

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

Original Application No.20/1143/2016

Date of Order: 25.06.2019

Between:

Y. Purna Sai, D/o Late Sri Y. Venkateswara Rao
Aged: 20 years, Occ: Unemployee,
R/o Endakuduru, A/W Lakshmipuram-521131
Machilipatnam Division
Krishna District, Andhra Pradesh.

... Applicant

And

1. The Union of India
Rep. by the Director General
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi – 1.
 2. The Chief Post Master General
A.P.Circle, Hyderabad.
 3. The Post Master General
Vijayawada Region
Vijayawada, Krishna District.
 4. The Superintendent of Post Offices
Machilipatnam Division
Machilipatnam, Krishna District
Andhra Pradesh.
 5. The Assistant Superintendent of Posts
Avanigadda Sub-Division
Avanigadda – 521121, Krishna District
Andhra Pradesh.
- ... Respondents

Counsel for the Applicant ... Mr. K. Rama Koteswara Rao

Counsel for the Respondents ... Sri B.Laxman, Advocate for
Smt. K. Rajitha, Sr.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 non-consideration of the request of the applicant for compassionate appointment.

3. Applicant's father while working for the respondents organisation as Branch Post Master (BPM) left for the heavenly abode on 10.5.2009. Applicant's mother applied for compassionate appointment which was rejected on 10.5.2012, though she got 100 points, for not possessing the requisite educational qualification. Thereafter, applicant represented on 20.7.2015 for compassionate appointment which too got rejected on 13.7.2016 stating that cases closed cannot be reconsidered. Aggrieved over the same, OA has been filed.

4. Contentions of the applicant are that she is eligible to be considered for compassionate appointment. Applicant applied for compassionate appointment on 20.7.2015 which was rejected on 13.7.2016, by quoting the letter dated 10.6.2016, which is irrational. Her husband is an agricultural labourer and that the responsibility of taking care of her mother and paternal grandmother has fallen on her after the demise of her father.

5. Respondents state that for the post of BPM the minimum qualification is 10th standard whereas the wife of the deceased employee had passed 4th standard and, hence, her request for compassionate appointment could not be considered though she got 100 points against 115 points scale. Applicant, who was a minor at the time of the death of the ex-employee, applied for compassionate appointment on 20.7.2015.

When her application was being processed, a policy shift occurred, with the merit points to be considered for compassionate appointment, have been revised from 51 to 36, vide Memo. dated 17.12.2015. In pursuance of this change in policy, a clarificatory letter was issued on 10.6.2016 ordering that cases closed prior to the date of issue of Memo. dated 17.12.2015 should not be re-opened. Quoting the letter dated 10.6.2016, request of the applicant was rejected vide letter dated 13.7.2016. Besides, the applicant is married and was not dependent on the deceased employee. Family members cannot claim compassionate appointment one after the other. Applicant cannot claim compassionate appointment, as a matter of right, after considerable lapse of time. Respondents cited certain judgments of Hon'ble Supreme Court in support of their contentions.

6. Heard both the counsel and perused the material papers submitted.

7. I) It is an undisputed fact that the request of the wife of the deceased employee was rejected on the ground that she did not have the requisite educational qualifications, though she secured 100 merit points on the 115 merit scale. Merit points indicate the indigent circumstances of the family. Closer to the 115 points, the greater is the indigence. Applicant's mother having got 100 points clearly establishes that the family is in indigent circumstances. Nevertheless, her request was not considered on educational grounds, which is understandable.

II) At the time of the death of ex-employee in 2009, applicant was a minor and, hence, was not eligible to apply. Applicant was born on 10.8.1996 as informed by the respondents and on becoming a major, she

has applied for compassionate appointment after acquiring the requisite qualifications. Admittedly, applicant being a minor was dependent on the deceased employee at the time of his death. Therefore, as a daughter she was dependent on the deceased employee. Later, she got married to an agricultural labourer but the burden of taking care of her mother and paternal grandmother on the demise of her father was on her. As a married daughter, she is taking care of the dependents of the deceased employee. Hence, the twin conditions laid down in DOPT's Memorandum dated 30.5.2013 and the latest instructions on compassionate appointment, circulated by the respondents, vide letter dated 30.5.2017 which are broadly consequential to the previous memos issued on the subject, are satisfied for considering her case for compassionate appointment.

III) Applicant applied for compassionate appointment on 20.7.2015 which was rejected by quoting the letter dated 10.6.2016 which does not permit closed cases to be processed consequent to the issue of revised compassionate recruitment policy on 17.12.2015. If the respondents were to act in 2015, then the letter of 2016 would not have been applicable to her case. It was the mistake of the respondents for not considering the case of the applicant in time, which is impermissible, as per the legal principle set by the Hon'ble Apex Court in

(a) *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust*, (2010) 1 SCC 287, wherein, it was held as under:

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) *Rekha Mukherjee v. Ashis Kumar Das*, (2005) 3 SCC 427, it was held as under:

“36. The respondents herein cannot take advantage of their own mistake.”

Respondents made the mistake and are penalising the applicant by not considering her request, which is unfair to say the least.

IV) Besides, respondents are expected to process compassionate appointment applications on a monthly basis earlier and as per latest letter dated 30.5.2017, within 3 months from the date of receipt of the application. Applicant applied on 20.7.2015 which was rejected on 13.7.2016 i.e. after nearly one year violating their own norms. Rules are to be followed. If not the respondents, who will? Hon'ble Apex has clearly directed that violation of rules is to be curbed and snubbed as under:

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 **A.N.Sehgal & Others v. Raja Ram Sheoran & Others**, 1992 Supp (1) SCC 304, the Hon'ble Supreme Court has stated that *“Any wanton or deliberate deviation in the implementation of the rules should be curbed and snubbed.”* In another judgment reported in (2007) 7 SCJ 353, the Hon'ble Apex court held that *“the court cannot de-hors rules”*

Respondents may have to bear in mind that they are the torch bearers of rules. Rules are sacrosanct and it is the respondents who have

to maintain their sanctity by strictly ensuring and following rules laid down by them.

