

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01690/2017

Dated , the day of November, 2019

PRESENT

Hon'ble Mr. T. Jacob, Member(A)

A. Ranjith Kumar,
Aged 26 years,
S/o. K.Rajamani,
No. 565/1, Mettu Street,
Komaratchi,
Kattumamannad(TK),
Cuddalore District- 608 302.

....Applicant

By Advocate M/s S. Ramaswamyrajarajan

Vs

Union of India rep., by
The Chief Postmaster General,
Tamilnadu Circle,
Chennai – 600 002.

...Respondent

By Advocate Mr. M.T. Arunan

ORDER

(Pronounced by Hon'ble Mr.T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"To quash the impugned order No.REP/35-4/2013 dated 26.09.2017 and to direct the respondents to consider the case of the applicant under the scheme which was available at the time of the death of the applicant's father and to give him Compassionate Appointment in an appropriate post to which he is eligible."

2. The brief facts of the case as submitted by the applicant are as follows:-

The applicant's father while working as Postman under the respondents died on 14.02.2005 leaving the family in indigent condition. The mother of the applicant made several representations to the respondents requesting to give compassionate appointment either to her or to her son .i.e., the applicant herein. But without considering the request of the applicant in an appropriate time and under appropriate scheme available at the time of his father's death, his case was considered under the New Relative Merit Point Scheme (which was introduced in the year 2010) by the Circle Relaxation Committee for the year 2015 and rejected on the ground that the family of the applicant is not in indigent condition. Aggrieved by the above, he has filed this OA on the following grounds:-

(a) The respondents ought to have considered the case of the applicant in an appropriate time and under appropriate scheme i.e under seniority quota which scheme was available at the time of the death of the applicant's father. But, the respondents made an inordinate delay in considering the case of the applicant

and after a lapse of 10 years had passed an order dated 25.08.2015 considering his case under the New Scheme of Relative Merit Point system, which came into force with effect from 02.01.2010, stating that his case was not recommended by the Circle Relaxation Committee for the year 2015 on the ground that (1) Non- availability of direct Recruitment Vacancy in the respective cadre under RRR quota and (2) Less Indigent as per Relative Merit Points under RRR quota and even when the applicant had given representation dated 18.09.2017, the respondent had not come forward to address the grievance of the applicant according to the law laid down by the Hon'ble Supreme Court and again rejected the request of the applicant repeating the same reason that the CRC could not recommend the case of the applicant due to less indigency as per Relative Merit Point System.

(b) The mother of the applicant had given representation immediately after the death of his father and there is no mistake either on the part of the applicant or his mother for the delay caused in considering his case till 2015 as his mother and he himself had given repeated representations pressing his case to be considered. It is the respondents who delayed the matter for a period of 10 years and now passed the rejection order stating that the applicant is not in indigent condition and will consider his case in the next CRC along with the fresh candidates is illegal because first of all the Scheme of Relative Merit point system is not at all applicable in the case of the applicant.

(c) The family of the applicant is in indigent condition.

(d) There is a delay and laches in considering the case of the applicant for Compassionate Appointment and thus the action of the respondents is illegal and in violation of Rules and Regulations available on the subject.

3. Per contra, the respondents in their reply statement have stated that the applicant's father, K. Rajamani, while working as Group 'D' in Parangipettai S.O.

Cuddalore Division died in harness on 14.02.2005. The applicant and his mother are the only legal heirs of the said deceased employee. Terminal benefits of Rs.1,06,351/- was paid to the widow of the deceased and she is in receipt of family pension of Rs.3701/- + DR per month. The applicant applied for compassionate appointment on 05.12.2012 even though his father expired on 14.02.2005. His application was rejected because at the time of death of his father he was a minor and had completed only 13 years which is under age and his mother was not a literate person. The applicant did not prefer any representation prior to 05.12.2012 as per the records available at the O/o SPOs, Cuddalore Division. Hence his application along with relevant documents could not be placed before the Circle Relaxation Committee (CRC) Meeting held on 12.03.2013. No CRC meeting was held during 2014 due to court cases. Between 1990 and 1999 more than 600 cases were approved. But the claim of the applicant was required to be processed under specific rules governing the compassionate appointment in the light of the instructions contained in DOP&T letter dated 09.10.1998. However, following the guidelines issued by the DOP&T vide OM dated 24.11.2000, Postal Directorate issued instructions vide letter dated 08.02.2001 to discontinue maintenance of waiting list of approved candidates for compassionate appointment. Further the DOP&T issued OM dated 22.06.2001 whereby consideration of waiting list for appointment on compassionate grounds should be with reference to the position about availability of vacancies within the ceiling of 5% falling under direct recruitment in Group 'C' and 'D' posts and to discontinue the

