

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.434 of 2018
and W.M.P.No.489 of 2018

1. Union of India,
rep. by its Chief Postmaster General,
Tamil Nadu Postal Circle,
Chennai - 600 002.
2. The Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai - 600 017. .. Petitioners

-vs-

1. R.Vasanth
2. The Central Administrative Tribunal,
rep. by its Registrar,
Madras Bench,
Chennai - 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the second respondent and quash the order dated 26.9.2017 in O.A.No.109 of 2016 as the same is unsustainable.

For Petitioner : Mr.G.Karthikeyan
Asst. Solicitor General

For Respondents : Mr.R.Malaichamy
for 1st respondent

R2 - Tribunal

ORDER

(Order of the Court made by The Hon'ble Chief Justice)

Heard Mr.G.Karthikeyan, learned Assistant Solicitor General appearing for the petitioners and Mr.R.Malaichamy, learned counsel appearing for the first respondent.

2. This writ petition has been filed by the petitioners - Union of India and the Senior Superintendent of Post Offices against the order passed by the Central Administrative Tribunal, Madras Bench, Chennai dated 26.9.2017 in O.A.No.109 of 2016 preferred by the first respondent. In the said O.A., the first respondent had prayed that he be appointed on compassionate grounds in any one of the vacant posts on considering his educational qualification. By the said order dated 26.9.2017, the Central Administrative Tribunal, allowed the O.A.

3. The first respondent's father died in harness on 24.9.2003 leaving behind his wife, daughter and the first respondent as legal heirs. At the time of the death of his father, the first respondent was a minor i.e., only 16 years of age. The mother of the first respondent first sought compassionate appointment in favour of her daughter, who was 19 years of age on the date of death of her husband. However, on her son attaining majority, she made a representation dated 14.12.2006 stating that her daughter was going to be married and therefore, she requested for appointment on compassionate grounds for her son. Accordingly, the mother of the first respondent was directed to submit the claim in favour of her son with necessary documents, which was done.

4. The first respondent's case was considered by the Circle Relaxation Committee (in short, "CRC") for the first time in the year 2012 for the post of Postal Assistant. According to the first respondent, he was wrongly awarded only 63 merit points, whereas he should have been awarded 73 points. The grievance of the first respondent was in relation to non-grant of additional 5 points in the category of "number of dependents" and 5 points in the category of "number of unmarried daughters". According to the first respondent, though candidates who were awarded 69 Relative Merit Points (in short, "RMP") in the year 2012 and awarded 67 RMP in the year 2015 were appointed as Postal Assistant, the request of the petitioner, who should have got 73 points, for compassionate appointment was rejected in the year 2012 and 2015.

5. Learned Assistant Solicitor General appearing for the petitioners submitted that on the date when the application of the first respondent for compassionate appointment was considered, the sister of the first respondent was already

married and, hence, no points could have been given for the sister in the category of unmarried daughter or as a dependent. He submitted that the first respondent had been rightly awarded 63 points and as the last candidate in the year 2012 was awarded 69 RMP and the last candidate in the year 2015 who was appointed was awarded 67 RMP, the petitioners' case was not rightly considered by the Central Administrative Tribunal.

6. Thus, the contention of learned Assistant Solicitor General is that marks/merit points have to be given as per the situation prevailing on the date of consideration of the application for compassionate appointment and as per the situation prevailing at that time, the first respondent has rightly been awarded 63 RMP. In relation to this contention, we would like to refer to the decision of the Supreme Court in the case of Canara Bank and another v. M. Mahesh Kumar, reported in (2015) 7 SCC 412. In the said case, the Supreme Court held that claim for compassionate appointment must be considered as per the scheme, which was in vogue at the time of death of the employee concerned. Thus, if the situation at the time of death is considered, the first respondent would get 73 RMP.

7. As per the letter and spirit of the scheme of compassionate appointment, the date of death of the deceased employee is to be taken into account to determine the penury condition of the applicant's family for which criteria/weightage has been laid down in the Circular of 2010. Although the first respondent's father expired in 2003, his application could be submitted in the year 2006 on his attaining majority. There was no delay on his part. The petitioners took 10 years time to consider the first respondent's case on the ground that cases of their Department relating to compassionate appointment were pending before the Supreme Court. However, it is seen that in the selection years of 2012 and 2015 when cases of other candidates were considered, the first respondent was eligible for appointment.

