

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.542/2024

1. Union of India, represented by the Secretary, Ministry of Communication, Government of India, Department of Posts, New Delhi-110011.
2. The Chief Postmaster General, North East Circle, Meghalaya, Shillong-793001.
3. The Superintendent of Posts, Agartala Postal Division, Agartala, 799001, District-West Tripura.

..... Petitioner(s).

V E R S U S

1. Smt. Jyoti Bhowmik, wife of Late Arun Chandra Bhowmik, resident of Thakurcherra, P.O.-Thakurcherra, P.S.-Baikhora, District-South Tripura.
2. Sri Pranjit Bhowmik, son of Late Arun Chandra Bhowmik, resident of Thakurcherra, P.O.-Thakurcherra, P.S.-Baikhora, District-South Tripura.
3. Tripura Human Rights Commission, represented by its Secretary, Kunjaban, P.O.-Kunjaban-799006, P.S.-New Capital Complex, District-West Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Bidyut Majumder, Deputy S.G.I.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

10/12/2024

Heard Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the petitioners-Union of India and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondents.

2. Union of India and its officials are aggrieved by the order dated 08.07.2024 passed in Complaint No.12 of 2024 by the Tripura Human Rights Commission (*hereinafter referred to as Commission, for short*) whereby the

learned Commission has entertained the claim by the complainant for compassionate appointment under die-in-harness scheme framed by the Postal Department. The claim for compassionate appointment of the second son of the deceased Arun Chandra Bhowmik working as Gramin Dak Sevak (GDS) Peon in the Postal Department dying in harness was rejected by the Superintendent of Posts, Agartala Postal Division on the ground that there was one earning member in the family of the deceased, i.e. his elder son. The learned Commission made inquiries vide order dated 23.02.2024 asking the Superintendent of Posts, Agartala Postal Division to submit his reply in writing in respect of the allegations made by the complainant. The Postal Authorities also submitted papers pursuant to the order dated 23.02.2024. The learned Commission thereafter proceeded to analyze the claim of the complainant/private respondent herein and directed the Superintendent of Posts, Agartala Postal Division to take action in terms of the recommendation and submit a report to the Commission within one month of the date of receipt thereof. The relevant part of the impugned order containing the recommendation is extracted hereunder:

"10. The complainant and her son Pranjit Bhowmik continued to approach the Superintendent of Posts for consideration of their prayer, but did not get any positive response.

It is quite clear from the communication of rejection that only on the ground that one member of the family of the deceased has got a govt. employment, the compassionate employment of Pranjit Bhowmik, s/o the complainant has been refused and/or regretted. The complainant has produced the family ration card, survival certificate and other documents. The family ration card shows that it was originally consisting of the members including deceased GDS Peon Arun Chandra Bhowmik, his wife Smt. Jyoti Bhowmik(Petitioner), their son Pranjit Bhowmik and even in the original ration card which was issued before the death of Arun Chandra Bhowmik, the name of Biswajit Bhowmik, ie, the eldest son does not appear. After the death of Arun Chandra Bhowmik his name was deleted in the year 2021. There is no document to show that Biswajit Bhowmik was a member of the family of the deceased GDS at the time of his death. No doubt, he was the son of the complainant Jyoti Bhowmik and her deceased husband Arun Bhowmik, but

while he is a mature person married and got his own children and living away with his own family may not be taking care of the other family members left behind by the deceased GDS. Without having made a practical assessment in terms of the scheme formulated by the Government of India, the Postal authority should not have refused the compassionate appointment. Definitely, such refusal has infringed the right to live a dignified life by the members of the family of the deceased GDS. Simply because a son of the complainant and the deceased got a govt. job, without having considered all other aspects in accordance with the scheme, rejection of the prayer does not seem to be justified and therefore, we are constrained to recommend that the Superintendent of Posts, Agartala Postal Division shall consider the compassionate appointment of Sri Pranjit Bhowmik, the unemployed dependent son of the deceased GDS Arun Chandra Bhowmik and his wife, the complainant of the case Smt. Jyoti Bhowmik.

11. A copy of this recommendation may be sent to the Superintendent of Posts, Agartala Postal Division to take action in terms of the recommendation and to report the action taken to this Commission within one month from the date of receipt of the recommendation.