practice of circulating the names of deserving applicants to other Ministries/Departments. Based on the above instructions, the Postal Directorate issued letter dated 25.07.2001 to dispense with the procedure of keeping the waiting list of candidates for compassionate appointment. Being aggrieved by the above orders, some of the candidates who were kept in the waiting list filed OA.862/2001 and batch wherein this Tribunal allowed the OAs vide order dated 28.03.2002 and the same were also upheld by the Hon'ble High Court by a common order dated 20.06.2007. Challenging the above, the Department filed SLP.No.2976/2008 (CA.No.7773/09) and 30 other SLPs. Since the question of considering the candidates already selected for appointment and kept in the waiting list was under judicial review, all pending and other applications for compassionate appointment received from 2000 were kept pending for consideration and decision. Meanwhile, the Hon'ble Supreme Court vide order dated 30.07.2010 disposed of the SLPs directing the Department to regularize the services of 202 respondents who were engaged in the Department as on 27.10.2009 and 37 interlocutory applicants against the vacancies kept reserved for compassionate appointment from the year 2001 to 2009 on humanitarian ground and setting aside the findings of the Tribunal and High Court with regard to the interpretation of OMs and Circulars of the Department leaving open the question of law. Since the number of cases accumulated were high and there was no vacancy under 5% direct recruitment quota to accommodate such excess approved candidates who have survived all these years and consider fresh

cases against the vacancies after regularization of respondents as per the order in SLPs, 876 cases including cases received from 2000 to 05.03.2012 were taken up for consideration by the Circle Relaxation Committee in the office of the second respondent. Meanwhile the Postal Directorate vide letter dated 20.01.2010 directed to decide the cases of compassionate appointment by allocating points based on various attributes so as to achieve the objective of the Scheme and to ensure complete transparency. The applicant submitted representation dated 05.12.2012 after attaining his majority and his case was placed before the Circle Relaxation Committee 2015 and was examined on the basis of Relative Merit Points (RMP). The educational qualification of the applicant is 12th standard and is eligible to be considered for the post of PA/SA/PM/MG/MTS. The applicant was awarded 55 RMP. The total RMP of the last selected candidate in Postal Assistant/Sorting Assistant cadre was 66, Postman cadre was 73 and MTS cadre was 85. Hence the Circle Relaxation Committee did not recommend his case. The applicant submitted another representation dated 18.09.2017 to the 1st respondent wherein by order dated 26.09.2017 it was stated that his case will be examined along with other cases on merit against the 5% DR quota vacancies meant for compassionate appointment in the next CRC when it meets and that the time limit of three years prescribed for considering cases of compassionate appointment has been withdrawn. The contention of the applicant for considering his case as per the scheme which prevailed at the time of demise of his father in 2005 is not possible. If his case has to be considered at the

time of death of his father, then his case has to be rejected as he was underaged on that date. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The object of compassionate appointment is to provide financial assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a Government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of

appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

6. The case of the applicant is that the Scheme that prevailed at the time of death of the Government employee in 2005 should be taken into consideration for evaluating the indigence of the family. After directions of the Hon'ble Supreme Court in SLP.2976/2008 (CA.No.7773/09) and 30 other SLPs dated 30.07.2010, since the number of cases accumulated were high and there was no vacancy under 5% direct recruitment quota available to accommodate such excess approved cases, the Postal Directorate had issued a clarification with the approval of Postal Directorate to disengage such excess approved candidates who have survived all these years and consider fresh cases against the vacancies after the regularisation of respondents in SLPs., 876 cases including cases received from 2000 to 05.03.2012 were taken up for consideration by the Circle Relaxation Committee. In pursuance of the Postal Directorate's letter dated 20.01.2010, compassionate appointment was assessed based on Relative Merit Points awarded on various attributes such as family pension, terminal benefits, monthly income of earning members, movable and immovable property, number of dependents, number of unmarried daughters, number. of minor children and left over service etc., with 15 grade points for the widow of the deceased.

