

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.27082 of 2016

P.Raghupathy

.. Petitioner

versus

1. The Chairman,
Postal Services Board,
Union of India,
Dak Bhavan, Sansad Marg,
New Delhi 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
3. The Postmaster General,
Southern Region (TN),
Madurai 625 002.
4. The Superintendent of Post Offices,
Dindigul Division,
Dindigul 624 001.
5. The Sub-Divisional Inspector of Posts,
Vedasandur Sub Division,
Vedasandur 624 710.
6. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the 6th respondent in O.A.No.34 of 2013, dated 23.07.2014, quash the same and consequently, to direct the respondents 1 to 5 to appoint the petitioner as GDS on compassionate grounds.

For Petitioner

: Mr.R.Malaichamy

For Respondents 1 to 5

: Mr.V.Balasubramanian

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order passed by the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.34 of 2013, dated 23.07.2014, by which, the Tribunal has declined to quash the orders of the Chief Postmaster General, Tamil Nadu Circle, Chennai, the 2nd respondent herein, made in No.REP/36/60/03, dated 07.04.2004 and No.REP/36-GDS/MOC/2012, dated 15.11.2012 and the order of the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, made in No.BII/RELXN/PR, dated 14.03.2012 and consequently, declined to issue any direction to respondents 1 to 5, to appoint the petitioner as Gramin Dek Sevak, on compassionate grounds, in a vacant post.

2. Facts leading to the writ petition are that petitioner's father, S.Palanichamy, who was originally recruited as Gramin Dak Sevak Mail Deliverer (GD5 MD) at Jenankottai BO a/w Vendasandur SO, by the Superintendent of Post Offices, Dindigul Division, Dindigul, THE 4th respondent herein, vide order, dated 01.12.1969, died in harness on 02.06.2001. The petitioner made a representation to the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, for employment assistance on compassionate appointment, stating that his family was in penury. Vide letter, dated 31.10.2003/03.11.2003, The Postmaster General, Southern Region (TN), Madurai, 3rd Respondent herein, informed the petitioner that his case had been forwarded to the Chairman, Postal Services Board, Union of India, New Delhi, 1st Respondent herein. However, vide order, dated 07.04.2004, the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, rejected the case of the petitioner for appointment on compassionate grounds. Thereafter the petitioner made several representations for re-consideration of his case.

3. The representation, dated 06.04.2009, addressed to the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, for appointment in anyone of the GDS posts, on compassionate grounds. Vide order, dated 14.03.2012, the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, informed the petitioner that his claim had already been rejected by the 2nd respondent, vide order, dated 07.04.2004.

4. Thereafter, the petitioner once again made a representation, dated 26.10.2012, to the Chairman, Postal Services Board, Union of India, New Delhi, 1st Respondent herein, seeking reconsideration of his claim, for appointment, as GDS, in view of the indigent circumstances of the family. The said representation was rejected on 15.11.2012, stating that the case of the petitioner could not be considered, in view of the conduct of petitioner's father, not being satisfactory. In the above circumstances, the petitioner has filed O.A.No.34 of 2013, for the reliefs, as follows:

"(i) Call for the records of (i) the 2nd respondent pertaining to his order made in No.REP/36/60/03, dated 07.04.2004 and the order in No.REP/36-GDS/MOC/2012, dated 15.11.2012, and (ii) the order of the 4th respondent in No.BII/RELXN/PR, dated 14.03.2012 and set aside the same; consequently to
(ii) direct the Respondents to appoint the petitioner on compassionate grounds as GDS against a clear vacant post."

5. inter alia, the petitioner has contended that in the matter of compassionate appointment, misconduct alleged against the deceased employee, cannot be a ground to deny appointment. After the demise of his father, there is no source of income and he had incurred heavy expenses for arranging marriage to his sister. That apart, he has also submitted that in June' 2012, the 2nd respondent has appointed nearly 94 candidates on compassionate grounds and in all these appointees, their fathers died in harness, during the years 1999, 2000 and 2001 respectively.

