

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

**Original Application No.20/295/2017 with
MA 20/303/2018**

Date of Order: 2.07.2019

Between:

B. Siva Krishna, S/o. late Bapaiah,
Ex. GDS MD, Boddikurapadu BO,
A/w. Uppalapadu (P) SO,
Aged about 28 years, R/o. Jamukuladinne Village,
Darsi Mandal, Prakasham District.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Communications and IT,
Dept of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle, Krishna Lanka,
Vijayawada – 520 013.
3. The Postmaster General,
Vijayawada Region, Vijayawada – 520 003.
4. The Superintendent of Post Offices,
Prakasam Division, Ongole – 523 001.
5. The Inspector of Posts,
Podili Sub Division, Podili.

... Respondents

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

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

CORAM:

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

ORAL ORDER

2. OA is filed for non consideration of the applicant for compassionate appointment.

3. Applicant's father died while working for the respondents organisation on 10.5.2014. This is the second round of litigation. Applicant, when he approached this Tribunal in OA 497 of 2015 it was directed on 23.06.2016 to consider the case of the applicant as per revised guidelines issued on 17.12.2015. Instead of complying with the order, respondents rejected the case of the applicant vide order dt. 17.08.2016, stating that the revised guidelines are not applicable to closed cases. Aggrieved, that the orders of the Tribunal have not been implemented, OA is filed.

4. The contentions of the applicant are that court orders cannot be violated. Indigent circumstances have not been properly evaluated. The corrigendum dated 10.6.2016 issued in respect of the memo dated 17.12.2015 is illegal since it was issued against the provisions of the original memo.

5. Respondents oppose the contentions of the applicant on the grounds that that the request of the applicant was rejected by the Circle Relaxation Committee on 17.3.2015 since applicant secured less than 51 points required to be considered for selection. However, when the issue

was agitated before this Tribunal in OA 497/2015, the matter was re-examined on the orders of the Tribunal and rejected vide letter dated 17.8.2016, based on the clarificatory letter of Postal Directorate dated 10.6.2016, wherein it was laid that cases closed prior to issue of memo dated 17.12.2015 need not strictly be opened. There is no provision to keep any post vacant till court case is finalised. Respondents have also pointed out that CP No. 94/2016 in OA 497/2015 is pending. CP will be dealt in its usual course when it comes up, depending on the facts and circumstances, that are available at the time of deciding the CP.

6. Heard both the Counsel and perused the records as well as the material papers submitted.

7. I) Respondents were clearly directed in OA 497/2015 on 23.03.2016 to reconsider the case of the applicant based on revised guidelines in memo dated 17.12.2015. Instead of acting on the direction, respondents rejected the request, which is bad in law for the following reasons:

- i) Court orders whether they are correct or wrong have to be implemented. Option open to the respondents was to challenge the decision in a higher judicial forum. Without doing so, respondents disobeying the orders of Tribunal would tantamount to disobedience which is serious and can be construed as contempt of the Tribunal. Respondents can be called upon to explain by taking up suo motu contempt

proceedings. However, Tribunal trusts that they will not repeat the folly once again in future. Observation made by the Hon'ble Supreme court in ***Director of Education v. Ved Prakash Joshi, (2005) 6 SCC 98***, establishes the fact as to how important it is to abide by a court order, as reproduced hereunder :

*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) Court order reigns supreme over an executive instruction. Therefore, the letter dated 10.6.2016, has no relevance in the context of the explicit directions of the Tribunal to follow guidelines issued on 17th Dec 2015. Respondents cannot sit on judgement over a court order.
- iii) The order dated 10.6.2016 does not have the legal force to withdraw a benefit with retrospective effect as observed by Hon'ble Apex 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.”

- iv) Moreover, as per memo dated 17.12.2015, eligible family member of the deceased employee has to be considered taking

the date of death of the ex-employee into consideration. Under this clause, applicant is eligible, whereas respondents violated their own rules, which has been decried by Hon'ble Supreme Court in **A.N. Sehgal & Ors v. Raje Ram Sheoran & Ors, (1992) Supp 1 SCC 304**, wherein it was held that

“Any wanton or deliberate deviation in implementation of rules should be curbed and snubbed.”

- v) Lack of application of mind is evident from the way the case was processed by the respondents. Any order which is issued without proper application of mind is as good as being invalid.
- vi) Once a case is under adjudication by the Tribunal, further action on the issue shall abate till the issue is adjudicated upon, as per Section 19 (4) of the Administrative Tribunals Act, 1985. Therefore, any action to fill up the post in question would not be proper after filing of the present OA. Hence, the contention of the respondents in this regard is incorrect.

II) Besides, it was pointed out by the learned counsel for the applicant that new guidelines have been introduced from 30.5.2017 wherein point system has been dispensed with.

III) Therefore, from the above, it is crystal clear that the action of the respondents is in flagrant violation of the Tribunal order dated 23.03.2016. Their decision is against rules, illegal and arbitrary. Therefore, in view of the aforesaid circumstances, respondents are directed to reconsider the case of the applicant for compassionate appointment to the post of GDS within a period of 3 months from the

date of receipt of this order as per the latest guidelines issued on 30.5.2017.

IV) This Tribunal granted an interim order on 19.04.2017 directing the respondents not to finalize the selection for the post of GDS MD, Boddikurapadu B.O a/w Uppalpadu (P) S.O without the leave of this Tribunal. The respondents, depending upon the reconsideration of the applicant's case for the said post by the CRC, can fill up the post. Till then, the post has to be kept vacant, as already directed in the interim order. MA No. 303/2018 is disposed of accordingly.

V) OA is allowed with the above directions. There shall be no order as to costs.

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

Dated, the 2nd day of July, 2019

evr
