

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 57 of 2018

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

Sailabala Pattnaik, aged about 48 years, W/o-Late Pradeep Kumar Mohanty, Vill/P.O.-Bhandarikuda, P.S-Brahmagiri, Dist-Puri.

.....Applicant

-Versus-

1. Union of India, Ministry of Communication, Department of Post represented through it's Secretary, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Assistant Director General(GDS/PCC), Government of India, Ministry of Communication, Department of Post(GDS Section), Dak Bhawan, Sansad Marg, New felhi-110001.
3. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-Pin-751001.
4. Senior Superintendent of Post Office, Puri Division, At/PO/Dist-Puri-752001.

.....Respondents

For the Applicant : Mr. T. K. Mishra

For the Respondents: Mr. D. K. Mallick

Heard & reserved on: 25.09.2019 Order on:

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The Original Application has been filed by the applicant seeks the following reliefs:-

"i) This Hon'ble Tribunal be pleased to declare that order dated 16.11.2016 violates Article 14,16 and 21 of the Constitution of India;

ii) and further be pleased to quash the order dated 16.11.2016 under Annexure-A/8;

iii) and this Hon'ble Court be pleased to quash the order dated 05.06.2017 under Annexure-A/4 and order dated 23.10.2017 under Annexure-A/5;

iv) and further be pleased to direct the respondent no.3 to give appointment to the applicant under scheme dated 30.05.2017. and any relief/reliefs be passed in favour of the applicant as this Hon'ble Court deem fit and proper.

2. The facts in brief are that the applicant is the widow of Late Shri Pradeep Kumar Mohanty, who was working as GDS-MD at Bhandaripokhari Post Office. The applicant's husband expired on 20.09.2016 leaving behind the applicant and two minor children. Thereafter, the applicant submitted an application for compassionate appointment to the respondents, but after due consideration of the

said application(Annexure-A/3 series), it was rejected vide order dated 05.06.2017(Annexure-A/4) which is impugned in this O.A. The applicant submitted representation dated 12.06.2017, 01.08.2017 and 24.08.2017 to the respondents No.4 for consideration of her case. The matter was considered by the CRC held on 06.10.2017, but the case was rejected on the basis of the fact that the scheme dated 30.05.2017 relating to the compassionate appointment for the post of GDS (Annexure-A/9) was not applicable to the applicant's case, since the case has already been settled and settled cases are not to be re-opened as per the circular dated 30.05.2017(Annexure-A/9) by which the revised scheme was circulated. The copy of the order dated 23.10.2017 of Respondent No.4 rejecting the case of the applicant is at Annexure-A/5. The case of the applicant is that when there is relaxation as per the scheme operating for compassionate appointment vide circular dated 30.05.2017, no such relaxation has been allowed to her. It is further stated that clarification dated 16.11.2016(Annexure-A/8) by which the maximum age limit of 40 years has been specified for compassionate appointment as GDS, is not applicable in her case since the circular dated 23.06.2016 was applicable only for direct selection of the GDS Post and not for the compassionate appointment.

2. Counter has been filed by the respondents stating that the case of the applicant has been rejected since she had crossed the maximum age limit of 40 years and relaxation is not applicable for the post of GDS for compassionate appointment. It is further stated that subsequent scheme dated 30.05.2017(Annexure-A/9) will not be applicable to the applicant's case since the case has already been decided and settled, which will not be re-opened as per the circular dated 30.05.2017(Annexure-A/9).

3. Rejoinder has been filed by the applicant reiterating the averments made in the OA and also stating as under: -

“2. That in reply to the facts stated and averments made in Paragraph 4.1, it is to state here that the respondent has communicated the order under Annexure-A/4 and A/5 after the scheme dated 30.05.2017 came into force. The language of the scheme show that the same is applicable to the pending cases, instead of doing so the authority has rejected the same”.

