

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

Original Application No.20/190/2019

Date of Order: 15.11.2019

Between:



S.L. Suresh Kumar, Gr. C,
S/o. late Sri L. Lokanadham, Postal Assistant,
Aged 43 years, Occ: Un-employee,
R/o. H. No. 15-25-177/4, Balajinagar, Greemspet,
Chittoor – 517 002, Chittoor District, A.P.

...Applicant

AND

1. Union of India,
Rep by the Secretary to Government of India,
Ministry of Communications & IT,
Department of Posts,
New Delhi – 110 001.
2. The Chief Postmaster General,
Andhra Pradesh Circle,
Vijayawada – 520 013, A.P.
3. The Postmaster General,
Kurnool Region, Kurnool – 518 002, A.P.
4. The Superintendent of Post Offices,
Chittoor Division,
Chittoor – 517 001, A.P.

... Respondents

Counsel for the Applicant ... Mr. B. Gurudas

Counsel for the Respondents ... Mr. D. Laxminarayana,
Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed in not considering the case of the applicant for compassionate appointment.



3. Brief details of the case are that the applicant's father died on 26.4.2005 while working as Sub Post Master in the respondents organisation. Consequently applicant made a request for compassionate appointment which was rejected on 1.3.2007 on the grounds of limited number of 5% of approved vacancies. Applicant represented on 6.8.2018 but was rejected on the same grounds and hence the OA.

4. The contentions of the applicant are that the indigent circumstances of the deceased employee's family have not been properly assessed. Employee died due to an accident, after prolonged treatment in the hospital. The case of the applicant was processed after two years of the death of the employee though applied promptly as per norms. Applicant claims that the rules prevailing on the date of the death of the employee have to be followed and that it needs to be processed for 3 consecutive years. As per the points system too, the applicant is eligible for compassionate appointment. Family is totally dependent on family and have no other sources of income nor any moveable or immoveable assets. The case of the applicant is covered by the orders of this Tribunal in OA 1276/2014 dated 27.1.2017.

5. Respondents state that the deceased family was granted terminal benefits to the extent of Rs 4,84,315 and the wife of the deceased employee is getting a family pension of Rs 12,727 per month. The delay in processing the case was due to the reluctance of the applicant to provide details which were, in fact, secured only after making a personal approach by the Asst. Supdt. of Post Offices. The circle relaxation committee considered the case of the applicant and rejected due to limited number of 5% of approved vacancies. Applicant claiming that the family does not have any immoveable property is incorrect as they do have an ancestral property in Doraswamy Iyyangar Road, Chittoor, in which, the family members are residing. Respondents cited Hon'ble Apex Court Judgments in support of their contentions.

6. Heard both the counsel and perused the pleadings on record.

7. I) Respondents rejected the request of the applicant for compassionate appointment on grounds of limited number of 5% of approved vacancies. The impugned order rejecting the request was issued on 26.10.2018. It is not explained as to why the case of the applicant could not be considered for the subsequent years in view of the reason given for rejection as non availability of vacancies. The decision of the respondents is in violation of the DOPT O.M No.14014/3/2011- Estt.(D) dated 26.07.2012, which is reproduced here under:

'Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case'



Again on 30.5.2013 DOPT vide clause 26 has reiterated that compassionate appointment can be considered in the next or more years if there are no vacancies in the year of consideration and that there is no time limit for such consideration. Thus, there is clear infringement of rules governing compassionate appointment by the respondents. Violation of rules has not been taken to kindly by the Hon'ble Supreme Court in a cornucopia of judgments 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”*

In view of the above cited judgments, the decision of the respondents in rejecting the request of the applicant for compassionate appointment is against the Hon'ble Supreme Court directions and therefore, has no validity.

II) Besides, respondents claimed that the deceased employee has been given terminal benefits which ought not to be considered while processing cases for compassionate appointment as per DOPT dated 16.1.2013 as under:

‘An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes.’

II) Respondents have cited the judgments of the Hon'ble Supreme Court, the essence of these judgments being that Compassionate

appointment cannot be sought as a matter of right, it should be considered only when there is a vacancy, decision after evaluation of the financial conditions of the deceased employee's family. In this regard, it is to be stated that the applicant has no right to be appointed on compassionate grounds but he has a right to be considered for compassionate appointment which has been infringed by the respondents. Further, compassionate appointment has to be considered only when there is a vacancy and the rule provides that the compassionate appointment has to be considered in the subsequent years as per DOPT orders which the respondents have not complied. Financial conditions of the family of the deceased employee has to be assessed to be considered for compassionate appointment. The rejection in the present case is based on the lack of vacancies and not based on the financial conditions of the family of the deceased employee. Further, the verdict of the Hon'ble High Court, Madurai Bench in WP No. 20872/2013, dt. 09.01.2018, cited by the respondents that the compassionate appointment has to be restricted to the terms and conditions of the scheme is, in fact, supportive of the cause of the applicant, since respondents have not followed the condition of the scheme of considering the case of the applicant in the subsequent years. Therefore, the judgments cited by the respondents are not applicable to the case on hand.

III) On the contrary, the OA 1276/2014 which dealt with a similar issue fully covers the case. Being a judgment of the coordinate bench, it is binding as per Hon'ble Supreme Court directions in S.I. Roopal And Anr vs Lt. Governor Through Chief ... on 14 December, 1999, Appeal (Civil) 5363-64 of 1997.



IV) Thus, from the above, it is evident that the respondents have violated rules and the legal principles laid down by the Hon'ble Supreme Court. Consequently, the impugned order dated 26.10.2018 is quashed.



Thereby, respondents are directed to reconsider the case of the applicant for compassionate appointment to posts eligible as per extant rules, within a period of 3 months from the date of receipt of this order, by issuing a speaking and reasoned order.

V) With the above directions, the OA is allowed, with no order as to costs.

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

Dated, the 15th day of November, 2019
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