

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16046 of 2017

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1. The Union Of India through the D.G. cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
 2. The Chief Post Master General, Bihar Circle, Patna.
 3. The Assistant Director (Staff & Recruitment), O/o Chief Post Master General, Bihar Circle, Patna.
 4. The Superintendent of Post Offices, Darbhanga Division, Darbhanga.

.... Petitioners

Versus

Santosh Kumar, Son of Late Fekan Mandal, Resident of Village & P.O.- Singhasho, P.S.- Bisfi, District- Madhubani.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Addl. S.G.
Mr. Anjani Kumar Sharan, ASC
For the Respondent/s : Mr. Hemant Kumar Karn, Adv.
Mr. Jayant Kumar Karn, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 19-12-2018

The petitioners i.e. Union of India in its Department of Posts are aggrieved by the judgment and order dated 20.7.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A.No. 050/00544 of 2016 (Santosh vs. the Union of India & ors.), whereby the Tribunal has allowed the original application of the respondent- applicant to direct for reconsideration of the case of the respondent- applicant for compassionate appointment in the light of the circular dated 30.5.2017 adopted by the Department.

Mr. S.D.Sanjay, learned Addl. Solicitor General assisted by



Mr. Anjani Kumar Sharan, learned Assistant Solicitor General, appeared for the petitioners while the sole respondent is represented by Mr. Jayant Kumar Karan.

Shorn of unnecessary details, the facts of the case leading to the present proceeding briefly stated is that the father of the respondent- applicant holding the post of Gramin Dak Sevak, Mail carrier, at Singhaso Branch Post Office, via Kewati Ranwe under Darbhanga Postal Division died in harness on 11.10.2012. The respondent filed an application for appointment on compassionate ground which was considered by the Circle Relaxation Committee (hereinafter referred to as 'the CRC') and as per scheme in force the respondent was awarded 37 merit points, the details of which is present at paragraph-9 of the writ petition and runs under:

1	Discharge benefit	Rs.1,05,000/-	15 points
2	Monthly income of earning members and income from property	Rs.40,000/-pa	06 points
3	Moveable/ immoveable properties	Yes	00 points
4	No. of dependents	Widow-02 Son-01	10 points
5	No. of unmarried daughter	Nil	00 points
6	No. of children for education	Nil	00 points
7	Left over service	13 years, 10 month, 27 days	06 points



Since the cut-off marks for qualifying for compassionate appointment under the Scheme in force was 50 and the applicant had secured only 37 marks, he was disqualified for such appointment and the claim was rejected vide order passed on 5.8.2015. Feeling aggrieved the respondent questioned the said order before the Tribunal through the original application in question with a further relief for directing the respondents to consider the claim afresh and award proper points in accordance with the Rules as manifest from the relief prayed at paragraph-8 of the original application. The Tribunal in consideration of the rival contentions has allowed the prayer to direct for reconsideration of the claim of the respondent- applicant and since the scheme of award of points, had been dispensed with under the revised Scheme in force with effect from 30.5.2017, they were directed to consider the claim in the light of the provisions present in the latest circular of the Department. This direction has aggrieved the Union to move this Court through the present writ petition.

Mr. S.D.Sanjay, learned Addl. Solicitor General, has primarily questioned the order passed by the Tribunal on the following grounds:

- (a) The Tribunal has given no reasons for the order of remand;
- (b) Even when the award of points was being



questioned by the respondent- applicant, no reasons have been given as to the infirmity present therein by the respondent- applicant nor the Tribunal has pointed out any infirmity;

(c) The order of remand has been passed on mere prayer of the respondent- applicant simply because the Scheme of compassionate appointment got replaced by a Scheme which had dispensed with the system of award of points;

(d) In any view of the matter and even if the Tribunal would have been persuaded with the complaint of the respondent- applicant that there was any infirmity in the merit points awarded to the respondent- applicant and the matter required reconsideration, it can yet only be tested as per the stipulations present in the Scheme under which the points had been awarded and not by a Scheme which came into force subsequently; and

(e) The order of the Tribunal is non-speaking and



is contrary to the legal position settled by the Supreme Court in the following judgments:

