

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 1041 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Prakash Parida, S/o Late Dinabandhu Parida (Ex-GDS MC/PKr of Mahodadhi GDS SO under Puri HO at Paikasahi, PO – Khadipada, Via- Puri 2, Dist. Puri.

.....Applicant

VERSUS

1. Union of India, represented through Secretary to Govt., Dept. Of Posts, Ministry of communications & IT, Dept. Of Posts, (GDS Section), Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist. – Puri.
3. Sr. Superintendent of Post Offices, Puri Division, Puri – 752001.

.....Respondents.

For the applicant : Mr.A.K.Mohanty, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 17.5.2019 Order on : 26.6.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

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

"In view of the facts and averments made in para (4) of the OA, the impugned order of rejection dt. 17.1.14 and order dt. 10.4.14 (Annexure -8) may be quashed and the OA may be allowed with a direction to the respondents to give appointment to the applicant for any suitable post commensurating with his eligibility within a time to be stipulated by this Hon'ble Tribunal."

2. The facts of the case are not disputed. The applicant's father while working as a Gramin Dak Sevak, Packer (in short GDS) in Mahodadhi Post Office under the respondents, died in harness on 13.9.2009. The applicant applied for compassionate appointment and on 15.2.2010 and he was asked to submit relevant documents for consideration of his claim. The applicant supplied the documents as required, but no decision was taken by the respondents till 17.1.2014 when the applicant was informed that his case was rejected (Annexure-2) on the ground of less merit point less than 50 points required for consideration his claim. Thereafter, the applicant made a representation dated

3.4.2014 (Annexure-7) to the authorities for reconsideration, which was also rejected vide order dated 10.4.2014 (Annexure-8) on the ground that the CRC has already considered the case.

3. The main ground advanced in the OA is that the applicant's case was rejected on the ground of less than 50 merit points in accordance with the circular dated 14.12.2010 (Annexure-3). It has been stated in the OA that as per information furnished in reply to the RTI query, the respondents have stated that the cases after 1.1.2011 have been considered as per the merit point system as per the circular dated 14.12.2010 and since the applicant's case pertained to much prior to this date, his case should not have been considered as per the merit point system. Further, as stated in the OA, for the time limit of more than 3 years as stipulated in the circular dated 5.5.2003 (Annexure-9), the applicant was not responsible as the delay occurred at the level of the respondents for processing his case. It is also stated that in some other cases which were similarly situated as the applicant's case, the respondents have considered the case as per the old circular and non-consideration of the applicant's case is a violation of the Article 14 and 16 of the Constitution of India.

4. In the Counter filed by the respondents, the facts were not disputed. It is stated as per the Directorate's instructions dated 1.8.2011 (Annexure-4 to the OA), the hard and deserving cases would mean the cases over and above 50 merit points. The applicant could get only 37 merit points. His case alongwith other cases were considered by the Circle Relaxation Committee (in short CRC) on 6.12.2013 as per the guidelines and his case was not considered to be a hard and deserving case. The decision was communicated to the applicant. It is stated that the delay in considering the applicant's case was due to delay in submission of some of the documents by the applicant like the application of his mother and it was not due to the respondents. Regarding applicability of the circular dated 5.5.2003 (Annexure-9), it is stated that it was applicable for the departmental cadre where there is a limit of 5% of posts to be filled up through appointment on compassionate ground. For the applicant's case, the said circular is not applicable. It is further stated that the case of the applicant was received on 28.10.2013 for consideration of the CRC and hence, the case was to be considered as per the guidelines as prevalent at that time and not as per the old circular. The respondents averred that the case of the applicant has been duly considered by the CRC on 6.12.2013 and the case was not recommended as per the extant guidelines on the ground of less merit points. It is also stated that as per the judgment of Hon'ble Apex Court in the case of LIC of India vs. Ms. Asha Ramchandra Ambekar and others, reported in JT

1994(2)SC 183, no direction can be given by the Tribunal for appointment of a person on compassionate ground as prayed for by the applicant.

5. The applicant filed Rejoinder, stating that the applicant had applied for the appointment on compassionate ground on 15.2.2010 after death of his father on 13.9.2009 and hence, the circulars dated 14.12.2010 (Annexure-3) regarding merit points and dated 9.3.2012 (Annexure-5) regarding cut-off merit point of 50 for hard and deserving cases, will not be applicable to this case. Although the applicant had submitted his application on 15.2.2010, the respondents had kept it pending and after a long delay asked the applicant to submit the undertaking in 2013. Hence, the case cannot be considered to be of 2013. It is further averred in the Rejoinder that the judgment of Hon'ble Apex Court in the case of Asha Remchandra Ambekar (supra) is not applicable to the applicant's case.

6. We heard learned counsels for both the parties and also perused the pleadings on record. The relevant issue in this case is whether the circulars dated 14.12.2010 regarding the merit points are applicable to the applicant's case for appointment on compassionate ground. It is undisputed that the applicant's father expired on 13.9.2009 while working as a GDS and that the applicant had initially applied for compassionate appointment on 15.2.2010, when the circular dated 14.12.2010 was not in force. It is also undisputed that his case was still under consideration and it was first considered by the CRC in its meeting dated 6.12.2013.