A copy of this recommendation may also be sent to the complainant for information.

List it on 12/08/2024."

3. Learned counsel for the petitioners-Union of India has questioned the jurisdiction of the Commission to entertain a dispute relating to compassionate appointment governed under the die-in-harness scheme framed by the employer as a social security measure for dependants of the deceased employee. He has referred to the provisions of the Protection of Human Rights Act, 1993 and the regulations framed by the Tripura Human Rights Commission under Section 10(2) read with Section 29 of the Act of 1993. He submits that as per regulation-9, complaints relating to service matters or industrial disputes are not ordinarily entertainable by the Commission. They can be dismissed in limine. In support of his submission, he has placed reliance upon the case of *District Tourism Promotion Council Represented by its Secretary vrs. State of Kerala Represented by the Secretary and others* reported in **2021 SCC OnLine Ker 3052**. It is submitted that under similar provisions relating to non-maintainability of service matter disputes, labour or

industrial disputes under the Kerala State Human Rights Commission (Procedure) Regulations, 2001, the Kerala High Court held that the Commission had no jurisdiction to entertain a complaint in service matters and consequently adjudicate the same.

4. Learned counsel for the petitioners-Union of India has also placed reliance upon a decision of the Apex Court in the case of *N.C. Dhoundial vrs. Union of India & others* reported in *AIR 2004 SC 1272*, paragraph-14 thereof. Relying upon the opinion of the Apex Court, it is submitted that the Commission which is the creature of the statute is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. The Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission also should not operate under a notion that persons wronged by such decisions of rejection of claim for compassionate appointment are not without remedy if the Commission does not take up the matter. He submits that the Commission has overstepped its jurisdiction and acted beyond the confines of the Regulations of 2022 framed by itself which ordinarily bars complaints relating to service matters or industrial disputes. It is submitted that if such a recourse is adopted by the Commission, it would give rise to flood of complaints relating to service matters or industrial disputes before the Commission when the aggrieved parties have statutory remedies or remedy before the Writ Court. Therefore, the impugned order may be set aside.

5. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the complainant/private

respondents herein, has in opposition drawn the attention of this Court to the provisions of Section 12 under Chapter-III of the Act of 1993 which defines the functions of the Commission. He has made special reference to Clause (j) which, according to him, clothes the Commission to perform such other functions as it may consider necessary for the promotion of human rights. Learned senior counsel has also placed reliance upon the definition of 'human rights' under Section 2(d) of the Act of 1993. He submits that denial of reasonable source of sustenance available under a die-in-harness scheme also affects right to life and right to live with dignity. Such a grievance, therefore, falls under the jurisdiction of the State Human Rights Commission.

6. Learned senior counsel for the complainant/private respondents has referred to the decision of the Apex Court in the case of ***Ram Deo Chauhan alias Raj Nath vrs. Bani Kanta Das & others*** reported in (2010) 14 SCC 209, particularly paragraphs-41 to 47. He submits that the Apex Court in the said case has held that the jurisdiction of NHRC stands enlarged by Section 12(j) of the Act of 1993 to take necessary action for the protection of human rights. The Court also opined that if a person is entitled to a benefit under a particular law and benefits under that law have been denied to him, it would amount to violation of human rights. According to him, denial of a claim for compassionate appointment falls in the category of human rights which is not a service matter dispute as exhorted by the learned counsel for the petitioners-Union of India.

7. Learned senior counsel for the private respondents has made efforts to expand the meaning of the expression- 'life', 'equality' and 'dignity' to

support his submission that refusal to grant compassionate appointment by a cryptic one line order without application of mind amounts to denial of right to life and a decent source of livelihood which would ultimately affect the dignity of the individuals who are dependants of the deceased employee. The Commission has only made a recommendation. It is for the Postal Department to act upon it or otherwise. In that way, the recommendation of the learned Commission is as such not enforceable in law as in the case of writs or orders issued by the High Courts. Therefore, the petitioners ought not to have approached this Court against a mere recommendation by the Human Rights Commission. The impugned order may not be interfered.