1. (2007) 9 SCC 571 (**State Bank of India & ors. v. Jaspal Kaur**) Para-26
2. (2007) 9 SCC 579 (**State Bank of India & Anr. V. Vikas Dubey & ors.**)
3. (2011) 4 SCC 209 (**Bhawani Prasad Sonkar v. Union of India & ors.**) Para-21
4. (2015) 7 SCC 412 (**Canara Bank & Anr. V. M. Mahesh Kumar**) Paras- 17, 18 & 218

The argument has been contested by Mr. Karn, who submits that the Scheme dated 30.5.2017 enforced by the Department was on review of the earlier Schemes which was based upon the award of merit points. He submits that since the Department itself was satisfied that the system of award of points was suffering from defect that they decided to dispense with this Scheme and enforced the revised Scheme with effect from 30.5.2017. It is argued that since a system which was found to be faulty led to introduction of a new Scheme on 30.5.2017 which did not contain such stipulation, the remand had to be for consideration under the improved Scheme because the respondent- applicant had complained against the system of points and the manner in which the points had been awarded.



In reference to the pleadings made in the original application he submits that the applicant has raised this issue of defect in award of merit points and it is taking note of the complaint as well the fact that in between this period the Scheme had undergone a change that the Tribunal has chosen to direct for reconsideration of the matter in the light of the revised Scheme. Learned counsel in support has referred to the statement made in paragraph 4.6 as well as paragraph 5.2 of the grounds raised in support of his contention that the award of merit points was abolished. Mr. Karn while accepting that the normal rule is that the case of any applicant for compassionate appointment is to be considered in the backdrop of the circular in force at the relevant time but the case in hand has its own peculiarities because the Department themselves have appreciated that the points system present in the earlier Scheme was faulty and that is why this system has been replaced by the revised Scheme dated 30.5.2017. He submits that where the Department itself has dispensed with this system, learned counsel appearing for the Department cannot take a stand different from what is present in the revised Scheme.

Mr. S.D.Sanjay while responding to the arguments made by Mr. Karn has submitted that the records of the proceedings would confirm that there has been a shifting stand by the respondent-applicant as regarding status of the family. He submits that the records



also reflect certain interpolations. In reference to the file so produced under the orders of this Court it is argued that while the applicant at the time of filing of the application has specifically stated that both the sisters were married during the life time of the father and the same stand was also taken by the mother but there has been a turn around subsequently by the mother to now say that only one of the daughters was married while the other one was studying. According to Mr. Sanjay, the conduct of the respondent- applicant in shifting his stand does not entitle him to either benefit of reconsideration or any indulgence by this Court.

I have heard learned counsel for the parties and have perused the records.

The issue relating to compassionate appointment has been a subject matter of Court decisions but one aspect is well settled that such appointments are an exception to the General Rule of Recruitment. In my opinion, while this position may be true in cases where compassionate appointment is provided to a dependent of a deceased Government employee on his death simply on his fulfillment of the educational qualification of the post and by giving him age relaxation as per the Scheme in force but the case in hand is a deviation therefrom because here there is an assessment to be made by the Department as regarding eligibility of the dependent for such



appointment. There is thus an element of selection in so far as the compassionate appointment in hand, is concerned. The whole dispute revolves around the marking of merit points and while the grievance raised by the respondent- applicant is that it has not been correctly done, the Department as the petitioner before this Court contest this position on the basis of materials on the records of the proceedings as also questioning the conduct of the applicant on his shifting stand.

Mr. Sanjay has been rather fair in providing the Schemes regulating compassionate appointment of Gramin Dak Sevak right since 14.12.2010. It is noted that the Scheme for engagement of a Gramin Dak Sevak on compassionate ground was based on award of merit points which formed the procedure for selection. In fact this procedure attaches a distinctive feature to the nature of engagement in hand. There is thus a discretion vested in the Committee so constituted for the purpose which is known as Central Relaxation Committee whether or not to award points against any particular head. The system of award of merit points was improved upon by the subsequent circulars dated 1.8.2011, 9.3.2012, 9.10.2013, 14.1.2015, 17.12.2015 and ultimately by the present revised Scheme of 30.5.2017, the very system of award of merit points for judging an appointment of a Gramin Dak Sevak on compassionate ground has been dispensed with on review of the earlier Schemes.



