

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/610/2018

Date of Order: 14.06.2019

Between:

Smt. P. Mamatha, Gr. C,
W/o. late P. Suresh, aged 27 years,
Occ: Unemployee, R/o. Kondapeta BO,
Madaka Village, A/w. Pothakapalli,
Pedapalli Division, Pedapalli – 505 152,
Pedapalli District.

... Applicant

And

1. The Union of India, Represented by
The Director General, Department of Posts,
New Delhi – 110 001.
2. The Chief Postmaster General,
Telangana Circle, Abids, Hyderabad – 500 001.
3. The Postmaster General,
Hyderabad Region, Abids, Hyderabad – 500 001.
4. The Superintendent of Post Offices,
Pedapalli Division, Peddapalli – 505152,
Peddapalli Dist.

... Respondents

Counsel for the Applicant ... Mr.B. Gurudas

Counsel for the Respondents ... Mrs.D. Shoba Rani
Addl CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed challenging the rejection of the request for compassionate appointment.

3. Applicant earlier moved this Tribunal in OA 151/2016 for compassionate appointment, wherein it was directed vide order dated 8.8.2017 to consider the request of the applicant without referring to the blemished record of the applicant's late husband who worked for the respondents organisation. Respondents have rejected the request once again on the same grounds of blemished record of the late husband of the applicant. Applicant secured merit points of 85 as per letter dt 27.10.2015 of the respondents, which establishes the indigent circumstances in which the applicant is living. Aggrieved over the rejection, the OA is filed.

4. Contentions of the applicant are that the respondents wilfully disobeyed the orders of the Tribunal in OA 151/2016. Applicant's late husband committed suicide and no misconduct was established against him. Further, the orders of the 1st respondent dated 30.5.2017 are illegal. Applicant cited judgment of the Hon'ble Supreme Court in D.S. Nakara vs. Union of India case in support of his assertion and asserts that she has been discriminated.

5. Respondents resist the contentions of the applicant by stating that the late husband of the applicant was involved in a fraud case and that before initiating disciplinary case he has committed suicide. As per letter dated 13.1.2006 of the respondents only those cases in which there is unblemished record can be considered for compassionate appointment. Accordingly, request of the applicant for compassionate appointment when rejected, the case was carried to the Tribunal in OA 151/2016 wherein it was directed to consider ignoring the blemished record vide order dated 8.8.2017. Accordingly, it was reconsidered and rejected on

the basis of blemished record vide order dated 30.1.2018 and on the ground that cases already rejected shall not be reconsidered as per 1st respondent order dated 30.5.2017.

6. Heard both the counsel and perused the records submitted.

7. I) This Tribunal has issued orders on the dispute in OA 151/2016 vide order dated 8.8.2017 to consider the request of the applicant without reckoning the alleged blemished record of the late husband of the applicant. In compliance, respondents issued the impugned order dated 30.1.2018 (A–VI) which reads as under:

“ The case was already considered and rejected in CRC held on 3.6.2015 as the deceased GDS official involved in fraud case”

II) Despite issue of an explicit order to consider ignoring the blemished record, respondents rejecting the request on the same ground is flagrant violation of the orders of this Tribunal. The order of the Tribunal is explicit and clear to the core with no ambiguity. The impugned order has to be construed as open defiance of the order of this Tribunal. Rarely, we come across such open defiance of the order of the Tribunal. Direction of the Tribunal has to be implemented without any reservation. By not complying with the Tribunal order, there will be an end to the rule of law. If dissatisfied, respondents can contest the decision in higher judicial forums. Without resorting to the remedy available refusing to implement the order of the Tribunal will lead to failure of justice and speaks about the contumacious conduct of the respondents. We take support of the Hon’ble Supreme Court observations in **The**

Commissioner, Karnataka vs C. Muddaiah on 7 September, 2007,

Appeal (Civil) No. 4108 of 2007, as under, to reiterate that the approach of the respondents is despicable to say the least.

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

It needs no exposition that an executive authority cannot sit on appeal in regard to a judicial direction. Right or wrong, the court order has to be implemented, lest it would be a sure case of contempt as per the directions of the Hon'ble Supreme Court in *Director of Education v. Ved Prakash Joshi, (2005) 6 SCC 98*, wherein it was held that:

“The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt.” (Emphasis supplied)

Thus, a court order, right or wrong, has to be implemented based on the construct and the language used there in. The order was clear that the

request of the applicant for compassionate appointment should be considered by ignoring the alleged blemished record of the late husband. Therefore, the respondents are liable for *suo motu* contempt proceedings. However, it is intended to give the respondents an opportunity to realize the gravity of the mistake they have committed and it is expected that they would not repeat the same in future.

III) Now proceeding to the case per se, when the late husband of the applicant was alive, disciplinary proceedings were not initiated. The misconduct was thus not established. As he is no more, there is no scope for establishing the same. Even if the disciplinary proceedings were to be initiated, the same would abate on the death of the applicant. Hence, the question of blemished record of the late husband has no relevance to consider the request of the applicant for compassionate appointment.

IV) Further, letter dated 30.5.2017 directing that past cases shall not be reopened for re-consideration is bad in law. A benefit made available cannot be denied with retrospective effect. Tribunal draws support from the directive of the Hon'ble Supreme Court in *High Court of Delhi v. A.K. Mahajan*, (2009) 12 SCC 62:

45. In short, law regarding the retrospectivity or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone such rules would not be permissible to the extent of retrospectivity.

Thus, the letter dated 30.5.2017 has no application to the case on hand in view of the observation of the Hon'ble Apex Court cited supra. Hence,

the very premise of rejection of the request of the applicant based on the letter dated 30.5.2017 is unsustainable.

V) Moreover, when the case was heard, respondents did not bring to the notice of the Tribunal about the instructions contained in the letter dated 30.5.2017. Therefore, relying on a letter which was not brought to the notice of the Tribunal is unfair. Had they brought the same to the notice of the Tribunal, the order could have been issued after considering the same. Hence, the respondent's action of rejecting the request even on this ground is difficult to be upheld.

VI) Also, it is well established in law that discriminating a homogeneous class by artificially fixing a cut off date has been held to be invalid by the Hon'ble Supreme Court in D.S. Nakara case. The applicant belongs to the same class of people who have sought compassionate appointment and are eligible. Taking cover of the letter dated 30.5.2017 and asserting that applicant is ineligible to be considered, is distinctly violative of the Hon'ble Apex Court observation since the indigent circumstances of the applicant would continue to be the same irrespective of the artificial cut off date fixed by the respondents. In fact, it would mean discrimination and violation of Article 14 of the Constitution.

VII) The applicant has secured 85 points, which is an indication of the acute indigent circumstances in which the applicant is placed. Hon'ble Supreme Court, in a catena of judgments, has observed that compassionate appointment has to be offered after assessing the indigent

circumstances. There can be no two views in regard to the aspect that the applicant has been living in indigent circumstances.

VIII) Therefore, based on the aforesaid, action of the respondents is arbitrary and illegal. Hence, the impugned order dated 30.1.2018 is quashed. Concomitantly, respondents are directed to reconsider the request of the applicant for compassionate appointment within a period of 3 months from the date of receipt of this order and issue a reasoned and speaking order.

IX) The OA is allowed with the above directions. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 14th day of June, 2019
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