

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

Original Application No.21/368/2018

Date of Order: 11.07.2019

Between:

Abdul Rawoof S/O Late Nabi Saheb, Fr D
(Ex-Maliman) SRO Karimnagar Stg.
Aged 25 years, Resident of H.No.6-2-448
Hussainpura, Karimnagar-505001
District: Karimnagar.

... Applicant

AND

1. Union of India, Rep. by
The Director General
Department of post
Dak Bhawan, Sansad Marg
New Delhi – 110 001.
2. The Chief Postmaster General
Telangana Circle, Abids
Hyderabad – 500 001.
3. The Postmaster General
Hyderabad Region, Abids
Hyderabad – 500 001.
4. The Superintendent
R.M.S., Z-Division
Hyderabad – 500 001.

... Respondents

Counsel for the Applicant ... Mr. B. Gurudas.

Counsel for the Respondents ... Mr. K. Venkateswarlu, Addl. CGSC

CORAM:

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

ORAL ORDER

2. OA is filed for non grant of compassionate appointment to the applicant.
3. Applicant's father died in harness on 2.2.2002 while working for the respondents organisation leaving behind wife and two minor children. On becoming a major, applicant sought compassionate appointment which

was rejected on 26.12.2011. The same was challenged in OA no 1304 of 2014 wherein respondents were directed by this Tribunal on 12.11.2014 to reconsider the request. Applicant claims that ignoring this direction, respondents again rejected the claim for compassionate appointment on grounds of relative merit and lack of vacancies. Aggrieved about the rejection OA has been filed.

4. The contentions of the applicant are that there was a delay in processing the request of the applicant for more than 2 years. On being rejected, the case of the applicant was not considered for the consequent 3 years as envisioned in the rules. Rules prevailing at the time of death of the employee have not been applied, instead the system of allotting points was followed which was brought into vogue in 2010. Even the allotting of points has not been correct. Applicant claims that he got 71 points. The directions of the Tribunal in OA 1304/2014 were not followed. As per the revised instructions of DOPT, vide letter dated 16.1.2013, there is no time limit in considering cases of compassionate appointment. Applicant is living in indigent circumstances and is in need of a job to make both ends meet.

5. Respondents claim that though the mother of the applicant was eligible, she did not apply but instead recommended her son for compassionate appointment. This decision of the mother is an indication that the family is not in indigent circumstances and that for financial security of the son the claim was made. The request of the applicant was examined by the Circle Relaxation Committee and rejected on 11.1.2010 due to want of vacancies and relative merit. Applicant on representing to the Secretary, the same was disposed of by giving valid reasons. On being not considered, applicant moved the Tribunal in OA 1304/2014 wherein it was

directed to reconsider the case and, accordingly, the same was examined and rejected as the circumstances did not warrant a change in the decision. Again a representation was made to the Secretary, Posts which was duly disposed of with reasons. The case of the applicant was considered on 11.1.2010 whereas the point system was put into practice from 20.1.2010 and, therefore, allocating points when the case was considered on 11.1.2010 did not arise. Moreover, the requirement of indigence has not been met. As per Hon'ble Supreme Court verdict in **Umesh Kumar Nagpal v State of Haryana & Others**, (1994) 4 SCC 138 compassionate appointment cannot be granted after a reasonable period of time. Yet the case was considered even after a lapse of 8 years. Compassionate appointment cannot be considered as a matter of right as per observation of the Hon'ble Apex Court in **MGB Gramin Bank v Chakrawarti Singh** (Civil Appeal No.6348/2013 dated 07.08.2013).

6. Heard the counsel for the applicant and perused the records as well as the material papers placed on record.

7. I) Albeit, respondents have submitted an elaborate reply statement but the crucial aspects which decide the dispute have not been touched upon. The impugned order does not furnish required details which are required, to make it a reasoned and a speaking order. The impugned order does not indicate the basis on which the request of the applicant was not considered. Respondents have been directed to reconsider the request of the applicant on 12.11.2014 in OA 1304/2014. At this juncture of time, the points system was in vogue. The respondents have not indicated the number of points secured by the applicant. This is essential to bring about transparency in the selection procedure. Applicant need to know as to

whether he was fairly assessed in comparison with those who have been considered along with him. Such details are woefully missing in the impugned order. True to speak, RTI act provides for information of public importance to be displayed suo motto in the public domain. Selection is one such area where information has to be volunteered to be given. In the present case, though the Tribunal directed to reconsider, respondents should have reconsidered the case of the applicant as per the point system which was in vogue and intimated the result. Instead of doing so, claiming that there was no change in the circumstances and, hence, does not warrant a change in the decision already taken in the past, is not an appropriate compliance to the directions of this Tribunal in OA 1304/2014.

II) As was pointed out the impugned order is neither a reasoned nor a speaking order since it did not reveal critical details considered for selection. An order which is not reasoned is invalid in the eyes of law as observed by 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, 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.”

Besides, adverse effect in not issuing a speaking order has been clearly spelt out, by the Hon'ble Supreme Court, Markand C. Gandhi Vs. Rohini M. Dandekar (Civil Appeal No.4168 of 2008, decided on 17.07.2008), as under:

“5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the

parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I.

6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most.

III) The applicant claimed that he got 71 marks, which is crucial to the case, but not responded to. Coming to the other averment of the respondents that the mother of the applicant has sought compassionate appointment to her son instead of herself is an indication that the family is not in indigent circumstances is surprising. Mother of the applicant has the prerogative to nominate any of the eligible family members for compassionate appointment. Decisions are not to be taken based on presumptions but based on hard facts backed by rules and law. In regard to the Hon'ble Supreme Court cases cited by the applicant, it is true that the applicant cannot claim compassionate appointment as a matter of right. However, he has a right to be considered. Besides, coming to delay respondents have equally contributed to the delay as is borne out by the facts of the case. Also DOPT's OM, dated 16.1.2013 does not specify any time limit in considering the case of the applicant for compassionate appointment.

IV) Thus, from the aforesaid , action of the respondents suffers from the infirmities of not following the directions of the Tribunal in OA

1304/2014 and the impugned order being a non speaking order without giving valid reasons. Hence, the decision of the respondents to reject the request of the applicant for compassionate appointment is arbitrary and illegal. Consequently, the impugned order dated 2.2.2015 is quashed. Respondents are, therefore, directed to reconsider the case of the applicant for compassionate appointment as per extant rules and law. After reconsidering the case, respondents are directed to issue a speaking and well reasoned order covering all the points required, without giving room for further grievance to arise on this count. Time permitted to implement the order is 3 months from the date of receipt of this order. Parties to bear their own costs.

V) With the above directions the OA is allowed.

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

Dated, the 11th day of July, 2019

nsn