The revised Scheme dated 30.5.2017 at paragraph-2 makes it clear that the earlier Schemes of compassionate appointment of a Gramin Dak Sevak has been reviewed in the Directorate and whereafter it was decided to introduce a revised scheme for compassionate engagement of a dependent of deceased Gramin Dak Sevak where under the point system has been dispensed with. The Scheme at paragraph-3 also further provides that it shall be extended to all pending cases and those arising but the settled cases will not be reopened.

The Tribunal on consideration of the arguments advanced by the parties has chosen to remit the matter to the Department for reconsideration of the claim in the light of the revised Circular.

This Court taking note of the dispute raised by the respondent- applicant before the Tribunal as present in his original application directed the Department for production of the file relating to the respondent- applicant and which has since been produced. The file does confirm some overwriting as regarding the status of the younger sister of the respondent- applicant Rubi Kumari, who initially was marked 'married' but has been corrected to read 'unmarried' and living with joint family. While it is the argument of Mr. Sanjay that the marital status of Rubi Kumari was as per declaration made by the applicant and his mother at the time of filing of the application, the



position is sought to be explained by Mr. Karn to submit that the applicant was misled by the Inspector who made them accept as such but the fact is that at the stage of filing of the application though the elder daughter of the deceased Government employee namely Sudila Devi was married, the younger daughter Rubi Kumari was a minor aged 17 years and living with joint family. He submits that this position was clarified by the mother subsequently by filing an application and praying for reconsideration of the matter.

I have gone through the records of the proceeding and I find that both Mr. Sanjay appearing for the petitioners as well as Mr. Karn appearing for the respondent- applicant are correct for while initially, a declaration was made by the applicant and his mother that the two daughters are married which is present at Page 1-5 and 1-6 respectively of the file so produced but it is also borne from the records that Rubi Kumari was aged 17 years at the time of filing of the application and the mother Lalita Devi on gathering information about the faulty marking has written to the Chief Postmaster General that they were misled by the Inspector Late Hari Mohan Jha while giving declaration and that one of her daughter Rubi Kumari is unmarried who was preparing for Matriculation examination and even her son was a student. She has thus requested the Chief Postmaster General for making enquiry on the status of the family for



reconsideration of the issue. This application of the mother is available at page-5 of the file and has also been enclosed in the original application at Annexure 7.

I would next be referring to the issues raised by the applicant at paragraph 4.6 of his original application to question the award of merit points as well as the answer thereto given by the Union in their written statement. The applicant has raised the following issues:

(a) The scheme came under the category of dependent children, applicant and his minor unmarried sister were wrongly excluded from the category of dependents and should have been awarded 20 points as per the scheme in force;

(b) 10 points should have been given in respect of his unmarried sister.

(c) The deceased had a Kachcha house with no agricultural land and thus, 3 points should have been given for the Kachcha house as per the Scheme in force.

(d) The applicant was yet pursuing his studies but no point was awarded to him against this head.

It is noted that the applicant had enclosed the documents which supported that he was pursuing his studies as also that he lived in a thatched house while filing his rejoinder to the written statement



at Annexure A/10.

The response of the Department to the statement made in paragraph 4.6 is that the daughters are marked as per the statement made by the applicant widow and since no document was produced to support that the applicant lived in a Kachcha house, no points were given. As regarding points claimed by the applicant for pursuing education it is replied that since the applicant has passed his Intermediate no points could be awarded on education.

It transpires from the file produced by the department that the complaint made by the widow yielded result because the Superintendent of Post Offices after making enquiry has revised the marking which is confirmed from the checklist present in the file so produced and according where to the applicant has been found entitled for 55 merit points as against 35 earlier awarded. The Superintendent of Post Offices thereafter has recommended the case of the applicant for compassionate appointment. .