6. The relief sought for in O.A.No.34 of 2013, has been opposed by the respondents, stating that the Circle Relaxation Committee (CRC), which met on 26.02.2004 and 27.02.2004, considered the application, dated 08.06.2001, submitted by the petitioner for appointment as GDS, but the Committee did not recommend his case, for the reasons that,

(i) no dependency was involved,
(ii) wife of the deceased GDS was no more,
(iii) both children had attained majority and were married,
and
(iv) family did not appear to be in indigent circumstances.
The Chief Postmaster General, Chennai, 2nd respondent herein, vide letter dated 07.04.2012, has informed the same, to the petitioner.

7. Before the Tribunal, the respondents have further submitted that that petitioner's further representation, dated 06.04.2009 addressed to the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, for reconsideration of his case, was also disposed of, vide letter, dated 13.04.2009,

stating that his case had already been considered and rejected by the previous Circle Relaxation Committee (CRC) and therefore, the subsequent representation cannot be reconsidered.

8. For the representation of the petitioner, dated 26.10.2012, addressed to the Chairman, Postal Services Board, New Delhi, a reply has been given by the Circle Office, Chennai, informing him, that the Circle Relaxation Committee (CRC) had already considered his case and rejected it, on the grounds, as informed in the letter, dated 07.04.2004.

9. The respondents have further contended that compassionate appointment is a gesture of welfare and goodwill by the Government, keeping in view the good work done by the former EDA, but the work and conduct of his father was not satisfactory and as such, his case could not be reconsidered.

10. The respondents have further submitted that the Original Application is barred by limitation, as the decision of the Circle Relaxation Committee (CRC), rejecting the claim of the petitioner, was sent, as early as on 07.04.2004 and again, the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th Respondent herein, has forwarded the copy of the letter dated 07.04.2004, along with his letter dated 28.04.2009. The respondents have further submitted that as per the records of the 4th Respondent herein, petitioner's father was unauthorisedly absent on duty, on 06.06.1980 and from 24.01.1983 to 28.01.1983. He was placed under put off duty from 18.08.1984 to 03.09.1984, for not attending the legitimate duty assigned to him and was reinstated on 04.09.1984, with severe warning for his unsatisfactory work. He was arrested on 14.05.1998, by the District Crime Branch, Dindigul, under Cr.No.4/98 and consequently, placed under put-off duty from 14.05.1998 to 26.06.1998. There was a public complaint against the deceased GDS, regarding non delivery of tapals.

11. It is also their contention that as per Postal Directorate's letter No.17-9/2001-ED & RFG, dated 15.02.2001, compassionate appointment is not permissible in the cadre of GDS, who was the subject matter of departmental proceedings for some wrong doings, and that extension of facility of compassionate appointment, as a welfare measure to the dependent of the GDS dying in harness, could be justified, only if the performance of the GDS was found to be satisfactory.

12. The respondents have further submitted that the DOPT in OM No.14014/6/94-Estt. (D), dated 09.10.1998, has laid down that for compassionate appointment, the family should be in indigent circumstances and deserve immediate assistance for relief from financial destitution. The Circle Relaxation Committee (CRC) has found that there was no dependency involved and the case did not

appear to be one of indigent circumstances. The respondents have relied on a decision of the Tribunal in R. Kathiravan Vs. Union of India and Ors., held on 12.06.2013, wherein, it has been held that compassionate appointment cannot be claimed as a matter of right and it could not be treated as a heritable public office. Reliance has also been placed on a decision in Brijesh Kumar D Patel Vs. UOI and ors. [OA No.179/2009], wherein, the Ahmedabad Bench of the Tribunal has taken a view that the department should not be compelled to relax the relevant circulars for compassionate appointment.

