

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 5212/2015

- 1 Union of India,
through Secretary,
Ministry of Communication,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi – 110001.
2. The Principal Chief Postmaster General,
Maharashtra Circle, Mumbai-400001.
3. The Senior Superintendent of Post Offices,
Chanda Division, Chandrapur-441222.

PETITIONERS

.....VERSUS.....

Vaibhav s/o Late Shri Sudhakar Bhavadkar,
Aged about 26 years, Occupation : Not Known,
R/o Navargaon Road, Sindewahi, District -
Chandrapur. PIN - 441222.

RESPONDENT

Shri A.M. Joshi, counsel for the petitioners.
Shri A.B. Bambal, counsel for the respondent.

**CORAM :SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.**

DATE : 16TH AUGUST, 2016.

ORAL JUDGMENT (PER : SMT.VASANTI A NAIK, J.)

RULE. Rule made returnable forthwith. The petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

2. By this writ petition, the petitioners have challenged the order of the Tribunal, dated 11.03.2015 partly allowing an original application filed by the respondent and directing the petitioners to consider the claim of the respondent in the light of the O.M. dated 20.01.2010 along with the other claimants of the year 2015 in the vacancies that arose in the year 2014-15.

3. The father of the respondent was working as a Postal Assistant with the petitioners and he expired on 13.12.2006 while he was at the fag end of his service. The father of the respondent, left behind him a widow, two married and two unmarried daughters and the respondent, his son. Since the respondent was sixteen years of age at the time of the death of his father, he applied for appointment on compassionate ground in the year 2008, after attaining the age of majority. The application of the respondent was rejected by the Circle Relaxation Committee, in the year 2009. The said order was communicated to the petitioner and the petitioner challenged the same before the Central Administrative Tribunal in the original application. The Tribunal, on a consideration of the material on record, found that the condition of the respondent was indigent and it was necessary for the Committee to have considered the claim of the respondent in the light of the O.M., dated 20.01.2010. The Tribunal held that since the object of granting compassionate appointment is to save the bereaved family from indigency and starvation, it was necessary to consider the claim of the respondent for appointment on compassionate ground. The said order of the Tribunal is challenged by the petitioners, in the instant petition.

4. Shri Joshi, the learned counsel for the petitioners, has challenged the order of the Tribunal on several grounds. It is submitted that the Tribunal could not have directed the petitioners to consider the

claim of the respondent in the light of the O.M. dated 20.01.2010, when the father of the respondent had expired in the year 2006 and his claim for compassionate appointment was rejected in the year 2009 by the Circle Relaxation Committee, before the O.M., dated 20.01.2010 was brought into force. It is stated that the Tribunal has committed an error in directing the petitioners to consider the claim of the respondent along with the other claimants of the year 2015, when the claim of the respondent is old and pertains to the year 2008. It is submitted that after the death of the father of the respondent, the mother of the respondent had received an amount of Rs.5,17,209/- and the family pension received by the mother of the respondent is Rs.15,315/-. It is stated that the aforesaid statement would itself reveal that the family of the respondent was not indigent and the Circle Relaxation Committee, therefore, rightly rejected the claim of the respondent by comparing his claim along with others that had applied in the same year. It is stated that the fact that the father of the respondent had expired while he was on the verge of retirement at the age of 57 years is not considered by the Tribunal while partly allowing the original application. It is stated that in almost similar set of facts, this Court has allowed a petition filed by the same department of the Central Government. The learned counsel relied on the judgment dated, 09.08.2016 in Writ Petition No.1794 of 2016 to substantiate his submission.

5. Shri Bambal, the learned counsel for the respondent, supported the order of the Tribunal and submitted that the Tribunal rightly held that the family of the respondent was indigent and it was necessary to consider the claim of the respondent. It is submitted that since the scheme of awarding points was brought into force by the O.M., dated 20.01.2010 and since the communication rejecting the claim of the respondent was received by the respondent on 05.03.2010, the Tribunal rightly directed the petitioners to consider the O.M., dated 20.01.2010. It is submitted that Shri S.P. Modak, the other employee had also expired at the relevant time and his dependent was granted compassionate appointment though the wife of Shri Modak had received a sum of nearly Rs.6,00,000/- towards the retiral benefits and the widow of Shri Modak was also receiving the basic pension of Rs.4686/-. The learned counsel sought for the dismissal of the writ petition.

6. On hearing the learned counsel for the parties and on a perusal of the judgment, dated 09.08.2016 in Writ Petition 1794 of 2016, we find that the Tribunal was not justified in allowing the original application filed by the respondent. The Tribunal could not have directed the petitioners to consider the claim of the respondent in the light of O.M., dated 20.01.2010 along with the other claimants of the year 2015. The O.M. could be applied only to the case where the employees had expired at the time of issuance of the O.M. or after it was issued. It is

well settled that the policy that exists at the time of the death of an employee or at the time of making of the application immediately thereafter is liable to be considered while considering the claim for compassionate appointment. In this case, the father of the respondent had expired in the year 2006. The O.M., dated 20.01.2010 could not have been applied to the case of the respondent, more so, when the Circle Relaxation Committee had rejected the claim of the respondent, in the year 2009. It appears that the Circle Relaxation Committee has rightly rejected the claim of the respondent as the father of the respondent had expired only a couple of years before his retirement. The Circle Relaxation Committee must have considered that the retiral benefits which the petitioner's father would have received on attaining the age of superannuation would not have been substantially more than what was received by his widow at the time of his death, when he was of more than 57 years of age. The Tribunal could not have sat in appeal over the order of the Circle Relaxation Committee, more so, when it had recorded cogent reasons for rejecting the claim of the respondent. In any case, since we are of the view that the O.M. dated 20.01.2010 cannot be applied to the case of the respondent, the Tribunal committed an error in directing the petitioners to consider the claim of the respondent along with the other claimants of the year 2015 for appointing the respondent on the post that was available for the year 2014-15. We do not find any rationale in the direction of the Tribunal to consider the claim of the respondent along

with the other claimants of the year 2015. Also, we find that the Tribunal was not justified in holding that the respondent had proved the indigency of the family. The mother of the respondent had received an amount of more than Rs.5,00,000/- towards the retiral benefits payable to the husband, and the mother of the respondent was receiving a sum of more than Rs.15,000/- per month towards family pension. The Tribunal could not have held in the circumstances of the case that the respondent had proved his indigency, when the Circle Relaxation Committee had rejected his claim. The case of the respondent that since the dependent of Shri Modak was granted appointment on compassionate ground, the compassionate appointment should be granted to the respondent also, is not well founded. The respondent has not pointed out that the death of Shri Modak as well as the respondent's father occurred in the year 2006 and the son of Shri Modak and the respondent had applied for the vacancies of the same year. In the reply of the petitioners, it is stated that the vacancy for a particular year is considered on the basis of the applications that are received by the Circle Relaxation Committee for that year. Nothing is pointed out on behalf of the respondent to show that the application was made by the respondent and the dependent of Shri Modak in the same year and for the same vacancies. Since we do not find any illegality in the order of the Circle Relaxation Committee in rejecting the claim of the respondent as his father had expired while he was on the verge of retirement, the order of the Tribunal directing the petitioners to

consider the claim of the respondent in the light of O.M. dated 20.01.2010 cannot be sustained.

7. Hence, for the reasons aforesaid, the writ petition is allowed. The order of the Tribunal is quashed and set aside. The original application filed by the respondent is dismissed.

Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

APTE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Rohit D. Apte.

Uploaded on : 19.08.2016.