

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

Original Application No.20/476/2017

Date of Order: 18.06.2019

Between:

Sri M. Chandramouli, S/o. late M. Ramanjaneyulu,
Aged 34 years, R/o. Nelagonda Village,
Guntakal Mandal, Anantapur District.

... Applicant

And

1. Union of India, Rep. by the Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi.
2. The Asst. Superintendent of Post Offices,
Guntakal Sub Division,
Anantapur Dn, A.P.
3. The Chief Postmaster General,
A.P. Circle, Daksadan, Abids, Hyderabad.
4. The Postmaster General, A.P. Southern Region,
Kurnool.
5. The Superintendent of Post Offices,
Anantapur Division, Anantapur.
6. Dilip Kumar,
Working as GDS BPM,
Nelagonda BO, Anantapur Dn, A.P.

... Respondents

Counsel for the Applicant ... Mr. Krishna Devan

Counsel for the Respondents ... Mr. K. Venkateswarlu,
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 is filed challenging the denial of compassionate appointment.
3. Father of applicant died while working for the respondents on 24.4.2006 as Branch Post Master. Applicant was allowed to work on a temporary basis in the post of Branch Post Master (BPM) in which his father was working. Applicant represented for compassionate appointment and the same was placed before the Circle Relaxation Committee, which met on 10.05.2012. The Committee rejected the case of the applicant and the same was communicated to the applicant on 23.5.2012. Consequently, applicant moved the Tribunal in OA No.668/2012 wherein it was directed on 20.7.2016 to consider the case of the applicant by applying the provisions of Memo dated 17.12.2015. Yet, the respondents rejected the request of the applicant on 6.3.2017 and appointed the 6th respondent, by relieving the applicant of the temporary charge of the post of BPM. Aggrieved, the OA has been filed.
4. Contentions of the applicant are that the Tribunal order dt. 20.7.2016 has been disregarded. Circular dated 17.12.2015 is prospective in nature. One provisional appointee cannot be replaced by another provisional appointee.
5. Respondents, *per contra*, state in their reply statement state that as per orders of the Tribunal in OA 668/2012, request for compassionate

appointment was reconsidered and rejected on 6.3.2017 stating that the memo dated 17.12.2015 applies only to those cases which come up for consideration from the date of issue of the memo and not to those cases which have been considered and rejected prior to the issue of the memo.

6. Heard the learned counsel for the applicant. Counsel for the Respondents 1 to 5 was absent. There was no representation on behalf of the 6th respondent despite service of notice to him. The material papers were perused.

7. I) In a series of OAs which have been disposed by the Tribunal recently on the same issue, it was observed that the respondents have not implemented the orders of the Tribunal. The same story continues in the present OA too, as can be evidenced from the succeeding paras.

II) Order of the Tribunal was to apply provisions of the new memo dated 17.12.2015 wherein the merit points for considering compassionate appointments have been revised from 51 to 36 points. Order of the Tribunal is extracted is under:

“..... the respondents are directed to place the case of the applicant before the next meeting of the Circle relaxation Committee for reconsideration of this case on the basis of revised merit points in accordance with the criteria laid down in letter dated 17.12.2015, within 3 months from the date of receipt of a copy of this order”

In response, respondents issued the compliance order, which reads as under:

“ As per latest instructions communicated vide Department of Posts letter no 17/17/2010-GDS dated 10.6.2010 that “the revised provisions will be given effect from the date of issue of these instructions in respect of those cases considered in CRC’s held after 17.12.2015. Cases already settled before 17.12.2015 need not strictly be opened.”