13. After hearing both sides, taking note of the Postal Directorate's letter No.17-9/2001-ED&RFG, dated 15.02.2001 and after considering the decisions in LIC v. Mrs.Asha Ramachandra Ambedkar & Anr., reported in 1994-II-LLJ 173 = JT 1994 (2) SC 183, Indian Drugs & Pharmaceuticals Ltd., v. Workman, Indian Drugs and Pharmaceuticals Ltd., reported in 2006 (12) SCALE 1, State Bank of India v. Raj Kumar reported in 2010 (11) SCC 661 and Union of India v. B.Kishore reported in 2011 (13) SCC 131, the Tribunal has declined to quash the orders impugned. The Tribunal also held that the Original Application is barred by limitation, as the decision of the Circle Relaxation Committee (CRC), rejecting the claim of the petitioner, was sent to him, as early as on 07.04.2004 and again the 4th Respondent, vide his letter dated 28.04.2009, has forwarded the copy of the letter, dated 07.04.2004. The said order is challenged in the year 2013.

14. Mr.P.Malaichamy, learned counsel for the writ petitioner reiterated the grounds made before the Tribunal. He further submitted that there was no departmental enquiry or Court proceedings, pending against the petitioner's father, while he was in service. It is also his contention that the department has taken long time to reconsider the case of the petitioner. The Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, has not considered the penury of the petitioner and simply referred the order to the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, dated 07.04.2004 and rejected the claim of the petitioner.

15. Referring to the instructions issued by the Assistant Director General (GDS), learned counsel for the petitioner submitted that married son can seek for employment on compassionate grounds. It is also his contention that as per the new scheme of compassionate appointment, there is no time limit for submission of application and review of cases, is based on point based system of assessing indigence. He prayed to remit the matter to the authorities, for reconsideration, in the light of subsequent instructions. For the abovesaid reasons, he prayed to interfere with the order of the Tribunal.

16. Mr.V.Balasubramanian, learned counsel for the respondents made submissions, to sustain the order of the Tribunal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

17. When the petitioner made a request for employment assistance on 09.06.2001, his case has been considered and vide letter No.REP/36-60/03, dated 07.04.2004, the Chief Postmaster General, Tamil Nadu Circle, Chennai, 2nd respondent herein, has rejected the claim of the petitioner. Letter, dated 07.04.2004, is extracted hereunder:

"After careful consideration, the Circle Relaxation Committee which met on 26.02.2004 and 27.02.2004, has NOT recommended your case for appointment, under compassionate grounds, for the reasons mentioned below:

- (1) no dependency was involved,
- (2) wife is no more,
- (iii) both children have attained majority and married,
- (iv) Does not appear to be in indigent circumstances.

It is therefore regretted to inform you that your application for appointment under compassionate ground as GDS in the Department is rejected."

18. Subsequently, when the petitioner made another representation, dated 06.04.2009, the same has been rejected, by the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, vide letter No.BII/RELXN/PR, at Dindigul 642001, dated 28.04.2009, which is extracted hereunder:

"No.BII/RELXN/PR, at Dindigul 642001, dated 28.04.2009.

Sub: Compassionate appointment -
C/o.Sri.P.Raghupathy,
S/o.Late S.Palanichamy, Jenankottai BO,
Vedasandur
SO - Reg.

Ref: Your application, dated 06.04.2009.
Please refer to your letter cited above.

Please forward the copy of Regional Office letter, dated 07.04.2004, in which your request for Compassionate appointment was rejected."

19. Thereafter, the petitioner has made another representation, dated 28.12.2011 and once again, the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, vide letter No.BII/RELXN/PR, Dindigul 642001, dated 14.03.2012, has rejected the request of the petitioner, on the grounds that the case of the petitioner has already been considered and rejected on 07.04.2004. Letter, dated 14.03.2012, is extracted hereunder:

"No.BII/RELXN/PR, at Dindigul 642001, dated 14.03.2012.

Sub: Compassionate appointment -
C/o.Sri.P.Raghupathy,
S/o.Late S.Palanichamy, Jenankottai BO,
Vedasandur
SO - Reg.

Ref: Your application, dated 06.04.2009.

Please refer to your letter cited above.

Please forward the copy of Regional Office letter, dated 07.04.2004, in which your request for Compassionate appointment was rejected."

20. From the material on record, it could be seen that though the request of the writ petitioner for employment assistance on compassionate grounds, has been rejected, as early as on 07.04.2004, the same has not been challenged before the forum. The petitioner has resurrected his request once again, after five years, in 2009, vide application, dated 06.04.2009, which also came to be rejected, vide order of the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, dated 28.04.2009 and this communication was also not challenged.