7. The applicant submitted his representation dated 05.12.2012 after attaining majority. His case was placed before the Circle Relaxation Committee held in the

year 2015 which examined his case based on a balanced and objective assessment of the financial condition of the family i.e., family status, family income etc., taking into consideration the assets and liabilities and all other relevant factors such as the presence of earning members, size of the family, age of the children and the essential needs of the family etc., by allocating the following Relative Merit Points based on a hundred point-scale as per the scheme existed at the time of introduction in 2010:-

Details	Particulars	Relative Merit Points awarded
Family pension/pension excluding DR	3701	20
Amount of terminal benefits received	106351	10
Monthly income of earning members	Nil	5
Property	15000	8
No. of dependents & Age	2	10
No. of unmarried daughter	Nil	0
No. of minor children	Nil	0
Left over service	1 year 5 months 17 days	
Total Relative Merit Points		55

The educational qualification of the applicant is 12th std and is eligible to be considered for the post of Postal Assistant/Sorting Assistant/ Postman /Mail guard/MTS. The total Relative Merit Points of the applicant was 55 whereas the Relative Merit Point of the last selected candidate for various cadres are as follows:-

Sl.No.	Cadre	Total of the Relative Merit Points
1	PA/SA (Postal Assistant /Sorting Assitant)	66
2	Postman	73
3	MTS	85

8. The Circle Relaxation Committee vide letter dated 25.08.2015 rejected the request of the applicant on the following grounds:-

1. Non availability of Direct Recruitment vacancy in the respective cadre under RRR quota.
2. Less indigent as per Relative Merit Point under RRR quota.

9. I have considered the matter. The applicant has relied on the Judgement of the Hon'ble Supreme Court in the case of Canara Bank & Anr. vs. Mahesh Kumar & Ors., in C.A.Nos.260, 266 & 267/2008 dated 15.5.2015 wherein it has been held as follows:-

“16. In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors., (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops

to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events.

It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation." Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.

17. Considering the scope of the Scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference."

10. In similar circumstances, a Division Bench of the Hon'ble High Court of Madras in a latest case of P. Mookayee & Anr., has held in W.P.3157/2018 dated 14.02.2018 as follows:-

"4. A perusal of the order of the Central Administrative Tribunal would go to show that what is being stated by the Tribunal is to decide the application of the first respondent herein for compassionate appointment based on the old Scheme which prevailed as on the date of death of the first respondent's husband which does not require any interference at the hands of this Court. The petitioners have not made out any ground to interfere with the order passed by the second respondent herein/Central Administrative Tribunal. Therefore the writ petition is dismissed."

11. The Judgements referred to by the applicant are not applicable to the facts of the present case as the the applicant in the instant case was a minor and was aged only 13 years on the date of death of his father in 2005. The respondents have

considered the case of the applicant after he attained majority vide his representation made on 05.12.2012, on which date, the new scheme of 2010 came into operation.

12. The respondents also have relied on various Judgements of the Hon'ble Supreme Court in support of their case. In the case of *Susma Gosain Vs. Union of India* 1989 (4) SCC 468, it has been held that the purpose of compassionate appointment is to give succour immediately and relief to the family who is shocked by the sudden death of the sole bread winner of the family. In the case of *Union of India vs. B. Kishore* (C.A.1045/2006) dated 06.04.2011, the Hon'ble Supreme Court has held that the dependents of employee who die in harness do not have any special claim or right to employment except by way of concession that may be extended by a separate Scheme. The Hon'ble Supreme Court in the case of *Gramin Bank vs., Chakravarti Singh* (C.A.6348/2013) has held that appointment on compassionate ground cannot be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances ie., eligibility and financial condition of the family, etc., the application has to be considered in accordance with the Scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen, ie., the date of death of the incumbent of the post and the case has to be considered only under the new scheme.

13. The respondents further submit that the matter regarding compassionate

appointment is sub judice before the Hon'ble High Court of Madras in WP.1362/2017 filed by the Department against the order of this Tribunal in OA.1778/2014. Further as per the DOP&T OM dated 26.07.2012, the time limit of three years prescribed vide DOP&T OM No.14014/19/2002-Estt(D) dated 05.05.1993 for considering cases of compassionate appointment had been withdrawn and all the non recommended cases of CRC-2015 including the applicant's case would be placed in the ensuing Circle Relaxation Committee when it meets and would be considered on merits along with other cases for the vacancies of the subsequent years after the judicial process is over. The under current of such a rule position presumably is that with the merit points as per the parameter prescribed, if in any of the years, the individual scores his merit qua other persons, he must be appointed on compassionate grounds.

14. In the conspectus of the above facts and circumstances of the case and the judgements referred to supra, the respondents are directed to consider the case of the applicant for appointment on compassionate grounds in the ensuing CRC meeting along with other cases for the vacancy of subsequent years and pass appropriate orders strictly in accordance with law.

15. The OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER (A)
-11-2019

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