

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

Original Application No.20/1246/2018

Date of Order: 16.08.2019

Between:

B. Mohammad, S/o. late B. Mastan Saheb,
Ex-Group D Pathikonda P.O.,
Aged about 45 years, R/o. H. No. 16/55,
Pathikonda – 518 380, Kurnool District.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Communications and IT,
Sanchar Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle, Vijayawada – 520 013.
3. The Senior Superintendent of Post Offices,
Kurnool Division, Kurnool -518001.

... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mr. A. Surender Reddy,
Addl. CGSC

CORAM:

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

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

2. The OA is filed seeking a direction to the respondents for considering the claim of the applicant in regard to compassionate appointment.
3. Father of the applicant while working as Group D in the respondents organisation has passed away. Applicant's brother applied

for compassionate appointment which was reported to be under process by the respondents. Unfortunately applicant's brother passed away in 2010. Consequently applicant made a request for compassionate appointment and he was directed to submit the relevant documents in 2016 which was complied in 2017. As there was no response applicant made another representation on 13.5.2018 but of no avail. Hence, the OA.

4. The contentions of the applicant are that the mother of the applicant has received meagre terminal benefits which were mostly used to repay debts raised to get medical treatment of the deceased employee. Case of the applicant has to be treated afresh.

5. Respondents through the reply statement inform that brother of the applicant requested for appointment to a GDS post which could not be considered since the ex-employee was a group D employee and his wards cannot be considered for GDS posts as per rules. Consequently, family members of the deceased employee represented on 21.3.2006 to consider providing compassionate appointment to the applicant, since brother of the applicant was married and living separately. However, the same could not be considered since applicant did not possess matriculation qualification and was intimated accordingly on 25.5.2011. Thereafter applicant acquired X class qualification and represented on 22.9.2014 for reconsideration of his case but it was not considered on grounds that the claim being belated. Besides, applicant's mother was receiving a pension of Rs.9,000 per month and that the family members are married and settled. Terminal benefits to the extent of around

Rs.2,00,000 were released. There are no liabilities like children education etc to be met. Respondents have cited certain judgements of the Hon'ble Apex Court to support their contentions.

6. Heard the learned counsel for the applicant and perused the pleadings on record.

7. I) The request of the applicant for compassionate appointment was rejected claiming that it is belated. By tracing the history of the case it would reveal that the brother of the applicant first applied which was rejected as his case could not be considered for GDS post as per rules. Thereafter, applicant applied and it was not considered since the minimum educational qualification was revised to X standard. Applicant after acquiring the prescribed educational qualification has applied for compassionate appointment. The entire process took time which was beyond the control of the applicant. Moreover, all the family members of the deceased employee are eking out their living as coolies. Compassionate appointment has to be considered based on the indigent circumstances in which the family is placed. The indigent circumstances did not change due to the time taken in processing the case. It is this aspect which is vital to the case.

II) Further there is no time limit to consider the cases of compassionate appointment as per DOPT memo cited below:

"TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT: Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012.

Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case.

DOPT memo dated 30.5.2013 does provide for considering belated claims of compassionate appointment.”

Therefore the action of the respondents in rejecting the claim based on delay and that too for valid reasons, is against the rule cited.

III) Facts of the case do reveal that there was a delay even on the part of the respondents. In this regard Hon’ble Apex Court has directed that the compassionate recruitment cases are to be processed expeditiously since the deceased family needs assistance when they are in crisis as under:

“7. Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In Sushma Gosain & Ors. vs. Union of India & Ors., (1989) 4 SCC 468, this 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.”

Respondents have not abided by this legal principle by delaying the processing of the case from their end too.

IV) Moreover, respondents cited Hon’ble Apex Court observation in ***Umesh Kumar Nagpal v State of Haryana & others*** in (JT 1994 (3) SC

525 where in it was observed compassionate appointment cannot be granted after lapse of reasonable lapse of time. The same is not relevant to the case as was explained in paras supra. Respondents need to the note that the Hon'ble Supreme Court in the same judgment has held that the financial conditions of the family is paramount in considering cases of compassionate appointment as under:

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every cases, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made In the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is -only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family....."

V) In addition, respondents were trying to emphasise that the deceased employees family has received terminal benefits of around Rs.2 lakhs but DOPT memo dated 30.5.2013 categorically states that receipt

of terminal benefits cannot be a ground to negate compassionate appointment. Important aspect to be examined is as to whether the family is living in indigent circumstances and the applicant has the requisite qualifications. Even the meagre terminal benefits received were reported to be mostly used for getting the deceased employee medically treated. Virtually all the male family members are working as daily coolies with no reliable source of income. Definitely earning from daily wages and that too which is seasonal would not help the family of the deceased employee to eke out a decent living. These aspects have not been gone into by the respondents. The other judgments referred to by the respondents are not relevant to the case on hand for reasons expounded above.

VI) Therefore based on the aforesaid, action of the respondents is against rules and the legal Principles laid down by the Hon'ble Supreme Court cited supra. Consequently respondents are directed to consider the case of the applicant for compassionate appointment to the post eligible as per extant rules within a period of 3 months from the date of receipt of this order.

VII) With the above direction, OA is allowed. There shall be no order as to costs.

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

Dated, the 16th day of August, 2019

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