IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/0585/2017

Date of Order: 13.06.2019

Between:

K. Govindarajulu,
S/o. late K. Brahmaiah,
Aged 35 years, Occ: Unemployee,
R/o.Peddakalukula,
Erragondapalem, Nandyala Dn,
Kurnool District, AP.

… Applicant

And

1. Union of India,
   Rep. by the Secretary to the Government of India,
   Department of Post,
   Dak Bhavan, New Delhi – 110 001.

2. The Director General (Posts),
   Department of Post, Dak Bhavan,
   Sansad Marg, New Delhi – 110 001.

3. The Chief Postmaster General,
   AP Circle, Vijayawada – 520 013.

4. The Postmaster General,
   A.P. Southern Region, Kurnool,
   Kurnool – 518 002.

5. The Superintendent of Post Offices,
   Nandyala Division, Kurnool Dist.

… Respondents

Counsel for the Applicant … Mr. B. Gurudas

Counsel for the Respondents … Mr. K. Venkateswarlu,
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 for not considering the case of the applicant for compassionate appointment.

3. Applicant's father died in harness on 1.4.2013 while working for the respondents organisation, leaving behind 6 family members to fend for themselves. Being in indigent circumstances, application was made for compassionate appointment, which was rejected by the respondents as he scored 41 merit points as against the 51 merit points required. Applicant, who is physically challenged, filed OA 328/2014, wherein, vide order dated 6.6.2016, it was directed to reconsider the case of the applicant as per revised guidelines issued on 17.12.2015. Once again, respondents rejected the request on 2.2.2017. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that he is living in indigents circumstances, terminal benefits received were mostly used for paying of loans raised to meet the medical expenses of the ex-employee. Respondents have given a go-by to the order of the Tribunal. The impugned order is illegal and hence invalid.

5. Respondents per contra state that the deceased employee after putting in around 29 years of service has passed away while on duty. The family of the deceased received around Rs.1,42,000 towards terminal benefits and have a thatched house. Request of the applicant was processed and rejected since he got 41 merit points as against 51

required. On the directions of the Tribunal, the case was reconsidered and rejected on 2.2.2017 stating that cases already settled before 17.12.2015 need not strictly to be opened.

6. Heard the counsel and perused the documents placed on record.

7. A) To adjudicate the dispute, an extract of the intrinsic portion of the impugned is extracted here under:

> "The revised provisions will be given effect from the date of issue of these instructions in respect of those cases considered in CRCs held after 17.12.2015. Cases already settled before 17.12.2015 need not be strictly be opened."

Tribunal order issued on 6.6.2016 was to consider the case of the applicant based on the revised criteria stipulated in the respondents memo dated 17.12.2015, as has been admitted by the respondents in the reply statement at page 6 of the reply statement. Respondents have to comply with the Tribunal order, and if dissatisfied with the direction, they need to approach the higher judicial forums for relief. Ignoring the order of the Tribunal by the respondents is shocking and very rarely we come across respondents from the central Govt. departmental spectrum indulging in such brazen violation.

B) In fact, the Tribunal has adjudicated quite a few cases wherein it is observed that the respondents are found to be disobeying the orders of the Tribunal with their contumacious approach. It is too serious an issue to be ignored. *Suo motu* Tribunal can initiate contempt proceedings for violating the order of the Tribunal, but it refrains from

doing so, in order to give an opportunity to the respondents to desist from such approach in future. An identical case is decided by the Tribunal in OA 330/2017 involving the same respondents. Hence, it is a fully covered case. The operative portion is extracted here under:

" I) The order of the Tribunal is explicit and clear to the core with no ambiguity. Respondents contravening the Tribunal order has to be construed as open defiance. Rarely we come across such instances of 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 defiant 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) 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)*

II) Further, respondents acted against the rules laid down by them. The memo dated 17.12.2015 at para 5, specifying the revised merit points of 36, states as under:

> "5. Revised provisions as per above will be given effect to taking the date of death of the GDS as cut off date where there is eligible member in the family on that date and date of consideration by the CRC in other cases."

