

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.5437 OF 2017

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The writ petitioner is the unsuccessful applicant in O.A.020/00311/2016 on the file of the Central Administrative Tribunal, Hyderabad Bench (*hereinafter*, 'the Tribunal'), which was dismissed *vide* order dated 28.10.2016. Therein, he had assailed the Memo dated 28.12.2015 issued by the Post Master General, Vijayawada Region, Krishna District, rejecting his request for appointment as a Postal Assistant on compassionate grounds. He sought a consequential direction to the authorities to consider and appoint him to the post of Postal Assistant on compassionate grounds. By the order under challenge, the Tribunal held that as the petitioner-applicant's claim was considered and rejected after a comparative assessment of the merit of all the cases placed before the Circle Relaxation Committee, no grounds were made out for interference. The O.A. was accordingly held to be devoid of merit and dismissed.

The father of the petitioner-applicant entered the service of Postal Department on 16.09.1965. He applied for retirement on medical invalidation grounds as he was afflicted with 'Multiple Cervical Disc Prolapse C34 C45 C56 C67 with Mylopathy'. The Post Master General, Vijayawada Region, permitted his retirement on medical grounds, *vide* proceedings dated 27.12.2001. In turn, the Senior Superintendent of Post Offices, Prakasam Division, Ongole, issued Memo dated 09.01.2002 permitting him to retire from service with immediate effect on grounds of medical invalidation. Thereafter, the father of the petitioner-applicant submitted representation dated 10.04.2002 requesting the Post Master General, Vijayawada Region, to provide

appointment on compassionate grounds to his son, the petitioner-applicant, as there was no other earning member in the family. The father of the petitioner-applicant died on 09.05.2002.

Despite repeated representations seeking appointment as a Postal Assistant on compassionate grounds, the petitioner-applicant was not provided employment. He then filed O.A.No.810 of 2015 before the Tribunal assailing the action of the postal authorities in not considering his case for appointment on compassionate grounds while others similarly situated were granted relief. The case of one T.Balaji Venkateswara Rao who was provided compassionate appointment 11 years after the death of his father, an employee in the Postal Department, was cited by the petitioner-applicant and he sought similar relief. The said O.A. was disposed of by the Tribunal, *vide* order dated 24.06.2015, directing the Post Master General, Vijayawada Region, to examine the contention of the petitioner-applicant that similarly situated persons were provided employment. Thereupon, Memo dated 28.12.2015 was issued by the Post Master General rejecting his claim on the ground that it had already been rejected, *vide* proceedings dated 18.04.2005.

Stating that he was suffering financial hurdles due to lack of regular employment, the petitioner-applicant again approached the Tribunal assailing the Memo dated 28.12.2015, whereby his request for compassionate appointment had once again been rejected.

Perusal of the impugned Memo dated 28.12.2015 reflects that the Circle Relaxation Committee, being the competent authority, met on 14.02.2005 and 11.03.2005 and examined various cases relating to compassionate appointments. The Committee found that as per the departmental provisions, it could consider compassionate appointments only

to the extent of 5% of the approved vacancies and therefore, the petitioner-applicant could not be selected as he did not merit selection in the comparative study of the indigent circumstances of all the 137 families of the deceased employees placed before the Committee and due to the limited 5% of the approved vacancies available. Adverting to the claim of the petitioner-applicant that T.Balaji Venkateswara Rao, son of late T.V.Subba Rao, was provided compassionate appointment 11 years after the death of his father, the Committee found that as T.V.Subba Rao had expired on 16.05.1993 after rendering more than 20 years of service but his wife was an illiterate, compassionate appointment was provided to his minor son, T.Balaji Venkateswara Rao, upon his attaining the age of majority, as per the recommendation of the Committee in its meeting held on 29.04.2014. The case of the petitioner-applicant was stated to be wholly different from that of T.Balaji Venkateswara Rao, as he was not a minor as on the date of the death of his father. Reference was also made to case law to the effect that after passage of sufficient time and if the bereaved family maintained itself in the meanwhile, there can be no indefeasible right to claim compassionate appointment. Citing these grounds, the Post Master General, Vijayawada Region, again found the petitioner-applicant to be ineligible for appointment on compassionate grounds as per the scheme and guidelines on the subject. It is therefore manifest that the case of the petitioner-applicant was not even placed for consideration afresh before the Circle Relaxation Committee,

