

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.260/346/2018

Date of Reserve:26.04.2019

Date of Order:10.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

Sri Karunakar Senapati, aged about 52 years, S/o. Late Rabinarayan Senapati, resident of Village-Harisankarpur, Post-Jitanaga, PS-Bhadrak (R), Dist-Bhadrak.

...Applicant

By the Advocate(s)-Mr.B.K.Behera

-VERSUS-

Union of India represented through:

1. The Secretary, Indian Postal Department, New Delhi.
2. Chief Post Master General, Indian Postal Department, Odisha Circle, Bhubaneswar-1, Dist-Khurda.
3. Assistant Director (Circle Relaxation Committee) Office of the Chief Post Master General, odisha Circle, Bhubaneswar-1, Dist-Khurda.
4. Superintendent of Post Office, Bhadrak Division, Bhadrak, At/Post/PS/Dist-Bhadrak.
5. Inspector of Post Office, Bhadrak Division, Bhadrak, At/Post/PS/Dist-Bhadrak.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty

ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A):

The applicant through this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i) To quash the order dated 05.04.2018 under Annexure-A/7, rejecting the order/direction dated 02.02.2018 passed by this Hon'ble Court in W.P.C.No.3701 of 2008 for appointment on compassionate ground so far it relates to the applicant under annexure-A/5.
- ii) To direct the respondents to consider the claim of the applicant for an appointment on compassionate ground against an existing Group-C or D post, as per the order/direction dated 02.02.2018 passed by this Hon'ble court in W.P.C.No.3701 of 2008.
- iii) To pass any order appropriate order(s)/direction(s) as deemed fit and proper.

2. The facts of the case are that the applicant's father was a Gramin Dak Sevak (in short GDS) under the respondents and died on 23.11.2002, while working as a GDS in Ganjeibani Post Office, leaving behind the widow and son, who is the applicant in this O.A. On 12.1.2003, an application was submitted for compassionate appointment of the son of the deceased GDS, i.e., the applicant. The respondents rejected the compassionate appointment application. Thereafter, on further representation, the authorities rejected the case vide order dated 20.5.2015 (Annexure-A/3 series).

3. The applicant filed the OA No. 454/2006, which was dismissed by the Tribunal vide order dated 3.10.2007 (Annexure-A/4), in which it was held that the OA was barred by limitation. This order of the Tribunal was challenged by the applicant by filing the Writ petition, which was allowed by Hon'ble High Court vide order dated 2.2.2018 (Annexure-5 to the OA), while setting aside the order dated 3.10.2007 of the Tribunal and the respondents were directed to consider the case of the applicant afresh in terms of the Scheme. The respondents have re-considered the case and have rejected it in the impugned order dated 5.4.2018 (Annexure-A/7).

4. The respondents through their Counter, have averred that the case of the applicant was placed before the Circle Relaxation Committee (in short CRC) for reconsideration. The case was not accepted by the CRC on the ground that the age of the applicant is beyond the prescribed upper age limit and the fact that the family has managed all these years should be taken as an adequate proof that the family had some dependable means of subsistence. It is also stated that the family did not have any liability and taking all factors into consideration, the CRC rejected the case.

5. Learned counsels for the applicant and the respondents were heard and the pleadings of the parties were perused by me. Hon'ble High Court, vide order dated 2.2.2018 (Annexure-A/5) has held as under:-

"On perusal of the Scheme for Compassionate Appointment, it reveals that at Clause-5 of the eligibility criteria has been fixed as follows:

5. Eligibility.

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) Appointment for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

Clause 16(C) provides thus:

- (C) The Scheme of compassionate appointments was received as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

In the said scheme nowhere it is mentioned that if any of the member of the family is receiving pension, then such income has to be taken into consideration while the application is considered for such appointment.

The Scheme rather stipulates upper age limit could be relaxed wherever found to be necessary. Compassionate appointments are exempted from observance of the following requirements:

- (a) Recruitment procedure i.e., without the agency of the Staff Selection Commission or the Employment Exchange.
- (b) Clearance from the Surplus Cell of the Department of Personnel & Training/?Directorate General of Employment and Training.
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure).

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Admittedly the Tribunal has not taken into consideration the above facts even though the details of those facts are given by the applicant. Thus, the impugned order passed by Tribunal has error apparent on the face of it. This Court accordingly sets aside the impugned order passed by the Tribunal and directs the opposite parties 1 to 5 to consider the case of the petitioner afresh in terms of the Scheme within a period of three months from today”.

6. As per the direction of Hon’ble High Court, the respondents are required to consider the case in accordance with the Scheme for compassionate appointment for the GDS. Under the Scheme, one of the important criteria is the indigent condition of the family. The respondents are required to ascertain whether the family of the deceased GDS is facing the financial difficulties due to death of the GDS i.e., the applicant’s father. The impugned order dated 5.4.2018 does not indicate if the financial condition of the family including the assets and liabilities of the family of the deceased GDS had been inquired into by the respondents and if the inquiry report reveals indigent condition of the family. Without ascertaining this basic fact about the family, the respondents have rejected the case based only on the age of the applicant (which can be relaxed by the competent authority) and the time between the death of the ex-GDS and the date of consideration of the case by CRC. Rejecting the case based on these factors without examining the financial condition of the family of the deceased GDS will not be as per the Scheme. These factors are not the most important factor to determine the eligibility of the applicant for compassionate engagement as a GDS.

7. In view of above discussions, the impugned order dated 5.4.2018 (Annexure-A/7) is not sustainable as the authority has not considered the case as per the Scheme guidelines as directed by Hon’ble High Court vide order dated 2.2.2018 and hence, the said impugned order is set aside and the matter

is remitted to the respondents/competent authority to re-consider the case of the applicant strictly in accordance with the Scheme guidelines for compassionate engagement of the GDS, keeping in mind the observations made in the order dated 2.2.2018 of the Hon'ble High Court as well as this order, and issue a fresh speaking order regarding the case of the applicant, copy of which will be communicated to the applicant within three months from the date of receipt of a copy of this order.

8. The OA is allowed to the extent as mentioned above. There will be no cost.

(GOKUL CHANDRA PATI)

MEMBER(A)

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