proper in the circumstances of the case and thus render justice."

2. The brief facts of the case according to the applicant are that the applicant is the son of an employee of the Postal department who retired on medical invalidation from service on 22.02.1991. He was selected as an approved Group-D candidate on the ground of compassionate appointment to work as Group- D on leave vacancies from 26.10.1993. He was offered GDS MM on 19.7.2002 at SRO Gandhi Nagar in the existing vacancy of Katpadi RMS. The applicant made several representations to the respondents, the one among which is dated 17.12.2011, seeking appointment as MTS to extend the benefit of relaxation of Recruitment Rules to candidates who had not approached the court. The 2nd respondent by impugned order 17.4.2012 rejected the claim of the applicant stating that while accepting the offer of GDS post, the applicant has given a declaration that he would not claim for any other posts in the Department. Further the applicant is also not among the respondents of the SLP under reference and hence his request could not be acceded to. Aggrieved, the applicant has come up with this OA seeking the

above mentioned relief on the following among other grounds:-

- (i) The order of the 2nd respondent regularising the junior of the applicant P. Saravanan as MTS cadre from the date of initial engagement ie., 8.4.1999 is in violation of Art.14 & 21 of the Constitution.
- (ii) The undertaking taken by the department is void in the light of the Supreme Court Judgement reported in 1986 (3) SCC 156 (Central Island Water Transport Corporation Ltd & Anr, etc., Vs. Brojo Nath Ganguly & Anr.)
- (iii) Based on the statement made by the department before the Supreme Court that they are willing to accommodate the respondents on regular basis, a list of 202 names was produced, denial to include the names of other approved candidates for regular appointment is against law.
- (iv) The impugned order is illegal, contrary to law and against the object and purpose of the Scheme providing employment under compassionate grounds.

3. The respondents in their reply contest the claim of the applicant stating that the applicant's case was rejected on the ground that initially the applicant was offered appointment as GDS on 19.7.2002 and thereafter the applicant was selected and appointed as MTS on selection cum seniority basis under SC category for the vacancies of the year 2016-17 vide Memo dated 23.1.2017, as per Recruitment Rules for MTS in force and the official assumed charge as MTS at Anna Road HO w.e.f. 23.1.2017. Hence his request to consider his

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application on compassionate grounds on par with his juniors with effect from the date of his initial appointment with all service benefits could not be acceded to. Further, the regularization based on the Supreme Court Judgment dated 30.7.2010 was applicable only to the respondents of the SLPs filed by the department. As per the said judgment it was ordered to regularize the services of 202 respondents who were working in the department as on 27.10.2009 based on the list submitted by the department with a specific observation that the findings recorded by the Tribunal and as well as the High Court with regard to the interpretation of office memorandums and circulars of the department are set aside and that those findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be pending. The applicant was not the respondent in the SLPs filed by the Department and, therefore, the regularization is not permissible as ordered by the Hon'ble Supreme Court. The rulings of the Department discontinuing the waiting list of candidates have been restored by the Hon'ble Supreme Court by setting aside the observations passed by the Tribunal and High Court against the orders of the Department. Therefore, the validity of the order issued by the respondent's department discontinuing the waiting list cannot be challenged after the findings passed by the Hon'ble Supreme Court. Hence they prayed for dismissal of the OA.

4. Learned counsel for the applicant submits that the applicant's junior Mr. P. Saravanan was issued with regularization order as MTS from the date of his initial engagement. Some of the left out persons approached this Tribunal in OA.1311/2010 which was allowed on 30.11.2012. The appeal preferred against

the said order was dismissed by the Hon'ble Madras High Court in WP No.24535/13 dated 30.9.2013. Therefore, the action of the respondents in denying the said benefit to the applicant is illegal and contrary to law. Learned counsel for the applicant also produces the judgment of the Hon'ble High Court of Madras in Ramkumar & Others v. Union of India, rep by its Secretary, Department of Posts & Others in WP Nos.39039 & 34130 of 2015 & MP No.1 of 2015 in support of his claim.

5. Per contra, learned counsel for the respondents submits that the applicant was an approved wait listed candidate in Grade 'D' cadre for compassionate appointment and kept in the waiting list for want of 5% DR vacancies. His services were utilised in short term/leave vacancies. Since the procedure of maintaining waiting list of candidates for compassionate appointment was dispensed with as instructed in Postal Directorate's letter dated 25.7.2001, it was decided to consider such wait listed candidates for the vacant posts of GDS if they were willing and eligible. As the applicant expressed his willingness for appointment to the post of GDS MM, he was offered GDS MM post and he accepted the same and assumed as GDS MM in the year 2002. Hence he was not considered for appointment as MTS. The applicant has also given a declaration that he would not claim any other post in the department. His working hours was 03.00 hours only per day. However, as per the Revised Recruitment Rules 2015 the applicant has been selected and appointed as MTS on selection cum seniority basis under SC category for the vacancies of the year 2016-17 and he has assumed the charge as MTS w.e.f. 23.1.2017. As per Supreme Court Orders and in accordance with 1st

respondent letter dated 30.8.2010 and 19.1.2015, the wait listed candidates who had filed their case in the court were given regularization of their services from the date of their initial engagement. The applicant is not a party in the above cases. Therefore, the request to consider his application on compassionate grounds on par with his juniors w.e.f. the date of his initial appointment could not be accepted.