The second important document which is present in the file so produced is the letter of the Assistant Director which clinches the issue in favour of the applicant for it clearly mentions that the papers have been verified and countersigned at the divisional level and the case has been recommended by the Superintendent of Post Offices, Darbhanga Division, Darbhanga for appointment. This letter is dated



24.12.2014 and it is unfortunate that even after the Department has satisfied itself that the initial award of points to the applicant was faulty and they have also gone ahead to correct the same and to make favourable recommendation for appointment as back as on 24.12.2014 which has been received in the office of the Chief Postmaster General on 29.12.2014 but the Chief Postmaster General has not only remained silent over the issue, he has also chosen to oppose the matter not only before the Tribunal but has carried on the challenge even before this Court. The letter of the Assistant Director dated 24.12.2014 for the sake of convenience is quoted hereinbelow:

“ DEPARTMENT OF POSTS- INDIA
OFFICE OF THE POSTMASTER GENERAL,
NORTHERN REGION, MUZAFFARPUR- 842002

To,

The Chief Postmaster General
Bihar Circle
Patna-800001.

No: WLF/PN/GDS-17/2014 dated at Muzaffarpur the;
24.12.2014.

Sub:Regarding appointment on compassionate ground in relaxation of normal recruitment rule, Case of- Shri Santosh Kumar, S/o late Fekan Mandal, Ex- GDS MC, Singhaso B.O. in account with K. Ranway SO under Darbhanga Division, Darbhanga

Three (03) Copies of Synopsis along with other relevant papers on the subject mentioned above received



from the Supdt. of Post Offices, Darbhanga Division, Darbhanga, under his letter no. A-1641 dated 29.5.2014, 24.9.2014 and 03.12.2014 is sent herewith for necessary action at C.O. level.

The papers have been verified and countersigned at Divisional level. The case has been recommended by the Supdt. of Post Offices, Darbhanga Division, Darbhanga and seen by the Postmaster General, Northern Region, Muzaffarpur.

Enclosure: As stated above,

Sd/-
(Assistant Director-I)
O/O the Postmaster General,
Northern Region,
Muzaffarpur.”

It is even more unfortunate that the recommendation of the Superintendent of Post Offices awarding 55 points to the applicant as endorsed by the Assistant Director in his letter dated 24.12.2014 was not even considered by the Central Relaxation Committee while passing the order of rejection on 5.8.2015 which nowhere takes notice of these subsequent developments which accompanies a recommendation in favour of the applicant.

In my opinion, in the nature of the developments that has taken place in the case of the applicant which transpires from the file so produced before this Court, we would not be required to give our expression on the correctness/ incorrectness of the order of remand



because there is already a recommendation present in the file in favour of the applicant and which relevant aspect was never brought to the notice of either the Tribunal or this Court.

May be, there is a deviation in the declaration made by the applicant and his mother as regarding the status of the younger daughter but once the mother had made a bonafide declaration that she was misled by the Inspector and that her younger daughter is yet unmarried and who is pursuing her studies alongwith the son, the Department ought to have accepted her request for a fresh enquiry. In my opinion, considering that the Department had already reviewed the marking as back as in 2014 itself and found the applicant eligible for appointment, they should have been fair in their stand before the Tribunal as well as before this Court. In fact these issues would not have surfaced if this Court would not have summoned for the file.

Mr. S.D.Sanjay has argued on interpolation but what transpires from the file is not interpolation rather the Superintendent of Post Offices has after examining the calculation of points on the checklist has been cautious to review the marks by marking it in red and thereafter recommending the case of the applicant for appointment because on review the respondent- applicant was found entitled to 55 marks. The two documents on records of the proceeding produced before us i.e. the checklist containing the award of points



and its review by the Superintendent of Post Offices together with the letter dated 24.12.2014 of the Assistant Director leaves no room for any confusion that the papers of this applicant was got verified and countersigned at the divisional level whereafter his case was recommended for compassionate appointment.

In the circumstances noted, I am satisfied that the writ petition does not warrant indulgence and is fit to be dismissed and the position which has emanated from the records of the proceedings I am of the opinion that the matter does not require a remand rather a direction needs to be issued to the Department, who are petitioners before this Court, for acting in pursuance of the recommendation as finds noted in the letter of the Assistant Director and to complete the exercise within a period of three months from the date of receipt/production of a copy of this judgment.

Ordered accordingly.

The writ petition is dismissed with the directions above.

(Jyoti Saran, J)

Nilu Agrawal, J. I agree.

Surendra/-

AFR/NAFR	AFR
CAV DATE	30.10.2018
Uploading Date	04.01.2019
Transmission Date	NA

(Nilu Agrawal, J)