8. According to the first respondent, on the basis of 2010 Circular, instructions were issued vide a letter dated 11.8.2011 by the petitioners to re-examine all the cases pending by applying the RMP and to send all the cases afresh for consideration by the CRC. As per the said circular, the first respondent received only 63 points, being as follows:

Attributes	Details as per synopsis	Points
Family Pension (Basic plus DA)	Rs.3500/-	20
Terminal benefits (DCRG, GPF, Leave Encashment, Pension commutation)	Rs.1,12,347/-	10
Monthly Income	Nil	5 (Maximum)
Immovable Property	Nil	10 (Maximum)
No. of dependents	2 (wife and son)	10
No. of unmarried daughter	Nil	0
No. of minor children	Nil	0
Left over service of the deceased	17 years 7 months 8	7 8
Grace points if the applicant is widow	Nil	
		63 points

9. According to the first respondent in the category of "number of dependents", he should have got 5 extra points. When his father expired, his sister was a dependent, hence 5 points ought to have been granted for the sister. In the second category, number of unmarried daughter, "0" marks was awarded to him. However, at the time of death of his father, his sister was unmarried and, hence, he ought to have been granted 5 points for the same.

10. Learned Assistant Solicitor General appearing for the petitioners submitted that the first respondent could not be granted marks in relation to his sister under both categories i.e., number of dependents and number of unmarried daughter. However, the learned Assistant Solicitor General was unable to point out any Rule which stated that an unmarried daughter can be counted only in any one of the two categories. If we consider the argument of the learned Assistant Solicitor General appearing for the petitioners that unmarried daughter can be given points only under any one of the two categories, there was no need for the petitioners to have two different columns i.e., "number of dependents" and "number of unmarried daughter". If the unmarried daughter is to be considered as a dependent only, then there was no need to have a separate column for unmarried daughter as she would be covered only under the category of

number of dependents. But the fact that there is a separate column for number of unmarried daughter shows that the person has to be awarded marks under each of the two categories.

11. In view of the decision of the Supreme Court in the case of Canara Bank and another v. M. Mahesh Kumar, supra, the case for compassionate appointment would have to be considered as per the scheme which was in vogue on the date of death of the deceased employee. At the time of the death of deceased employee, as the sister was also dependent and was unmarried daughter, the first respondent ought to have been given 5 points under each head, hence, first respondent would get extra 10 points which would make his RMP 73. As stated earlier, in 2012, the last candidate who was appointed had been awarded 69 RMP and in the year 2015, the last candidate who was appointed on compassionate grounds had got 67 RMP. As the first respondent's RMP would actually be 73 points, he can be said to be very much eligible to be appointed on compassionate grounds.

12. Thus, the limited issue for consideration is whether the first respondent is eligible for award of 5 points each in the category of "number of dependents" and "number of unmarried daughter", which would raise the total by 10 points. As per 2010 Circular, only the date with reference to the death of the deceased employee is relevant for assessment of the dependency based on eligibility by applying the parameters/weightage. On the date of death of the deceased employee, there were three dependents i.e., wife, one unmarried daughter and the first respondent. Hence, the first respondent should have been given extra 5 points against the category of number of dependents. The first respondent got 10 points under this category whereas he should have got a total of 15 points in the light of Para 4 (b) (e) of the 2010 Circular. As regards unmarried daughter, the first respondent's sister was 19 years of age at the time of death of the deceased employee. As the daughter was not married on the date of death of the deceased employee, she fell in the category of unmarried daughter at the time of death of her father, hence, for the same, extra 5 RMP ought to have been granted to the first respondent.

13. It is evident that had the first respondent been awarded 10 more points by the CRC 2012, as against 63 points, he would have become eligible for appointment in the year 2012 itself. The cut-off points for Postal Assistant cadre being only 69 RMP in the year 2012, the first respondent had 4 points more than the above cut-off point. Hence, he should have been considered against the vacancy which arose before the CRC 2012. By observing thus, the Central Administrative Tribunal directed the petitioners to re-convene CRC or have the CRC re-convened to consider accommodating the first respondent against any vacant post whether PA/SA cadre, PM cadre or M.Ts. cadre wherever

vacancy is available and wherever he is found eligible, keeping in view the educational qualification of the first respondent or other eligibility criteria in mind. The Central Administrative Tribunal further directed that the petitioners shall pass a reasoned and speaking order within a period of two months from the date of receipt of certified copy of the order.

14. In view of the facts enumerated above, we are of the opinion that the first respondent ought to have been given 10 more points, thus the order of the Tribunal does not call for any interference, hence, the writ petition is dismissed. No costs. Consequently, W.M.P.No.489 of 2018 is closed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

+1 CC to Mr.R. Malaichamy, Advocate sr 58250.

+1 CC to Mr.G. Karthikeyan, Advocate sr 58299.

W.P.No.434 of 2018

SJ(CO)
SP(11/09/2018)

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