

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

Original Application No.20/895/2016

Date of Order: 28.06.2019

Between:

1. L.Sailendri W/o Late Raja Rao,
Aged about 44 years, Occ: House Wife
R/o Marripadu Village, Seethammapet Mandal
Sriakkulam District.

2. L. Nirmala D/o Late Raja Rao
Aged about 25 years, Occ: Unemployee
R/o Marripadu Village, Seethammapet Mandal
Sriakakulam District.

... Applicants

AND

1. The Union of India,
Rep. by its Secretary
Ministry of Postal Departments
Sastri Bhavan, New Delhi, India.

2. The Chief Post Master General
A.P.Circle, Abids, Hyderabad-I.

3. The Superintendent of Post Offices
Sriakakulam Town & District.

4. The Assistant Superintendent of Post Offices
Amadalavalasa Sub-Division, Amadalavalasa,
Pin – 532185.

... 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

2. The OA is filed questioning the rejection of the request of the applicants for compassionate appointment.

3. Husband of Applicant No.1 died while working for the respondents organisation as Branch Post Master on 6.10.2013. Applicant No.1 made a request to provide compassionate appointment to any of the eligible dependent family members. However, when it was not considered, Applicant No.1 moved the Tribunal in OA 1360 of 2015, which was disposed of on 05.02.2016, wherein it was directed to consider the representation of Applicant No.1, and accordingly respondents complied by rejecting the case by passing the impugned order. Hence, the OA.

4. The contentions of the applicants are that the order of the Tribunal has not been acted upon and that the impugned order is not a reasoned order.

5. Respondents oppose the contentions of the applicants by contending that the late husband of Applicant No.1 was kept under put off duty on 14.12.2011 for alleged excess charge Rs.5,89,698 in NREGS payments. When the past work verification of the late husband of the applicant was on, he died on 6.10.2013. Hence, the Post Master General, Visakhapatnam did not recommend the case. As per Postal

Directorate letter dated 15.02.2001, compassionate recruitment can be offered to the dependent family members of the deceased employee, provided the later had a blemish less record. Consequently, the Circle Relaxation Committee rejected the case. Again, as per the directions of this Tribunal in OA 1360/2015, the case was re-examined and rejected on 6.4.2016 for the same reason.

6. Heard both the counsel and perused the records submitted.

7. I) The main ground for rejection of compassionate appointment is that the applicant's late husband was involved in an alleged excess charge of NREGS (National Rural Employment Guarantee Scheme) funds to the tune of Rs.5,89,698/-. However, when the past work verification was under process, ex-employee died. The excess charge to the account was only an allegation and it could not be proved since the ex-employee has passed away. No disciplinary action was initiated. Even, if it were to be initiated, it abates on the death of the employee as per DOPT instruction letter dated 20.10.1999, which is extracted hereunder.

“(4) Disciplinary cases should be closed on the death of charged official – The Department has been receiving references seeking the clarification whether disciplinary cases initiated against the Government servant under CCS (CCA) Rules, 1965 could be closed in the event of death of the charged official during pendency

of the proceedings. After careful consideration of all the aspects, it has been decided that where a Government servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965 would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant. (GI, Dept. Per & Trg. OM NO. 11012/7/99-Estt (A) dated the 20th October, 1999)."

Albeit, the deceased-employee is an Extra Departmental employee, yet the principle laid down applies to Extra Departmental employee as per the above instructions and as per law.

II) Put off is not a punishment. The employee is only distanced from regular duties till the alleged irregularities are investigated and charge sheet is issued. In the present case, the death of the employee has abetted further action in the matter. Therefore, taking a view that the past conduct of the ex-employee is not good and rejecting the request of the applicant for compassionate appointment is incorrect.

III) Besides, respondents have clarified on 30.11.2015, that even in cases of a deceased employee, who had a blemished record, dependents of such employees, can be considered for compassionate appointment. The letter is reproduced here under:

“No.17-17/2010-GDS, Government of India, Ministry of Communications & IT, Department of Posts, (GDS Section), Dak Bhawan, Sansad Marg, New Delhi – 110001. Dated : 30 Nov 2015

All Heads of Postal Circles

Sub : Scheme for engagement of a dependent of deceased GDS on compassionate grounds – clarification:

Various issues in connection with compassionate engagement scheme were engaging attention of this Directorate for some time past and the same are clarified for the information of all concerned as under:

Ser	Point raised	Clarification
1	Whether cases of married son living with parents and dependent for livelihood on the GDS on the date of death of the deceased GDS considered and rejected for compassionate engagement based on clarification on Point of Doubt No.2 vide Directorate's letter No.17-17/2010-GDS dated 09.10.2013 can be reconsidered in the light of their consideration as dependant vide Directorate's letter No.17-39/2012-GDS dated 14.01.2015?	Yes. Clarification on Point No.2 of Directorate's letter No.17-17/2010-GDS dated 09.10.2013 is to be treated non-existent/withdrawn ab-initio.
2	Whether or not the educational qualifications prescribed vide Directorate's letter No.17-39/2012-GDS dated 06.02.2014 & further vide letter No.17-39/6/2012-GDS dated 14.01.2015 would apply to cases of compassionate engagement taking the day of death of the GDS as cut off date?	Being a part of regular mode of engagement to GDS Posts, the educational qualification applicable on the date of consideration cases by CRC would apply.
3	Whether it is permissible to allow compassionate engagement to a dependant of a deceased GDS where the service rendered by him/her was found to be	Yes. However, this will apply from the date of issue of the order and no rejected past cases would be permissible to

	unsatisfactory due to their involvement in serious financial irregularities but expired before award of penalty?	be re-opened.
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2. This has the approval of the competent authority.

(Surender Kumar)

Assistant Director General (GDS)”

IV) Respondents, on being directed by the Tribunal to reconsider the case, have re-examined and issued the impugned order on 6.4.2016, whereas the Clarification was issued on 30.11.2015. Therefore, respondents have acted against their own rules, which is rather surprising. Hon’ble Apex Court in a catena of judgments has made it categorical that violation of rules has to be curbed and snubbed, as under:

“The Hon’ble Supreme Court observation 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*”

V) In view of the aforesaid, action of the respondents is against rules and arbitrary. Therefore, the impugned order dated 6.4.2016 is

quashed. Consequently, respondents are directed to reconsider the request of the applicant for compassionate appointment to any dependent eligible family member, within a period of 3 months from the date of receipt of a certified copy of this order.

With the above direction (made in Para 7(V) above), the OA is allowed with no order as to costs.

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

Dated, the 28th day of June, 2019

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