

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 69 of 2019**

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

Ajay Kumar Mohanty, aged about 49 years, S/o Late Ajit Kumar Mohanty, Vill/PO – Parbatipur, PS – Biridi, Dist. – Jagatsinghpur – 754111.

.....Applicant

**VERSUS**

1. Union of India represented through its Director General of Posts, Ministry of Communication and I.T., government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General (Odisha Circle), At – PMG Square, Bhubaneswar-1, Dist. – Khurda – 751001.
3. Superintendent of Post Offices, Cuttack, South Division, Cuttack, Cantonment Road, town/Dist. – Cuttack – 753001.
4. Asst. Superintendent of Posts, Jagatsinghpur Sub Division, At/PO/PS/Dist. Jagatsinghpur – 954103.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr. S.Behera, Sr. panel counsel

Heard & reserved on : 12.7.2019

Order on : 19.7.2019

**O R D E R**

Per Mr.Gokul Chandra Pati, Member (A)

This OA is filed with the following prayer :

"(i) To quash the letter dated 7.2.2017 under Annexure A/5 as well as order dated 27.7.2017 under Annexure A/9.

(ii) To direct the respondent5s to reconsider the case of the applicant for appointment under compassionate ground on the basis of the application submitted under Annexure A/2 in view of Directorate letter dated 14.1.2015 as well as order of the Hon'ble High Court dated 10.4.2018 in the interest of justice.

(iii) To pass any other order/orders as deemed fit and proper."

2. The facts, in brief, are that the applicant's mother who was working as a GDS expired on 3.11.2014 and thereafter, the applicant submitted an application to the respondents for engagement as GDS on compassionate ground (Annexure A/3). On 31.1.2017 Circle Relaxation Committee under the respondents (in short CRC) rejected the case of the applicant on the ground that he did not fulfil the prescribed minimum merit point and it was communicated to the applicant vide order dated 7.2.2017 (Annexure A/5)

which is impugned in this OA. Thereafter the applicant submitted a representation dated 17.4.2017 (Annexure A/7) to the respondents No. 3 & 4 for reconsideration of his case. Since no action was taken, he filed the OA No.365/2017 which was disposed of vide the Tribunal's order dated 20.6.2017 (Annexure A/9), directing the respondents to consider the representation of the applicant dated 17.4.2017 and pass a speaking order within 4 weeks from the date of receipt of the order. Accordingly the respondent No.2 passed an order dated 27.7.2017 (Annexure A/10) rejecting the case of the applicant. The applicant is aggrieved by this order and has challenged it in this OA mainly on the ground that the letter dated 14.1.2015 of the Government of India (copy enclosed as Annexure A/8 to the OA) has not been taken into account while rejecting his case. It is also submitted that on a similar issue in case of another candidate, Hon'ble High Court has passed the order dated 10.4.2018 under WP(C) 27292/2017 vide the copy of the order enclosed as Annexure A/11.

3. The respondents have opposed the OA by filing counter, reiterating the reasons mentioned in order dated 27.7.2017 that against the requirement of 36 merit points to be treated as hard and deserving case, the applicant scored 22 merit points, for which CRC could not accept his candidature in its meeting dated 31.1.2017. In reply to para 4.20 and 4.21 of the OA, in which the issue of non-consideration of the case of the applicant as per the circular dated 14.1.2015 has been raised by the applicant, the respondents have stated in the counter, vide paragraph 25 & 26 stating as under :

"25. That in reply to the averments made in para 4.20 of the OA, it is humbly submitted that as the case was considered taking into account the documents submitted for consideration of compassionate appointment, those documents were taken into account which were prepared based on legal heir. So the action of the respondents is as per rule.

26. That in reply to the averments made in para 4.21 of the OA, it is humbly submitted that the case of the applicant is different from that of the WP(C) 27292/2017. In that case the widow daughter and his son were dependent on the applicant. But as per DOP&T's OM No.14014/02/2012-Estt(D) dated 16.1.2013 daughter in law and grandson of the deceased cannot be taken as dependents of the deceased. So the case of the applicant cannot be taken on same footing."

5. Rejoinder has been filed by the applicant broadly reiterating the fact that the circular dated 14.1.2015 has not been taken into consideration.

6. Learned counsel for the applicant was heard. He argued that the point system was not in vogue by the time the order of rejection was issued on 7.2.2017. It was also argued that in the CRC meeting on 31.1.2017 the circular dated 14.1.2015 (Annexure A/8) has not been considered by the CRC and by the authorities. He submitted that as per the said circular dated 14.1.2015, the married son is entitled to be considered as a dependent if he is residing along with his wife and children with parents.