7. Learned counsel for the applicant has also submitted a short note of submission citing the judgment of Hon'ble High Court of Orissa reported in 2015(II) ILR Cuttack 569 in the case of Damodar Jena vs. Chairman-cum-M.D., GRIDCO LTD & Ors. In this cited case, the petitioner's application for compassionate appointment was rejected solely on the ground that the guidelines pertaining to the compassionate appointment was repealed after receipt of the Collector's report on the application of the petitioner for compassionate appointment. Hon'ble High Court held that since the application was received prior to repeal of the guidelines in question, the petitioner's case is required to be considered by GRIDCO.

8. In this OA, the issue is the applicability of the circular dated 14.12.2010 (Annexure-3) which states that the said circular is applicable for all cases for compassionate appointment to be considered after 1.1.2011. The objective of having the merit system has been explained in the said circular, which states as under:-

"The objective of the scheme for engagement of Gramin Dak Sevaks on compassionate grounds is to engage dependent family member of a Gramin Dak Sevak dying in harness, thereby leaving his family in penury and without adequate means of livelihood.

2. Keeping in view the objective of the scheme, the existing instructions relating to compassionate engagement have time and again been reviewed/modified/simplified so that the system finally derived at shall be more transparent, efficient and uniform in nature.

3. Currently, there is no laid down transparent criteria for adjudging degree of indigence of the GDS family while considering their cases for compassionate engagement. Therefore, a need is felt to lay down transparent criteria for considering a request for engagement on compassionate grounds by a Committee. A balanced and objective assessment of the financial condition of the family has to be made taking into consideration of his/her assets and liabilities, and all other relevant factors such as presence of an earning member, size of the family and the essential needs of the family including social obligations, etc. in order to assess the degree of indigence of all the applicants to be considered for compassionate engagement. The Department of Personnel & Training has provided for limiting compassionate appointments of wards of departmental employees to 5% of the total vacancies and no such stipulation ha been made for this purpose in respect of GES. This, however, does not mean that all applicants are to be engaged as GDS on compassionate grounds in relaxation of normal engagement procedures in practical terms, each case has to be assessed on merit and only the exceptional and deserving cases are to be considered for compassionate engagement as the scheme stipulates that compassionate engagement is to be given only in indigent and deserving cases."

Para 7(f) of the aforesaid circular dated 14.12.2010 states as under:-

"(f) No relaxation in educational qualification for the post of GDS BPM or any other category of the GDS would be permissible.

The above instructions will be applicable for all the compassionate appointment cases to be considered on or after 01.01.2011. This issues with the approval of Secretary Posts."

9. It is clear from the above circular dated 14.1.2.2010 that it will be applicable to all cases to be considered on or after 1.1.2011 including the applicant's case which was considered by the CRC after 1.1.2011. The applicant has stated that his case was delayed by the respondents although he had applied on 15.2.2010. There is nothing on record to show if the applicant has taken any steps in accordance with the law to raise his grievances before the authorities or if he had moved the Tribunal in the matter before filing this OA. There is nothing on record to show that the applicant has even submitted any representation when his application dated 15.2.2010 was not considered by the authorities in time. As seen from the OA, his representation dated 3.4.2014 (Annexure-7) for reconsideration of his case for compassionate appointment on the ground that the circular dated 14.1.2.2010 was not applicable to his case, was submitted by the applicant after rejection of his claim vide order dated 17.1.2014 on the ground of less merit point. The

applicant has not mentioned anything in the OA about the steps taken by him for expediting the decision in his case prior to submission of representation dated 3.4.2014, although it was open for the applicant to approach this Tribunal for delay in considering his application dated 15.2.2010. Hence, I am unable to accept the argument that the applicant's case was considered after much delay although he had applied on 15.2.2010 for which the circular dated 14.12.2010 will not be applicable to his case.

10. In view of the discussions above, the applicant's case was considered after 1.1.2011, for which the circular dated 14.12.2010 (Annexure-3) regarding merit points will be applicable to his case and the issue framed in para 6 above, is answered against the applicant. The cited case of Damodar Jena (supra) cited by the applicant will not be helpful since in applicant's case, it was duly considered by the CRC and was not approved due to less merit of the applicant.

11. It is stated in the Counter that the applicant's merit point was 37, which was below 50 and a case with the merit point of more than 50 is treated as a hard and deserving case. The applicant has not produced any document before us about the financial condition of the family after death of his father, which would have merited higher merit point than 37. The Scheme for compassionate appointment is meant to provide immediate assistance to the family of the bereaved GDS in case the family would be facing financial hardship and penury due to sudden death of the bread earner of the family as explained in the circular dated 14.1.2.2010. It is not a matter of right of an applicant for compassionate appointment. There is nothing on record to show that the family of the deceased GDS in this case had to face extreme financial hardship and penury.

12. In the circumstances as discussed above, I am not inclined to interfere in the matter. The OA is accordingly dismissed. No order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath