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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00980/2018

Wednesday this the 20th day of November, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

Shri Jishnu K.Das,
Aged 27 years,
'Kundan House', Kannapuram,
Cherukunnu PO, Kannur – 670 301.

....Applicant

(By Advocate Mr.Shafik M.Abdulkhadir)

v e r s u s

1. Union of India, represented by the Secretary,
Department of Posts/Director General,
Posts, Ministry of Communications,
New Delhi – 110 011.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Superintendent of Post Offices,
Kannur Division, Kannur – 670 001.

....Respondents

(By Advocate Mrs.Mini R.Menon)

This application having been heard on 6th November, 2019, the Tribunal on 20th November, 2019 delivered the following :

ORDER

O.A.No.180/980/2018 is filed by Shri.Jishnu.K.Das, son of late Shri.K.Krishnadas, Postal Assistant of Payyanur HO of the Kannur Division who died while in service on 13.7.2015, aggrieved by **Annexure A-1** dated 28.7.2016 by which his request for employment under compassionate

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grounds stands rejected as he was not having the required Relative Merit Points (RMP), **Annexure A-2** dated 8.11.2017 whereby it has been intimated to the applicant that his claim for reconsideration cannot be acceded to and **Annexure A-3** dated 11.8.2018 whereby the applicant has been informed that after re-examination the respondents found no reason to review his request.

The reliefs sought by the applicant in the O.A are as follows :

1. To call for the records relating to Annexure A-1 to Annexure A-9 and to quash Annexure A-1, Annexure A-2 and Annexure A-3 being illegal and arbitrary.
2. To declare that the applicant is entitled to be granted compassionate appointment under the respondents consequent to the death of his father immediately and to direct the respondents to appoint the applicant in any appropriate post immediately.
3. To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

And

4. To award costs of this proceedings.

2. The brief facts of the case are as follows : the deceased employee, the late Shri.Krishnadas, Postal Assistant of Payyanur HO of the Kannur Division met with an accident while returning from office. He succumbed to injuries and expired while in service on 13.7.2015 leaving behind his wife, son (the applicant), daughter and his 84 years old mother. Since the deceased employee was the sole breadwinner in the family, his wife submitted a representation for compassionate appointment for the applicant. As required by the 3rd respondent all the required records, certificates and undertakings, affidavits etc. were also submitted. It is submitted that the DCRG and other benefits received from the Department was utilized for closing the housing

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loan and medical expenses incurred for treating the deceased employee. Besides the grandmother of the applicant was diagnosed with cancer, which required additional funds for chemotherapy.

3. It is submitted that the appointment under 'Dyeing in Harness' scheme under the Department is presently governed by the Scheme, a copy of which is available at Annexure A-7. As per Annexure A-7, RMP is awarded for each component of eligibility norms in order to consider for compassionate appointment. The applicant alleges that if has been properly assessed he would have got 52 RMPs. But he has been awarded only 44 RMPs and the respondents selected the candidate with 48 RMPs thereby rejecting his claim. Based on the information he had received through RTI Act, he has also specifically pointed out that under the head 'moveable/immovable property' he should have been assigned more points for the reason that the dwelling house referred to does not generate any income at all. In support of his contentions he has cited the decision in O.A.No.710/2015 wherein the Tribunal has found that the granting of RMPs for own house and landed property is incorrect and has allowed the aforesaid O.A as per order dated 4.11.2016.

4. As grounds, the applicant submits that as per the norms relating to compassionate appointment, he is entitled to an appointment due to the untimely and unfortunate death of his father.

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5. The respondents have filed their reply statement wherein they have stated that the request for compassionate appointment was considered by the Circle Relaxation Committee which met on 23.6.2016 as per Annexure A-8 Rules and only after finding that the case was not fit for giving appointment, the 2nd respondent, who is the competent authority to decide the matter, rejected it, based on the recommendation of the Circle Relaxation Committee.

6. It is submitted that the objective of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood. It is meant to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. To achieve the objective of scheme of compassionate engagement the Circle Relaxation Committee has worked out a system of allocation of points to various attributes based on a hundred point scale as per Directorate instructions. Since the compassionate appointment is restricted to 5% of the Direct Recruitment vacancies, it is imperative that cases which deserve utmost compassion are to be approved. Also, the committee has to limit its recommendations within the 5% identified for the purpose.

7. With regard to applicability of O.A.No.710/2015 the respondents have submitted that the aforesaid O.A related to the compassionate appointment case of Gramin Dak Sevaks (GDS). Compassionate appointment of GDS candidates and departmental candidates is governed by different rules. The 5% limit of vacancies is not applicable in respect of the appointment as GDS. The criterion followed is that the total of RMPs should be over and above 50 points. The condition is not applicable for departmental candidates. It is submitted that the compassionate appointment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employees' family to tide over the sudden financial crisis and cannot be claimed as a matter of right. The concept of compassionate appointment has been recognized as an exemption to the general recruitment rule, carved out in the interest of justice, in case of certain exigencies by way of a policy of an employer which assumes the character of the service rules. The request is to be strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment *dehors* the scheme. In support of their contentions the respondents have cited the following judgments of the Apex Court :

1. **Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138.**
2. **Bhawani Prasad Sankar v. Union of India & Ors. (2011) 4 SCC 209.**
3. **Himachal Road Transport Corporation v. Dinesh Kumar (JT) 1996 (5) SC 319 and**
4. **Hindustan Aeronautics Limited v. Smt.A.Radhika Thirumalai (JT) 1996 (9) SC 197.**

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8. A rejoinder has been filed by the applicant reiterating his contentions in the O.A and he submits that in the order of this Tribunal dated 27.2.2019 in O.A.No.180/560/2017 the issue of non revenue generating dwelling land and house has been considered and it has been directed therein that the land owned has to be treated as 'no land' if it does not generate agricultural income or any other income. The applicant pleads that in the light of Annexure A-10 he would have got more RMPs which would have secured him employment.

9. The respondents have filed an additional reply statement to the rejoinder filed by the applicant wherein they have submitted that against the order of this Tribunal in O.A.No.180/560/2017 the respondents have already moved to file OP(CAT) before the Hon'ble High Cour. Diluting one vital attribute like 'immovable property' arbitrarily for one individual would be in violation of the basic principle of compassionate appointment and it is apprehended that this will adversely affect the chances of other deserving applicants. The respondents have relied on the judgment of the Apex Court in **Life Insurance Corporation of India v. Asha Ramachandran Ambedkar & Ors. (JT) 1994 (2) SC 183** wherein it has been held that the High Courts and Administrative Tribunals cannot give directions for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such appointment.

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10. Heard Mr.Shafik M.A, learned counsel for the applicant and Mrs.Mini.R.Menon, learned counsel for the respondents. All pleadings, oral and documental, were examined.

11. The applicant's case for compassionate level appointment was negatived on the ground that he possessed landed property and this resulted in RMPs being denied to him in the assessment matrix designed by the Directorate. The applicant's case is that he ought to have been awarded 16 points under serial No.a, 5 points under serial No.c, 10 points under serial No.d, 15 points for Serial No.c, 5 points for serial No.f and 2 points for serial no.h, which would make his RMP's 52. But as per Annexure A-1 order, he came to be awarded only 44 points. He submits that his family has to pay back large loans taken for the treatment of the deceased employee as well as for other pressing commitments. As per RTI information received by him, he was allowed only one point as he possessed movable/immovable properties assessed as Rs.8,21,189/-. He states that the 7 cents of land owned by the family brings no income at all as his dwelling house is located in that plot.

