

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

Original Application No.20/0330/2017

Date of Order: 13.06.2019

Between:

N. Murali Mohan Rao, S/o. late N. Raja Rao,
Ex. Gramina Dak Sevak Mail Carrier/ Mail Deliverer,
S.R. Peta BO, a/w. Garugubilli SO,
Aged about 36 years, R/o. Pedagudaba Village,
Garugubilli Mandal, Vijayanagaram District,
Parvathipuram Division.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Communications and IT,
Department of Post – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Krishna Lanka, Vijayawada – 520 013.
3. The Postmaster General,
Vijayawada Region, Vijayawada – 520 003.
4. The Superintendent of Post Offices,
Parvatipuram Division,
Parvatipuram – 535501.
5. The Inspector of Posts,
Bobbili Sub Division, Bobbili.

... 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.)

ORAL ORDER

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

2. OA filed for rejecting the claim of the applicant for compassionate appointment.

3. Applicant's father, while working for the respondents organisation as Grameen Dak Sevak, passed away on 19.7.2011. Respondents permitted the applicant to work in the vacancy caused by the demise of his father on officiating basis. Applicant sought appointment on compassionate grounds, which was rejected on 22.5.2012 on grounds that he secured less than 51 merit points. Aggrieved, applicant filed OA 319/2014 wherein it was directed to reconsider the case as per the revised merit criteria of 36 points enunciated vide respondents letter dated 17.12.2015. Instead, respondents once again rejected the claim on 7.2.2017 and issued notifications to call for applications to fill up the post from the open market. Concomitantly, the present OA.

4. The contentions of the applicant are that he is unemployed with no property and is living in indigent circumstances. Respondents have disobeyed the order of the Tribunal. Applicant has to be considered based on para 5 of the memo dated 17.12.2015. Similarly situated persons were considered and appointed.

5. Respondents inform that the case of the applicant was reconsidered by the Circle Relaxation Committee on 10 & 11/1/2017 and rejected on grounds that cases settled prior to issue of the memo 17.12.2015 need not strictly be opened. On the demise of the ex-employee, the applicant was

allowed to officiate in the vacancy created due to death and as his case was rejected the 2nd time, notification was issued to fill up the post on regular basis. The family of the deceased employee received terminal benefits to the tune of near around Rs.1,15,000 and that they possess a house with cement slab. Annual income of the family is Rs.8,000.

6. Heard both the counsel and perused the documents placed on record.

7. I) The spinal argument of the respondents is that those cases closed prior to the issue of memo dated 17.12.2015 cannot be reopened. It is alarming to note that the respondents could make such an observation when this Tribunal order was to consider the case based on the revised criteria of 36 merit points circulated vide memo dated 17.12.2015. The order of the Tribunal reads as under:

“5. Having regard to the revised merit criteria points notified by the G.O.I, Ministry of communications & IT, Dept. of Posts letter No.17-17/2010 –GDS dated 17.12.2015, we direct the respondents to place the applicant’s case before the Circle relaxation committee in its ensuing meeting for consideration of his appointment on compassionate grounds in accordance with the revised merit criteria notified in the above cited letter.”

The order of the Tribunal is explicit and clear to the core with no ambiguity. The action of the respondents in contravention of the Tribunal directive has to be construed as open defiance. Rarely, we come across such instances of open defiance of the order of the Tribunal. Direction of the Tribunal has to be implemented without any reservation. By not complying with the Tribunal order, there will be an end to the rule of law. If dissatisfied, respondents can contest the decision in higher judicial

forums. Without resorting to the remedy available refusing to implement the order of the Tribunal will lead to failure of justice and speaks about the contumacious conduct of the respondents. We take support of the Hon'ble Supreme Court observations in **The Commissioner, Karnataka ... vs C. Muddaiah on 7 September, 2007**, Appeal (Civil) No.4108 of 2007, as under, to reiterate that the approach of the respondents is despicable to say the least.

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.

It needs no exposition that an executive authority cannot sit on appeal in regard to a judicial direction. Right or wrong the court order has to be implemented, lest it would be a sure case of contempt as per the directions of the Hon'ble Supreme Court in *Director of Education v. Ved Prakash Joshi*, (2005) 6 SCC 98, wherein it was held that:

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) Further, respondents acted against the rules laid down by them.

The memo dated 17.12.2015 at para 5, specifying the revised merit points of 36, states as under:

“5. Revised provisions as per above will be given effect to taking the date of death of the GDS as cut off date where there is eligible member in the family on that date and date of consideration by the CRC in other cases.”

Applicant is the eligible member in the deceased employee's family on the date of death and hence, the revised provisions would apply to the applicant. Respondents have violated their own rules which has been strongly decried by the Hon'ble Supreme Court in:

T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that “*Action in respect of matters covered by rules should be regulated by rules*”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “*the court cannot de hors rules..*”

The action of the respondents in negating the request of the applicant against rules has thus to be curbed and snubbed.

III) Further rules and regulations are framed so that there is fair play in administration. Service law gives paramount importance to this facet of administration. Indeed there is nothing personnel in public employment. When the right of an employee is infringed as per the organisational norms, it has to be corrected and by not doing so forcing

employees to approach the judicial forums is comprehensively unfair. The observations of the Hon'ble Supreme Court extracted here under fully cover the case:

- (a) Regulations defining duties, conduct and conditions of its employees framed by statutory bodies have the force of law. The form and content of contract with a particular employee being prescriptive and statutory, the statutory bodies have no free hand in framing the terms and conditions of service to their employees, but are bound to apply them as laid down in the 774 regulations. The regulations give the employees a statutory status and impose obligations on the statutory authorities, and that they cannot deviate from the conditions of service laid down therein. There is no personal element in public employment and service. Whenever employees rights are affected by a decision taken under statutory powers the court would presume the existence of a duty to observe the rules of natural justice and compliance by the statutory body with rules and regulations imposed by the statute. [779 E-G] Sukhdev Singh v. Bhagat Ram [1975] 3 SCR 619 referred to.

IV) Lastly, it is not of place to mention that a benefit available to a class of people cannot be denied by applying an order with retrospective order. Class discrimination of persons similarly situated, as held by Hon'ble Supreme Court in D.K.Nakara case, should be avoided. In fact, rejection of the case of the applicant on the grounds that past cases cannot be reopened particularly when there is a clear judicial order has to be deprecated. To be precise, action of the respondents is a clear violation of the Hon'ble Supreme 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.

V) It is 8 years since the demise of the ex employee and yet the issue continues to linger due to the irregular conduct of the respondents. We take serious note of the same and calls for imposition of heavy costs on the respondents. Yet, with a view that respondents would make a note and not come up for adverse conduct once again, Tribunal desists to impose the same.

VI) To conclude, action of the respondents is against rules, arbitrary, unreasonable and illegal. It goes against the principles laid down by Hon'ble Supreme Court as exposted above. Therefore, the impugned order dated 7.2.2017 is quashed. Consequently respondents are directed to consider as under:

- i) To reconsider the case of the applicant for compassionate appointment as per the orders of this Tribunal dated 2.6.2016 in OA 319/2014 by applying the revised merit points of 36 as laid down in the respondents memo dated 17.12.2015, by taking into consideration the points secured by the applicant at the first instance when his case was received and processed.
- ii) In view of the delay noticed, respondents are given 8 weeks time to implement the order from the date of its receipt.
- iii) With the above direction, the OA is allowed.
- iv) There shall be no order to costs.

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

Dated, the 13th day of June, 2019

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