Applicant is the eligible member in the deceased employees family at the date of death and hence the revised provisions would apply to the applicant. Respondents have violated their own rules which has been strongly decried by the Hon'ble Supreme Court in:

> **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "*the court cannot de hors rules..*"

The action of the respondents in negating the request of the applicant against rules has thus to be curbed and snubbed.

III) Further rules and regulations are framed so that there is fair play in administration. Service law gives paramount importance to this facet of administration. Indeed there is nothing personnel in public employment. When the right of an employee is infringed as per the organisational norms, it has to be corrected and by not doing so forcing employees to approach the judicial forums is comprehensively unfair. The observations of the Hon'ble Supreme Court extracted here under fully cover the case:

> "Regulations defining duties, conduct and conditions of its employees framed by statutory bodies have the force of law. The form and content of contract with a particular employee being prescriptive and statutory, the statutory bodies have no free hand in framing the terms and conditions of service to their employees, but

are bound to apply them as laid down in the 774 regulations. The regulations give the employees a statutory status and impose obligations on the statutory authorities, and that they cannot deviate from the conditions of service laid down therein. There is no personal element in public employment and service. Whenever employees rights are affected by a decision taken under statutory powers the court would presume the existence of a duty to observe the rules of natural justice and compliance by the statutory body with rules and regulations imposed by the statute. [779 E-G] Sukhdev Singh v. Bhagat Ram [1975] 3 SCR 619 referred to."

IV) Lastly it is not of place to mention that a benefit available to a class of people cannot be denied by applying an order with retrospective order. Class discrimination of persons similarly situated, as held by Hon'ble Supreme Court in D.K.Nakara case should be avoided. In fact, rejection of the case of the applicant on the grounds that past cases cannot be reopened particularly when there is a clear judicial order has to be deprecated. To be precise, action of the respondents is a clear violation 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.*

V) It is 8 years since the demise of the ex employee and yet the issue continues to linger due to the irregular conduct of the respondents. We take serious note of the same and calls for imposition of heavy costs on the respondents. Yet, with a view that respondents would make a note and not come up for adverse conduct once again Tribunal desists to impose the same. "

C) In the instant case too, respondents were directed to apply the revised merit points of 36 as per memo dated 17.12.2015, which they failed to do on similar grounds of cases closed shall not be reopened. Hence, the verdict in OA 330/2017 squarely applies to the case on hand. Memo dated 10.6.2016 issued by the respondents lacks rationale and application, as expounded in paras cited supra. Needless to state that a

clarificatory order cannot defeat the very objective of an instruction or a rule brought into vogue.

D) Applicant is physically challenged with 52% disability and the case is under process since last 6 years because of the intransigent approach to the issue. Order of the Tribunal in OA 328/2014 both in construct and language was simple and clear. Yet, non implementation of the same is deeply disturbing. It is time that the first respondent takes stock of the conduct of the subordinate formations in implementing the orders of the Tribunal. Though the disobedience exhibited calls for proceeding under relevant provisions of the Administrative Tribunals Act 1985, Tribunal believes that it would suffice, in the instant case, by expressing strong displeasure of the Tribunal at the way the respondents processed the request of a hapless, physically challenged applicant over the last few years by-passing a judicial order.

E) To conclude, action of the respondents is a colourable exercise of power, against rules, arbitrary, unreasonable and illegal. It goes against the principles laid down by Hon'ble Supreme Court as exposited above. Therefore, the impugned order dated 2.2.2017 is quashed. Consequently respondents are directed as under:

i) To reconsider the case of the applicant for compassionate appointment as per the orders of this Tribunal dated 6.6.2016 in OA No. 328/2014 by applying the revised merit points of 36 as laid down in the respondents memo dated 17.12.2015, by taking into consideration the points secured

by the applicant at the first instance when his case was received and processed.

ii) In view of the delay noticed, respondents are given only 8 weeks time to implement the order from the date of its receipt.

iii) With the above direction, the OA is allowed.

iv) No order as to costs.

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

Dated, the 13th day of June, 2019

evr