

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2337 of 2015

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Deepak Kumar Malakar @ Deepak Kumar, S/o Late Birendra Nath Malakar
Resident of village - Nawabganj, P.S. Manihari, District - Katihar

.... Petitioner/s

Versus

1. The Union of India through the Secretary cum Director General Department of Posts, Dak Bhawan, New Delhi
2. The Chief Post Master General, Bihar Circle, Patna
3. The Assistant Director (Staff and Recruitment), office of the Chief Post Master General, Bihar Circle, Patna
4. The Superintendent of Post offices, Purnea Division, Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate

For the Respondent/s : Mr. Sanjay Kumar, ASG

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-05-2016

The order dated 4th March, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 18 of 2013 is the subject matter of challenge in the present writ petition. Vide the order impugned, the claim of the petitioner for appointment on compassionate ground was dismissed.

Sri Birendra Nath Malakar, father of the petitioner, died in harness on 1st August, 2005. At that time, he had left over service of 2 years 5 months and 26 days. Earlier, the brother of the petitioner applied for employment on compassionate ground in the year 2005, but he was employed as Shiksha Mitra, as a part-time engagement. It was in the year 2008, the mother of the petitioner submitted another

application for considering compassionate appointment in favour of the petitioner. Such request was rejected by the Circle Relaxation Committee by granting only 38 points as per the parameters. The petitioner claims that he should have been awarded additional 20 points on account of qualifying in Intermediate Examination.

The learned Tribunal considered the arguments raised by the petitioner that the Circular dated 20.01.2010 adopting point-wise weightage for determining suitability for appointment on compassionate ground cannot be extended to the old applicant. The Tribunal did not accept the argument relying upon the judgment of the Supreme Court in **MGB Gramin Bank vs. Chakrawarti Singh (2014) 13 SCC 583**. The Court observed to the following effect:-

“15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions 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 i.e. death of the incumbent on the post. In *SBI vs. Raj Kumar* [(2010) 11 SCC 661], this Court held that in such a situation, the case under the new scheme has to be considered.”

Learned counsel for petitioner refers to another judgment of the Supreme Court in the case of **Canara Bank vs. M. Mahesh**

Kumar [(2015) 7 SCC 412], wherein the aforesaid judgment has been considered and it has been held that the new scheme will not be applicable to the old pending application.

We do not find it necessary to examine as to whether the new scheme will be applicable to the applicant or not. The petitioner submitted his application for compassionate appointment in 2008 which was much after the date of superannuation of his father. The appointment on compassionate ground is not a source of regular employment which can be claimed at any point of time. The father of the petitioner was on the verge of superannuation when he unfortunately died. Such unfortunate death will not confer right on any individual to seek appointment after the date of superannuation of the deceased employee.

In view thereof, we do not find any merit in the present application. The writ petition is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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