V) Moreover, respondent organisation being an instrumentality of the State is a model employer. As a model employer, respondents need to be fair and just in their action. It is indescribably unfair to apply an instruction which did not exist at the time when the applicant made the request for compassionate appointment. There is no rationale in applying a nonexistent circular on the date of making the application. Model employer in the words of the Hon'ble Supreme Court in Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors on 30 November, 2012 in CA Nos.8514-8515 of 2012 has to conduct in a manner as under:

*“48. Before parting with the case, we are compelled to reiterate the oft- stated principle that the State is a **model employer** and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.”*

Respondents violated the rules and acted in an unfair manner in processing the case, which is not in tune with the theme of being a model employer.

VI) In a cornucopia of judgments, Hon'ble Supreme Court has held that compassionate appointments have to be given based on the indigent circumstances in which the family is living. Applicant's mother when she applied, scored 100 points on the indigence scale, which is an indication of acute indigent circumstances. However, her application was rejected since she did not possess the requisite educational qualifications. Applicant applied when she became a major with the eligible qualifications and with the additional responsibility of taking care of the

dependents of the deceased employee. Hence, she has been pushed into deeper penury making her the fit candidate to be considered for compassionate appointment. Her husband is an agricultural labourer who have seasonal work and his meagre earnings do not enable both ends to meet.

VII) As can be seen, there is a sequence in the occurrence of the events from the death of the ex-employee commencing from the applicant's mother first applying and on getting rejected, applicant on becoming major applied etc., which naturally took time and, hence, it cannot be alleged that there is delay in applying for compassionate appointment, as alleged by the respondents.

VIII) As per DOPT guidelines dated 16.1.2013, any eligible dependent family member can apply for compassionate appointment. Applicant was dependent on her father at the time of his death and after his death, she is taking care of the rest of the dependent members of the deceased employee members as married daughter, since there is none to take care of the family. Hence, in the given circumstances, she has applied for compassionate appointment which should have been processed. Instead, respondents rejected on the grounds that her mother's application has been rejected. Rule provides for considering compassionate appointment to any dependent member who takes care of the family of the deceased employee. Therefore, it is not correct to reject the request of the applicant as she is fully eligible as per DOPT's Memorandum dated 16.1.2013 which permits considering married daughters for compassionate appointment. Respondents have not shown

any rule which prohibits dependent family members to apply for compassionate appointment. Thus, here again infringement of rules, by the respondents, is flagrant.

IX) Reverting to the Hon'ble Supreme Court judgments cited by the respondents, they are in fact helpful to the applicant, since the various judgments cited state that compassionate appointment has to be offered as per rules. Applicant is to be in indigent circumstances and has the right to be considered though not the right to be appointed. Applicant is eligible as per rules, is living in indigent circumstances and is only pleading to be considered. Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In fact, Hon'ble Supreme Court in different judgments has further held as under:

In *Sushma Gosain & Ors. vs. Union of India & Ors.*, (1989) 4

SCC 468, the Hon'ble Apex Court held as thus:

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

The essence of the above judgment is that there should not be delay in processing compassionate appointments. Respondents did the opposite by procrastinating the process and that too against their own rules.

Besides, in **Bhawani Prasad Sonkar vs. Union of India & Ors.**,

(2011) 4 SCC 209, Hon'ble Supreme Court has held as under :-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

Family is living in penury as is evident from the 100 marks allotted when the applicant's mother applied. BPMs do not get pension. With the death of employee, burden fell on the applicant to shoulder the family responsibility, which has obviously created further financial pressure. Husband earns seasonally as an agricultural labourer. Family requires humanitarian consideration. Respondents did not appreciate this aspect and mechanically disposed of her request by citing a non consequential letter as exposted above.

In fact, to remove ambiguity in regard to compassionate appointments, Hon'ble Supreme Court in **Bhawani Prasad Sonkar**'s case (supra) has summarised the grounds on which compassionate recruitment has to be considered, which reads as under:

“19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

On all the grounds the applicant is fully eligible to be considered for compassionate appointment.

X) Going a step further, even a cursory glance of the impugned order dated 13.7.2016, makes it explicit that it is neither a speaking nor a reasoned order. It does not give reasons as to how the letter dated

10.6.2016 which did not exist on the date when the applicant submitted the application in 2015 could be applied. An order which does not give the basis of the decision is invalid, in the eyes of law, as per Hon'ble High Court of Jharkhand in Jit Lal Ray v. State of Jharkhand, WP(C) No. 469 of 2019, decided on 26-04-2019, the relevant part of which reads as under:

“It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice.”

Therefore, the impugned order dated 13.7.2016 is *non-est*.

XI) Thus, it can be seen from the above, action of the respondents is against rules, arbitrary and contrary to law.

In totality of the facts and circumstances of this case and the discussion held hereinbefore, the OA is allowed. The impugned order dated 13.7.2016 is quashed and set-aside. Consequently, respondents are directed to reconsider the case of the applicant based on the prevailing guidelines as on date and issue a speaking and well reasoned order within a period of 3 months from the date of receipt of a copy of this order. Parties will bear their own costs.

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

Dated, the 25th day of June, 2019

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