12. This Tribunal in O.A 1108/2017, following the orders in O.A.No.839/2015, had come to the conclusion that even if an applicant in a compassionate appointment case possesses a parcel of land, what has to be taken into account is the income deriving from it and not the

market value as it is not encashable, particularly, if the applicant lives on that land. In O.A 839/2015, this Tribunal had issued specific direction as follows :

“4. After hearing both sides, this Tribunal has noted that the respondents have taken into consideration of the fact that the applicant is in position of a land worth Rs.2,60,000/- and a house the value of which is estimated by the competent authority as Rs.7,03,543/-. It is difficult to believe that mere possession of land is a factor which negatives the claim for compassionate appointment. Only if it is an agricultural land capable of engaging agricultural operations and if the family of the deceased can earn livelihood by agricultural operations, possession of land can be taken into consideration as a factor for denial of compassionate appointment. The mere fact that the land and house have enormous value is not a justification for rejection of the request for compassionate appointment because one cannot expect the family to sell the land and house to eak their livelihood. That is not the objective behind the scheme for appointment on compassionate grounds. Therefore, it appears to this Tribunal that the request of the applicant requires a reconsideration by the competent authority of the respondents in the light of the observations made by this Tribunal in this order. Annexure A-6 is quashed and set aside.

5. The Original Application is disposed of with a direction to the respondents to reconsider the request of the applicant again in the light of the observations in this order. The respondents are directed to pass a speaking order explaining the reasons with proper justifications in a detailed manner. The above exercise shall be completed by the respondent within two months from the date of receipt of a copy of this order. No order as to costs.”

13. The judgments referred to in the reply statement are not relevant to the question above and are to the effect that compassionate level appointments can be made only where a vacancy exists. This is not an issue under consideration here.

14. After due examination, this Tribunal would like to follow the decision taken in the two Original Applications referred to where this Tribunal had ruled that mere possession of a property should not lead to disqualification of

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the applicant from being considered under the scheme and what has to be reckoned is whether he is getting any income from the same. No income is seen estimated in the calculation made by the Directorate.

15. In view of the above, this Tribunal directs Respondent No.2 to consider the case afresh, independent of the stand taken earlier. The assessment has to be made taking in to account what income the applicant receives from his property and not the market value. Respondent No.2 is directed to hold a Circle Relaxation Committee and take a decision on the above lines within three months from the date of receipt of a copy of this order.

16. The Original Application is thus allowed. No costs.

(Dated this the 20th day of November 2019)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00980/2018

- 1. Annexure A1** : True copy of the Letter No.B2/DLGS/2015 dated 28.07.2016 issued by the 3rd Respondent.
 - 2. Annexure A2** : True copy of the Letter No.Rectt/7-9/Deptl/2016 dated 8.11.2017 issued by the Asst. Director of the 2nd Respondent.
 - 3. Annexure A3** : True copy of the letter No.Rectt/7-9/Deptl/2016 dated 11.8.2018 issued by the Asst. Director of the 2nd Respondent.
 - 4. Annexure A4** : True copy of the letter No.B2/3/DLGS/2015 dated 04.09.2015 issued by the 3rd Respondent.
 - 5. Annexure A5** : True copy of the Representation dated 16.02.2016, submitted before the 2nd Respondent.
 - 6. Annexure A6** : True copy of the Representation dated 25.08.2016 before the 1st Respondent.
 - 7. Annexure A7** : True copy of letter No.37-36/2004-SPB-I/C dated 20.01.2010 issued by the 1st Respondent.
 - 8. Annexure A8** : True copy of the Letter No.Rectt/7-RTI/2018 dated 01.11.2018 by the CPIO of the 2nd Respondent.
 - 9. Annexure A9** : True copy of the order dated 04.11.2016 of this Hon'ble Tribunal in O.A.No.710/2015,
 - 10. Annexure A10** : True copy of the order 27.2.2019 of this Hon'ble Tribunal in O.A.No.180/560/2017.
 - 11. Annexure R1** : Copy of land valuation certificate issued by Executive Engineer, PWD Buildings Division, Thalassery.
 - 12. Annexure R2** : Copy of point based on hundred point scale.
 - 13. Annexure R3** : Copy of certificate from Village Officer, Kannapuram.
 - 14. Annexure R3-A** : Translated copy of certificate from Village Officer, Kannapuram.
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