4. Learned Counsel for the applicant at the time of hearing submitted that specifying the maximum age limit of 40 years for compassionate appointment on the basis of the circular dated 16.11.2016(Annexure-A/8) read with 23.06.2016(Annexure-A/7) was incorrect since the circular dated 23.06.2016 was

applicable for post of GDS selection and not for compassionate appointment. Hence, it was argued by Ld. Counsel for the applicant that the case of the applicant was wrongly rejected vide impugned order dated 05.06.2017(Annexure-A/4). He further submitted that when the revised scheme dated 30.05.2017(Annexure-A/9) provides for relaxation for the upper age and the applicant is entitled for the same since her case was pending as on 30.05.2017 since no order was communicated to the applicant as on 30.05.2017. Hence, it was argued that as on 30.05.2017, the case of the applicant has been wrongly considered as already settled and not to be reopened.

5. Learned Counsel for the respondents was heard. It was submitted by him that the circular dated 16.11.2016 (Annexure-A/8), it is clearly stated that the maximum age limit for consideration for appointment as GDS on compassionate ground is 40 years. He further argued that as stated in the Para-3 of the counter that the applicant's case was rejected on the basis of decision of the CRC meeting held on 23.05.2017 in which the case was rejected because of the fact that she had crossed the maximum upper age limit. Hence, it was argued that the case has been rightly considered to be settled. Subsequently the CRC did not consider the case of the applicant on the ground that since the applicant's case was already decided on 23.05.2017, for which the case is treated as settled and it cannot be re-opened as per the circular dated 30.05.2017(Annexure-A/9).

6. Pleadings as well as submissions of learned counsels for both the parties are considered by me. The question to be decided in this case is whether as on 30.05.2017, when the revised scheme (Annexure-A/9) for compassionate appointment for GDS came into force, the applicant's case will be treated as pending or settled. The applicant in the rejoinder has stated that since her case has been rejected vide order dated 05.06.2017(Annexure-A/4) on the basis of the decision of the CRC meeting held on 23.05.2017, her case is to be treated as pending on 30.05.2017. Learned counsel for the respondents argued that since her case was decided and rejected in the CRC meeting held on 23.05.2017, the case of the applicant cannot be treated as pending as on 30.05.2017 and it has been rightly treated as settled case.

7. Undisputedly, the case of the applicant was considered by the CRC meeting held on 23.05.2017, in which her case could not be considered to the fact that the applicant had crossed the maximum age limit. It is seen from the Part-V of the

Annexure-R/1 of the counter (Proceedings of the CRC meeting held on 23.05.2019) that the applicant secured 99 points and her case was rejected because of the fact that she had upper age limit had exceeded 40 years as per the circular dated 16.11.2016(Annexure-A/8). It is also undisputed that the decisions of the CRC meeting held on 23.05.2017 was communicated to the applicant vide order dated 05.06.2017 which is subsequent to 30.05.2017 when the revised scheme came into existence. Hence, the stands taken by the respondents that as on 30.05.2017 when new scheme came into force, the case of the applicant was decided and settled is not acceptable since the decision which was taken in the meeting of the CRC held on 23.05.2017 was not communicated to the applicant by 30.05.2017. The said decision was communicated on 05.06.2017(Annexure-A/4).

8. It is seen from the circular dated 30.05.2017(Annexure-A/9) that it is applicable to all cases pending and arising on or after 30.05.2017. Form above, it is clear that the applicant's case would be treated as pending as on 30.05.2017 since the decision of the CRC was not communicated to the applicant as on 30.05.2017.

9. Moreover, the scheme for compassionate appointment is meant to relieve the family of the GDS concerned from financial destitution and to help if to get over the emergency" as stated in the scheme dated 30.05.2017. When the revised scheme dated 30.05.2017 came into force and applicant's case had not been disposed of and the case of the applicant deserves to be considered keeping in view the above objective of the scheme.

10. In the circumstances, the impugned order dated 23.10.2017 (Annexure-A/5) is not sustainable under law and hence, it is set aside and quashed. The matter is remitted to the respondent No.4 to consider the case of the applicant in accordance with the scheme dated 30.05.2017(Annexure-A/9) treating the applicant's case to be pending as on 30.05.2017 and to take an appropriate decision on her request for compassionate appointment in accordance with said scheme dated 30.05.2017 and pass a speaking order, copy of which is to be communicated to the applicant within a period of three months from the date of receipt of copy of this order.

11. The OA is allowed as above, with no order as to cost.

(Gokul Chandra Pati)
Member(Admn.)