A judicial order has to be complied with. An administrative authority cannot sit on appeal on a judicial order. The recourse open to the respondents was to approach the higher judicial forums, if they were aggrieved over the order. Instead of doing so, non implementation of the order of the Tribunal by the respondents speaks about the contemptuous approach of the respondents. This calls for a serious view to be taken and in fact proceed against the respondents by initiating suo motu contempt proceedings. Nevertheless, it appears that the respondents have not understood the import of their misdoing and hence, an opportunity is given to them to be on guard, so as not to repeat the same folly in future. However, to sensitise the respondents on a court order, the observations of the Hon’ble Supreme Court in a catena of judgments are reproduced here under:

1) In The Commissioner, Karnataka Housing Board vs C. Muddaiah, in Appeal (Civil) No.4108 of 2007, decided on 7 September, 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

2) 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)

Tribunal expects that the respondents would not come up again for adverse notice in regard to compliance of judicial orders as per procedure prescribed in implementing them, keeping in view of the serious directions of the Hon'ble Apex Court in the aforesaid judgements.

III) Even on the rule front, action of the respondents is questionable. Para 5 of the 17.12.2015 memo, speaks that the provisions of Memo can be applied if there is an eligible member of the family at the time of the death of the ex-employee. Applicant was the eligible

family member available at the time of the death of the ex-employee. Hence, the spirit of the memo dictates that the applicant had to be considered for compassionate appointment. Relevant portion is extracted hereunder to drive home the assertion.

“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.”

Respondents have infringed their own rule, which is deprecated by the Hon’ble Apex Court, in no uncertain terms, as under:

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*”.

IV) Further, when an order has a beneficial consequence its application has retrospective application. The applicant had the right to be considered for compassionate appointment with revised merit points as per para 5 of the cited memo and also as per the legal principle enunciated by the 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.

Based on the above legal principle, the memo dated 17.12.2015 which has a beneficial connotation has to be applied to the case of the applicant. Corrigendum dated 10.6.2016, which attempts to deny the benefit is non est in view of the legal principle referred to above. If the 17.12.2015 memo were to be applied, may be the outcome would have been different. Instead of doing so, injustice has been done by rejecting applicant candidature by relying on an extraneous executive instruction, which has no relevance to the case nor the authority to overrule a specific direction of the Tribunal, as exposed in paras supra.

V) Moreover, applicants for compassionate appointment form a homogeneous class in themselves. A benefit extendable to a homogeneous class cannot be denied by dissecting it into two distinct groups through an artificial cut off date as was observed by the Hon'ble Supreme Court in D.S. Nakara case. The indigent circumstances as a parameter remains what it is, irrespective of the cut off date. Applicant indigent circumstances do not change because of an artificial cut off date of 17.12.2015. They continue to be what they are irrespective of the cut off date. Providing benefit to one section of people belonging to the same homogeneous group who applied after a cut off date and denying the same to another section belonging to the same class who applied earlier to the cut off, is impermissible as per the principle expounded in the D.S. Nakara case.

VI) It is seen that the post which was temporarily manned by the applicant has been filled up on a regular basis by the 6th respondent. Hence, he has acquired a vested right to the post he has been selected, which should not be disturbed. Applicant has no right to claim the same post for which the 6th respondent has been selected. Moreover, the applicant can only be considered for compassionate appointment and definitely not claim it as a right in the words of the Hon'ble Supreme Court in *SAIL v. Madhusudan Das & Ors* in Civil Appeal No. 6159 of 2008, decided on 20.10.2008, as inscribed below:

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

The GDS cadre is a large one with many unfilled vacancies at any given instant of time. Applicant can aspire to any one for which he is eligible and can be considered.

V) Thus to conclude, as can be seen from the above, action of the respondents is against the orders of the Tribunal, rules and law laid down by the Hon'ble Supreme Court. Therefore, the impugned order is quashed. Concomitantly, respondents are directed to reconsider as under:

- i) To reconsider the request of the applicant for compassionate appointment as was directed by this Tribunal in OA No. 668/2012 by applying the revised norms as contained in memo dated 17.12.2015.
- ii) Applicant may be considered to any existing vacancy of BPM in Anantapur Postal Division
- iii) Time allowed to implement is 4 months from the date of receipt of this order
- iv) With the above directions the OA is disposed.
- v) No order as to costs.

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

Dated, the 18th day of June, 2019

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