

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH: HYDERABAD

Original Application No.20/790/2017

Date of Order: 27.06.2019

Between:

Pitta Srinivasa Rao
S/o Late Sri Krishna Rao
Aged 40 years, Occ: Ex. Branch Postmaster
Konthur BO, Account, Palakol HO 534260
Bhimavaram Division. Applicant

AND

1. Union of India, Rep. by its Secretary
Ministry of Communication & I.T.
Department of Posts-India, Dak Bhavan
Sansad Marg
New Delhi – 110 001.

2. The Chief Postmaster General
A.P.Circle, Dak Sadan, Abids
Hyderabad – 500 001.

3. The Postmaster General
Vijayawada Regio, Gandhinagaram
Vijayawada – 520 013, Krishna District.

4. The Sr. Superintendent of Post Offices
Bhimavaram Division
Bhimavaram 534201
West Godavari District. Respondents

Counsel for the Applicant Mr. G. Jaya Prakash Babu.

Counsel for the Respondents Mr. P. Krishna.

CORAM:

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

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

2. The OA is filed for not considering the applicant for compassionate appointment.
3. Applicant's father while working for the respondents organisation as GDS Branch Postmaster passed away on 7.7.2007. On applying for compassionate recruitment, it was rejected on 25.5.2012 for securing marks less than 51. Aggrieved, applicant filed OA 1267 of 2012 and the outcome was that respondents once again rejected the request on 31.7.2014 claiming that the applicant got 40 points against 51. Applicant, claiming that without properly assessing the penurious circumstances in which the deceased employee's family is living, another OA 1397/2014 was filed on 31.7.2014, which was allowed vide order dated 15.03.2017, wherein it was directed to reconsider the case of the applicant based on the revised guidelines issued on 17.12.2015. However, lady luck eluded the applicant as the respondents continued the rejection saga. Hence, the OA.
3. The contentions of the applicant are that the delay in the processing of the request for compassionate appointment cannot be attributed to the

applicant. The points system introduced in 2010 is not applicable to the applicant since the respondents willy nilly did not consider the case of the applicant in 2008. Considering the case of other similarly placed, ignoring the applicant request from 2008 to 2012 is illegal. Respondents are duty bound to follow the Tribunal's order to consider applicant's case as per revised guide lines of 17.12.2015.

4. Respondents oppose the contentions of the applicant by stating that the case of the applicant was rejected in 2012 on the grounds that he got 33 points against the minimum 51 required. Consequently the post to which the applicant has applied for has been filled up by regular notification. Being aggrieved, applicant filed OA 1267/2012 wherein it was directed to dispose of the representation of the applicant and accordingly it was disposed of on 26.11.2013 by informing the applicant that he is ineligible as he did not acquire the required merit points as prescribed by the Directorate. Contesting the rejection one another OA 9/2014 was filed, which was disposed of by this Tribunal on 22.04.2014, and the final result was a rejection order issued by the respondents on 11.8.2014. Again a fresh OA 1397/2014 was filed, to resurrect the request of the applicant, wherein, vide its Order dated 15.03.2017, respondents were directed to consider the claim of the applicant based on revised guidelines of

17.12.2015. However, the revised guidelines apply only for those cases received on or after 17.12.2015 and not to closed cases and, hence, the case of the applicant met the same fate of rejection on 01.08.2017.

6. Heard the counsel for the applicant and there is no representation on behalf of the respondents, however, we perused the pleadings on record.

7. I) The records speak of a tell tale story of the applicant continuously approaching this Tribunal seeking compassionate appointment on several occasions culminating in the final one (OA 1397/2014) wherein respondents were directed to reconsider the case of the applicant based on the revised guidelines of 17.12.2015, which lowered the threshold of merit points for selection from 51 to 36. However, instead of complying with this order, respondents rejected the case of the applicant citing an executive instruction which prohibited consideration of closed cases.

II) The decision of the respondents is irregular for the following reasons.

- a. A Court order reigns supreme over an executive instruction.
- b. An order which has a beneficial intent has retrospective effect.
- c. Homogeneous group of people cannot be artificially divided into two different classes by instituting an artificial cut off date.

d. Respondents are liable for contempt on grounds of disregarding the orders of the Tribunal

III) Law is supportive of each of the above observations made in Para II seriatim, as expounded below:

a. ***Director of Education v. Ved Prakash Joshi,(2005) 6 SCC 98***

“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) Referring to the above case, the Apex Court has stated in its judgment in Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami, (2008) 5 SCC 339.”

b. ***High Court of Delhi v. A.K. Mahajan,(2009) 12 SCC 62***

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“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.”

c. In **D.S.Nakara & Others v. Union of India & Others**, 1983 AIR 130 the

Hon'ble Apex Court observed that benefit available to a class of people cannot be denied by ushering in an artificial divide amongst the homogeneous class.

Class discrimination of persons similarly situated, as held by Hon'ble Supreme Court in **D.S.Nakara** case (supra), should be avoided. The cut off date fixed by the respondents to apply the norms of the memo dated 17.12.2015 does not in any way change indigent circumstances in which the applicant is placed. Therefore, the cut off date brings in a class divide within a homogeneous group.

d. The Commissioner, Karnataka ... vs C. Muddaiah on 7 September, 2007, Appeal (Civil) No.4108 of 2007,

“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.”

IV) It is also to be pointed out that the impugned order, is an elaborate narration of facts lacking sound reasoning. An order which is not

reasoned, is invalid in the eyes of law as per the observation of the 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

“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.”

V) Before parting, it has to be adduced that the processing of the case was procrastinated. Had it been processed in 2008 or 2009, rules regarding application of merit points introduced in 2010 would not have been applied to the case of the applicant. Therefore, mistake of the respondents should not recoil on to the applicant as per the legal Principle laid down by the Hon'ble Supreme Court, as stated herenunder:

“The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.”

VI) Thus, the action of the respondents is contrary to law and, hence, illegal. Therefore, the impugned order dated 1.8.2017 is quashed.

Consequently respondents are directed to reconsider the request of the applicant for compassionate appointment as per latest rules and regulations governing compassionate appointment, within a period of 3 months from the date of receipt of this order.

With the above directions, the OA is allowed with no order as to costs.

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

Dated, the 27th day of June, 2019

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