8. We have given anxious consideration to the submissions of learned counsel for the parties after hearing them at length. We have also perused the impugned order and the background in which the Commission has proceeded to entertain a complaint relating to claim for compassionate appointment.

9. In the first place, even going by the submission of learned counsel for the respondents that the claim for compassionate appointment would fall in the definition of 'human rights' which are inalienable and basic to the existence of a person by virtue of being born as a human being, the learned Commission has in the body of the impugned order nowhere recorded that it is a case of violation of human right which is essential ingredient for the Commission to clothe itself with the jurisdiction to entertain such a claim. The Apex Court in the case of *N.C. Dhoundial* (supra) had very categorically observed that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations since it is a creature of the statute

bound by its provisions. In execution of its statutory functions, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. Jurisdiction whenever vested by a statute is coupled with a conscious duty upon the statutory body or the Court concerned to be conscious of its limitations. The opinion of the Apex Court at paragraph-14 of the report in the case of *N.C. Dhoundial* (supra) is appropriately quoted hereunder:

"14. We cannot endorse the view of the Commission. The Commission which is an "unique expert body" is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter."

10. In the absence of a clear finding that the present dispute is a case of a human rights violation, the Commission fell in serious error in entertaining such a claim arising out of a scheme framed for compassionate appointment to the dependants of the deceased employee. The scheme is a social security measure not to the public at large but for those who are dependants of an employee. Though learned counsel for the respondents has sought to distinguish the category of service matters with the present dispute of compassionate

appointment but we do not accept that argument and agree to such an artificial distinction on a claim for compassionate appointment arising on the death of an employee in harness, i.e. during service.

11. The regulations of 2022 have been framed by the learned Commission in exercise of the powers under Section 10(2) read with Section 29 of the Act of 1993. The Commission has consciously chosen to exclude class of complaints which relate to civil disputes, such as property rights, contractual obligations or are relating to service matters or industrial disputes or are allegations relating to public servant or those which do not make out any specific violation of human rights. The regulation 9 also excludes matters which are sub-judice before a Court or Tribunal or which are covered by a judicial verdict or decision of the Commission. The underlying purpose for framing such a regulation under the parent Act of 1993 is to exclude categories of complaints which do not fall in the category of human rights violation and otherwise are subjected to the jurisdiction of ordinary Courts or specialized Tribunals or the High Courts.

12. We are constrained to say that the learned Commission failed to notice the very provision under the regulation 9 framed by itself while proceeding to entertain a claim which does not fall in the category of human rights violation. If such an expansive definition of human rights is read into Section 2(d) of the Act, it would erode the very purpose of creating a Commission under the Protection of Human Rights Act, 1993, specifically meant to deal with complaints relating to violations of human rights, i.e. rights which are basic, inherent, immutable and inalienable to a person simply by

virtue of his being born a human. The present case definitely does not fall in that category as such a claim by the respondent would not have arisen or are enforceable, had she not been the widow of an employee dying in harness under the Postal Department. The claim for compassionate appointment is on account of being a dependant of an employee dying in harness under the State or its instrumentality. Compassionate appointment is an exception to the general rule under Article 14 of the Constitution of India which guarantees equality in public employment. Reference is only made to the case of *Umesh Kumar Nagpal vrs. State of Haryana* reported in (1994) 4 SCC 138 rendered by the Apex Court for that purpose.

13. In view of the aforesaid reasons, we are satisfied that the writ petition deserves to be allowed. While passing the order, we deem it appropriate to observe that the Commission should refrain from entertaining such matters which are excluded under the Regulations of 2022 otherwise the Commission may be drawn on a slippery course likely to cause not only errors of jurisdiction but also a flood of unwanted litigations when the aggrieved person may have a statutory or constitutional remedy elsewhere before the appropriate forum or Court of law. The impugned order dated 08.07.2024 is accordingly set aside. The writ petition is allowed.

14. At the end, learned senior counsel for the private respondents Mr. P. Roy Barman has prayed that the complainant/private respondent may be allowed liberty to raise her claim for compassionate appointment before a competent Court of law. She is at liberty to do so subject to all limitations in law.

15. The writ petition is allowed in view of above terms.
- Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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