6. Arguments were heard and documents perused. This OA is liable to be dismissed in view of the following:-

(a) Admittedly, the applicant was an approved wait listed candidate in Group D cadre under compassionate appointment and was kept in the waiting list for want of 5% DR vacancies. The engagement of the applicant as a GDS in 2002 was on the ground that the waiting list for compassionate appointment was by then discontinued and the rules on compassionate appointment were relaxed by the Postal Department to accomodate such persons against GDS post subject to the condition that such persons who are engaged as GDS would not claim any other post at a later point of time. The applicant has also given an undertaking in this regard. The same still subsists. On this ground itself, the claim of the applicant is liable to be rejected.

(b) The request of the applicant that his case be considered at par with those cases wherein the Apex Court intervened to direct the petitioner Department to regularize the services of the respondents in an SLP cannot also be considered in view of the fact that the Hon'ble Supreme Court while disposing of the SLPs on the issue directing the Department to regularize the services of the respondents of the SLPs, in univocal term directed that it is only

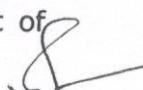
the respondents before it that alone could be considered for regularization and not all those who are approved and working in leave/short terms vacancies. The remaining excess approved RRR candidates who were still working in the Department in short term/leave vacancies with an exception of those who have filed OAs before the CAT and pending disposal, were disengaged due to non-availability of 5% DR vacancies earmarked for compassionate appointment available to accommodate them. The scheme of keeping waiting list of approved candidates was also discontinued as per the orders issued by the Postal Department and action of the department is supported by the judgment of Supreme Court in SLP.

(c) The claim of the applicant is that services of certain persons juniors to him were regularised and the same concession be extended to him. The fact being all those whose services were regularised were parties before the Apex Court and thus, the case of the applicant cannot be said to be similar to them. The criteria of regularisation is not on the basis of seniority. Hence, the question of seniority would not rise. Consequently, the request of Shri P. Murali, for considering him on par with his juniors with effect from the date of his initial appointment with all service benefits cannot be acceded to.

(d) Further, compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future. In this case, the applicant accepted the GDS post and working as GDS from the year 2002 but claiming compassionate appointment on par with his juniors only during 2016.



(e) The constraints , restrictions and the cap of 5% of the total Group C & D vacancies against the Direct Recruits quota has been on a solid ground that compassionate appointment is nothing but a back door entry and the Apex Court thus stated in the case of Union of India vs. Jogindar Sharma dated 30.09.2002, that the restriction of compassionate appointment to the extent of 5% of vacancies under direct recruitment quota is valid and the orders of Department of Personnel and Training not to relax the ceiling of 5% of vacancies is also in order. In Umesh Kumar Nagpal vs. State of Haryana (JT 1994 (3) SC 525), the Hon'ble Supreme Court has laid down the important principles that compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. It has also been held by the Supreme Court in its order dated 18.02.1995 in the case of Life Insurance Corporation of India vs. Mrs. Asha Ramachandra Ambedkar and others (JT) 1994 (2) SC 183 that the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment. It has also been held in the case of Himachal Road Transport Corporation vs. Dinesh Kumar (JT 1996 (5) SC 319) and Hindustan Aeronautics Limited vs. Smt A. Radhika Thirumalai (JT 1996 (9) SC 197) that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. In the case of State of Jammu & Kashmir Vs. Sajad Ahmed Mir (2006 SCC (L&S) 1195, the Hon'ble Supreme Court held that compassionate appointment after long time during which period the dependents of the deceased employee survived is at the cost of interest of



several others ignoring the mandate under Article 14 of the Constitution.

(f) This Tribunal in its order dated 11.9.2015 in OA 614 of 2014 filed by one Shri P. Mariappan, a similarly placed candidate held that since his name was not included in the list of persons approved by the Hon'ble Supreme Court for grant of compassionate appointment/regularization, the matter has attained finality and it would not be possible to reopen the issue and dismissed the OA as devoid of merits. This case is no different from that of Shri P. Mariappan.

(g) Further, the applicant has been selected and appointed as MTS on selection-cum-seniority basis under SC category for the vacancies of the year 2016-17 and has assumed charge as MTS at Anna Road HO, Chennai-600 002 w.e.f. 23.1.2017. Therefore, the applicant's request to consider his application for compassionate ground appointment on par with his juniors with effect from the date of his initial appointment with all service benefits cannot be acceded to now after giving an undertaking in 2002 as per the Scheme prevailing then that he would not stake claim for any other posts in the department. Having regard to the above facts and circumstances of the case, I do not find any ground to interfere with the impugned order of the respondents dated 17.04.2012.

7. Thus, the OA being devoid of merits is dismissed. No order as to costs.