21. After two years, once again, the petitioner has submitted a representation, dated 28.12.2011 to the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, which has been rejected on 14.03.2012 and the said order has not been challenged. After eight years of the first rejection order, dated 07.04.2004, the petitioner has sent another representation, dated 26.10.2012, to the Chairman, Postal Services Board, Union of India, New Delhi, 1st Respondent herein, requesting for reconsideration of his case for compassionate appointment as TDS. This representation has been rejected on 15.11.2012, citing that the compassionate appointment is a gesture of welfare and goodwill by the Government, keeping in view the good work done by the former EDA, but the work and conduct of his father was not satisfactory

and therefore, the Chairman, Postal Services Board, Union of India, New Delhi, 1st Respondent herein, has formed an opinion that petitioner's case could not be reconsidered.

22. Thus, from the materials on record, it could be seen that without challenging the orders of the competent authorities, rejecting the request for compassionate appointment, the petitioner has been trying to resurrect his case for employment assistance on compassionate appointment, by sending representations, one after another, from 2001 till 2012.

23. Though the learned counsel for the petitioner submitted that the Chairman, Postal Services Board, Union of India, New Delhi, 1st Respondent herein, has assigned different reasons, attributing misconduct, against the father of the writ petitioner, for rejecting the request of the writ petitioner, for employment assistance on compassionate appointment, citing the Postal Directorate's letter No.17-9/2001-ED & RFG, dated 15.02.2001, which states that compassionate appointment is not permissible in the cadre of GDS, who was the subject matter of departmental proceedings for some wrong doings and that extension of facility of compassionate appointment, as a welfare measure to the dependent of the GDS dying in harness, can be justified only if the performance of the GDS was found to be satisfactory and further contended that for the said reasons, request for compassionate appointment should not be denied, this Court is not inclined to reverse the order impugned.

24. When O.A.No.34 of 2013, was filed before the Central Administrative Tribunal, Chennai, the petitioner was aged 39 years. Perusal of the counter affidavit, filed by the Superintendent of Post Offices, Dindigul Division, Dindigul, 4th respondent herein, shows that the writ petitioner was having a house and plot, at Jenankottai Village and that he was a partner in cloth store. Having regard to the above, the respondents have further stated that the compassionate appointment is a welfare measure to mitigate financial destitution and that the same cannot be demanded as a matter of right.

25. Reliance made on the subsequent scheme for review of three years time limit for making compassionate appointment, vide proceedings in F.No.14014/3/2011-Estt.(D), dated 26.07.2012, will not erase the earlier orders of rejection, dated 07.04.2004, 28.04.2009 and 14.03.2012, passed by the competent authorities and give rise to a new cause of action, to file another representation on 26.10.2012, resurrecting the matter once again. Once an order has been passed on the request of the writ petitioner, rejecting his case for employment assistance on compassionate grounds and not challenged before the competent forum, within time and when the reasons stated in the orders, are allowed to be sustained, the same attains finality.

26. It is one thing to state that a new scheme of compassionate appointment has taken away the time limit for submitting an application for employment assistance on compassionate grounds. But, as observed in the earlier paragraphs, that will not have the effect of erasing the earlier orders, not challenged. Section 21 of the Administrative Tribunals Act, 1985, prescribes a period of limitation and the said Section reads that,

"(1) A Tribunal shall not admit an application,

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(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

27. As rightly observed by the Tribunal, challenging the order, dated 07.04.2004 is barred by limitation. Decisions relied on by the Tribunal, are reproduced hereunder:

"8. Compassionate appointment is not another source of recruitment and it cannot be claimed as a matter of right as held by the Courts in a number of cases. The consistent view taken by the Hon'ble Supreme Court is that compassionate appointment is not another source of recruitment and it cannot be claimed as a matter of right. Its primary purpose is to provide immediate financial assistance to a family which has lost its bread winner.