7. Learned counsel for the respondents was heard. He reiterated the stand taken in the counter. He submitted that as per the instruction of DOPT dated 16.1.2013 (Annexure R/1 of the counter), the daughter in law and the grandson of the deceased employee cannot be included as dependent as per para 2 of the said guidelines on compassionate appointment.

8. I have considered the submissions of both the learned counsels and have gone through the pleadings on record. The only issue to be decided is whether the circular dated 14.1.2015 (Annexure A/8) is applicable to the case of the applicant and if it is applicable, then whether the said circular was taken into consideration while considering the case of the applicant and rejecting the same vide the decision of CRC communicated vide order dated 7.2.2017 (Annexure A/6) and rejection order dated 27.7.2017 (Annexure A/10). Respondent No.2 has rejected the representation of the applicant vide order dated 27.7.2017 (Annexure A/9), which is also impugned in this OA.

9. The respondents, vide order dated 7.2.2017 (Annexure A/6) and order dated 27.7.2017 (Annexure A/10), have rejected the case of the applicant mainly on the ground that he secured less than 36 merit points which is the threshold decided for case to be treated as a hard and deserving case. The order dated 27.7.2017 (Annexure A/10) stated as under :

"The documents submitted by the Assistant Superintendent of Posts, Jagatsinghpur Sub division, Jagatsinghpur were correct and accordingly your case was considered in the CRC meeting held on 31.1.2017 and rejected as you scored 22 merit points against minimum requirement of 36 merit points for treating hard and deserving for engagement in any GDS post as per the instructions contained in the Directorate letter No. 17-17/2010-GDS dated 17.12.2015.

In view of the above discussions, I agree with the decision of the CRC meeting held on 31.1.2017 and accordingly the case of Shri Ajay

Kumar Mohanty for engagement on compassionate ground as GDS is rejected."

So from the above it is clear that the case of the applicant was rejected as he secured 22 merit points against 36 merit points as required.

10. The applicant in his representation dated 17.4.2017 (Annexure A/7) requested for reconsideration of the matter. It is noted that he did not raise the issue of applicability of the circular dated 14.1.2015 before the authorities in the said representation. The circular dated 14.1.2015 stated as under :

"Subject : Consideration of Married son as dependent family member for the purpose of compassionate engagement to GDS posts.

Attention of all concerned is invited to clarification issued on Point of Doubt No.2 in para 3 of this Directorate's letter No.17-17/2010-GDS dated 9<sup>th</sup> Oct 2013 vide which it was clarified that "*a married son is not considered dependent on a GDS*" for the purpose of compassionate engagement.

2. Considering the recommendations made by DKS Chauhan Committee, which was constituted to look into the various aspects related to Gramin Dak Sevaks, it has now been decided by the Department that a married son shall also be considered as one of the dependents of the Sevak for the purpose of compassionate engagement where the married son resides with his grandparents/parents along with his wife and children and is dependent on the parents for livelihood, and other needs provided he possesses the required educational qualification including computer knowledge."

11. The respondents have taken a plea that the daughter in law and the grand children are not considered to be part of dependent in the family of deceased employee in view of the circular at Annexure R/1. It is seen that Annexure R/1 is the DOPT OM dated 16.1.2013, by which the consolidated instructions on compassionate appointment has been circulated and such scheme is applicable for compassionate appointment under Central Government. The said scheme is applicable in a case of death of a Government servant in harness. Nowhere in the said OM dated 16.1.2013, it is stated that it is applicable to the GDS who is admittedly not a Government servant. Learned counsel for the applicant at the time of hearing, submitted a copy of letter dated 30.5.2017 in which the scheme of engagement of dependent of a deceased GDS on compassionate ground has been modified. It is clear that compassionate appointment in respect of GDS is governed by different guidelines other than the OM dated 16.1.2013 (Annexure R/1) which is not applicable in the present case, since the mother of the applicant was a GDS and the applicant's case was to be considered under the scheme for

engagement of GDS on compassionate ground and not under OM dated 16.1.2013.

12. On the other hand the circular dated 14.1.2015 is applicable to the GDS as extracted above as stated in subject of the said circular which is extracted in para 10 above. The married son living with the parents and depending on them for livelihood as on the date of death of GDS are treated as dependent family members. It is clear from the facts and circumstances that the circular dated 14.1.2015 has not been taken into account by the respondents while deciding the case of the applicant.

13. In view of the above discussions, the matter is remitted to the Respondent No.2 to reconsider the issue in the light of the circular dated 14.1.2015 and the scheme for engagement of a dependent of deceased GDS on compassionate ground as applicable for the applicant and take a fresh decision as per the extant rules and pass a speaking order (in modification to order at Annexure A/10), copy of which is to be communicated to the applicant within three months from the date of receipt of the copy of this order.

14. The OA is disposed of accordingly. No order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath