

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

Original Application No.20/1089/2017 & MA 295/2018

Date of Order: 25.07.2019

Between:

G. Sai Krishna Mohan,
S/o. late G. Seshagiri Rao,
(Ex.GDS/Branch Postmaster,
Pottipadu a/w. Koilkuntla SO),
Aged about 24 years, R/o. Pottipadu,
Under Koilkuntla SO,
Nandyal Division, Nandyal,
District Kurnool.

... Applicant

And

1. Union of India, Represented by
The Director General, Posts,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi -1.
2. The Chief Postmaster General,
A.P. Circle, Hyderabad.
3. The Postmaster General,
Kurnool Region, Kurnool.
4. The Superintendent of Post Offices,
Nandyal Division, Nandyal,
District Kurnool.

... Respondents

Counsel for the Applicant ... Mrs. Rachna Kumari

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

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

ORDER
{As per B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for rejecting the request for compassionate appointment.
3. Brief facts of the case are that the applicant's father, while working for the respondents organisation as Grameen Dak Sewak (GDS), died in harness on 23.12.2010. On the demise of his father, applicant sought compassionate appointment which was rejected on 29.5.2012 since points secured were less than the cut off score of 51 points. Aggrieved applicant filed OA 849/2012 wherein it was directed to reconsider the request which the respondents did and rejected the request once again on 9.1.2015. Thereupon, OA 229/2015 was filed wherein it was once again directed to reconsider the case of the applicant but the rejection saga continued vide impugned order dated 6.11.2017. Hence, the OA.
4. The contentions of the applicant are that he has the requisite educational qualifications. Further, terminal benefits were mostly used to repay loans raised by his late father for getting himself medically treated. Impugned order is not a speaking order. The applicant's case cannot be rejected based on the order dated 10.6.2016 with retrospective effect. In fact, applicant has to be considered for compassionate appointment based on the revised scheme dated 30.5.2017. Points were not allotted for the attribute immovable/landed property. Rejection is against the observation of the Hon'ble Supreme Court in D.S.Nakara v U.O.I. Release of terminal benefits cannot be a criteria to consider compassionate appointments. Further, as per Postal Directorate letter the compassionate

appointment requests are to be first examined and thereafter, based on the outcome vacant posts are to be filled.

5. Respondents oppose the contentions of the applicant by stating that the applicant's mother nominated the applicant for compassionate appointment since she is illiterate. Terminal dues were paid. Applicant has to take care of his mother. His request for compassionate appointment was rejected on 29.5.2012 and thereafter, on the intervention of the Tribunal in OA 849/2012 it was once again reconsidered but rejected on 09.1.2015 since he got 50 points against 51 required. Applicant challenged the rejection in OA 229/2015 and as per directions of the Tribunal the case was re-examined and rejected on 6.11.2017. Reason given was that closed cases should not be reconsidered as per Postal Directorate letter dated 10.6.2016. In OA 229/2015 it was also directed to keep the status quo in respect of the notification to fill up the post in question till the case of the applicant is reconsidered and orders issued.

6. Heard both the counsel and perused the pleadings on record.

7. I) Applicant has been repeatedly knocking the doors of Tribunal for consideration of his case for compassionate appointment. Tribunal did direct the respondents to reconsider the case of the applicant in OA 849/2012 and accordingly it was reconsidered and rejected since the applicant got 50 points against 51 required. The difference is wafer thin. Later the points required to be selected were reduced to 36 in 2015. After the reduction of the points, respondents instead of considering the case of the applicant as per the order contained in OA 229/2015, rejected

the case of the applicant vide impugned order dated 6.11.2017 stating that as per Postal Directorate letter dated 10.6.2016 closed cases should not be reopened.

II) This action of the respondents is in flagrant violation of the Tribunal order dated 26.4.2017 in OA 229/2015 wherein it was directed as under:

“Respondents to reconsider the case of the applicant in the light of the Dept. of Posts letter dated 17.12.2015 and pass a speaking and reasoned order.”

Instead of abiding by the order of the Tribunal, respondents rejected the request which, in fact, speaks about the contumacious conduct of the respondents, as observed by the Hon’ble Apex Court in, *Director of Education, Uttarakhand & Others v. Ved Prakash Joshi & Others, (2005) 6 SCC 98, as under:*

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.

Xxxxxxx

Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. (Emphasis supplied)

The above view has been reiterated by the Hon’ble Apex Court in ***Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami, (2008) 5 SCC 339.***

The respondents are liable to be proceeded against for suo motto contempt proceedings in the context of disobeying the Tribunal order. It needs no reiteration that the executive authorities cannot sit on appeal over a court order. Tribunal Trusts that the respondents will not repeat the folly in future lest, it may have to be viewed in all the seriousness it deserves.

III) Moreover, applicant got 50 points out of 51 and if the orders of the Tribunal were to be complied with, perhaps the applicant would have made it based on the revised guidelines of 2015 wherein the cut off point has been revised to 36.

IV) Besides, orders denying a benefit granted, with retrospective effect, are held to be legally invalid as per Hon'ble Supreme Court observations in High Court of Delhi v. A.K. Mahajan, (2009) 12 SCC 62, as under:

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.

Therefore, the order dated 10.6.2016 cannot deny the benefit of considering the case of the applicant based on the relaxed standards contained in the modified scheme of 2015.

V) Lastly, all those who apply for compassionate appointment form a homogeneous group. They cannot be segregated based on a cut off date. The cut off date does not make any change in the indigent

circumstances of the applicant based on the cut off date. Hence the principle laid down by Hon'ble Apex Court in D.S .Nakara case applies to the case on hand.

VI) Thus the action of the respondents is against the legal principles laid down by the Hon'ble Supreme and brazenly against the orders of this Tribunal in OA 229/2015. As the respondents have failed to follow the intrinsic legal principles cited, impugned order dated 6.11.2017 is quashed. Concomitantly respondents are directed to reconsider the request of the applicant for compassionate appointment based on the latest guidelines on the matter, by passing a speaking and reasoned order within a period of 3 months from the date of the receipt of this order.

VI) With the above direction, the OA is allowed. MA 295/2018 stands disposed. There shall be no order as to costs.

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

Dated, the 25th day of July, 2019

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