9. In Union of India & Anr. vs. B.Kishore in C.A.No.1046 of 2006, the Hon'ble Supreme Court referred to the decision in the case of State Bank of India v. Raj Kumar and said on 6 April, 2011, as follows:

"In State Bank of India v. Raj Kumar, (2010) II SCC 661, elucidating the nature of the scheme of compassionate appointments this Court observed:

It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit. by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.....

10. In the case of LIC V. Mrs, Asha Ramachandra Ambedkar & Anr., 1994-II-LLJ-173 = JT 1994 (2) SC 183, the Hon'ble Supreme Court held that High Courts and Central Administrative Tribunals cannot give direction for appointment of a person on compassionate ground impelled by sympathetic Considerations but can merely direct consideration of the claim for such appointment.

11. In the case Of Indian Drugs & Pharmaceuticals Ltd., v. Workman, Indian Drugs & Pharmaceuticals Ltd. in CA No, 4996 of 2006 on 16 November, 2006, [2006 (12) SCALE 1], the Hon'ble Supreme Court said as follows:

".... we would like to state that although this Court would be very happy if everybody in the country is given a suitable job, the fact remains that in the present state of Our Country's economy the number of jobs are limited. Hence, everybody cannot be given a job, despite our earnest desire.

It may be mentioned that jobs cannot be created by

judicial orders, nor even by legislative or executive decisions. Jobs are created when the economy is rapidly expanding, which means when there is rapid industrialization. At present, the state of affairs in Our country is that although the economy has progressed a little in some directions, but the truth is that this has only benefited a handful of persons while the plight of the masses has Worsened. Unemployment in our country is increasing, and has become massive and chronic. To give an example, for each post of a peon which is advertised in some establishment, there are over a thousand applicants, many of whom have MA, M.SC., M.Com or MBA degrees. Recently, about 140 posts of Primary School Teachers were advertised in a District in Western Madhya Pradesh, and there were about 13000 applicants i.e. almost 100 applicants for each post. Large scale suicides by farmers in several parts of the country also shows the level of unemployment. These are the social and economic realities of the country which cannot be ignored.

One may be very large hearted but then economic realities have also to be seen. Giving appointments means adding extra financial burden to the national exchequer. Money for paying salaries to such appointees does not fall from the sky, and it can only be realized by imposing additional taxes on the public or taking fresh loans. both of which will only lead to additional burden on the people.

No doubt, Article 41 provides for the right to work, but this has been deliberately kept by the founding fathers of our Constitution in the Directive Principles and hence made unenforceable in view of Article 37, because the founding fathers in their wisdom realized that while it was their wish that everyone should be given employment, but the ground realities of our country cannot be overlooked. In our opinion, Article 21 of the Constitution cannot be stretched so far as to mean that everyone must be given a job. The number of available jobs are limited, and hence Courts must take a realistic view of the matter and must exercise self-restraint."

28. Order, dated 07.04.2004, has been challenged in the year 2013. In the light of Section 21 of the Administrative Tribunals Act, 1985, the Original Application is time barred. Instructions, dated 14.01.2015, issued by the Assistant Director General (GDS) regarding the status of married son as a dependant family member, cannot be made applicable to the case of the petitioner, when his application was considered, as per the guidelines in vogue, at that time, when the petitioner has not challenged the earlier orders, dated 07.04.2004, 28.04.2009,

14.03.2012 and 15.11.2012, he cannot take advantage of subsequent instructions, in this writ petition.

29. Going through the material on record, this Court is of the view that there is no illegality or irregularity in the impugned order in O.A.No.34 of 2013, dated 23.07.2014 of the Tribunal, warranting interference. Hence, the Writ Petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

skm

To

1. The Chairman,
Postal Services Board,
Union of India,
Dak Bhavan, Sansad Marg,
New Delhi 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
3. The Postmaster General,
Southern Region (TN),
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4. The Superintendent of Post Offices,
Dindigul Division,
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5. The Sub-Divisional Inspector of Posts,
Vedasandur Sub Division,
Vedasandur 624 710.
6. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

1 cc to Mr.R. Malaichamy, Advocate, Sr. 55720

W.P.No.27082 of 2016

RJ (CO)
kk 24/11