There can be no dispute with the proposition that compassionate appointment is not a mode or method of recruitment and is only a welfare measure intended to aid the family of the deceased employee tide over the crisis of suddenly losing its bread-winner. However, it is for the authorities to conscientiously implement the scheme of compassionate appointments so as

to come to the aid of the family in distress. It is not open to an employer to pick and choose arbitrarily from those aspiring for such compassionate appointment. Discrimination in this regard would not only defeat the very purpose of providing compassionate appointment but would also be a source for arbitrary recruitment through the back-door of those to the liking of the employer.

In the case on hand, the petitioner-applicant cited the instance of T.Balaji Venkateswara Rao who was provided compassionate appointment in the year 2014 though his father, T.V.Subba Rao, a Postal Assistant, died on 16.05.1993. Though much is sought to be made of the 20 years of service put in by late T.V.Subba Rao, it is not denied that the father of the petitioner-applicant put in 36 long years of service before his retirement on medical invalidation grounds. Further, there is no explanation forthcoming as to why the representation dated 10.04.2002 made by the father of the petitioner-applicant seeking appointment of his son on compassionate grounds was not considered till February–March, 2005. It is not the case of the authorities that the scheme of compassionate appointments would not be available to the progeny of the employees who retired prematurely on medical grounds. In any event, by the time of the said representation was considered, the father of the petitioner had expired. Therefore, the application warranted consideration on its own merits.

In this regard, it may be noted that the Postal Department is adopting a rather peculiar procedure of weighing the indigent circumstances of the families of the deceased employees so as to decide who amongst them should be provided compassionate appointment. This approach is sought to be justified by stating that compassionate appointment can be provided only up to a maximum of 5% of the approved vacancies. As the said scheme is

not under challenge before us, we refrain from going into the validity of a maximum limit on the number of compassionate appointments that can be provided, but the very ideology behind fixation of such a maximum limit completely undermines the very concept of the welfare scheme of providing compassionate appointments to dependents/scions of deceased employees.

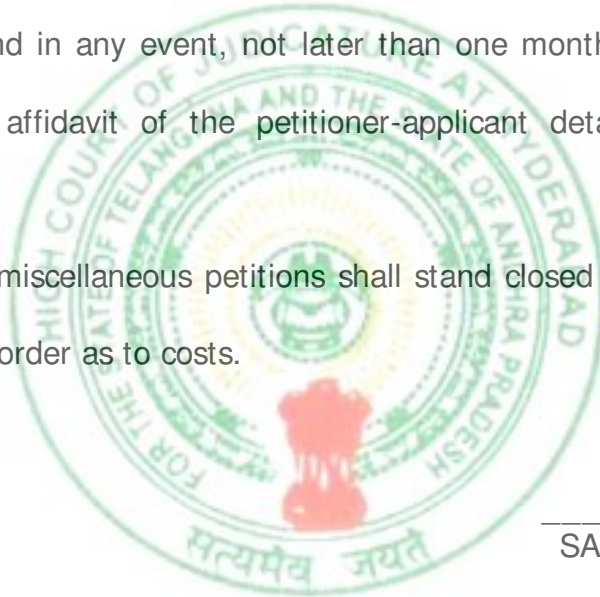
It is no doubt true that after a long passage of years, the right to claim compassionate appointment would diminish substantially, if not vanish altogether. However, when the authorities themselves are responsible for denial of compassionate appointment to a deserving candidate and the said candidate continues to be in a state of penury, it would not be against the spirit of the compassionate appointments scheme and the law relating thereto to permit such an appointment even after a lapse of years. Though the Post Master General, Vijayawada Region, cited the aspect of passage of time in the impugned Memo dated 28.12.2015, he himself adverted to the fact that T.Balaji Venkateswara Rao was provided compassionate appointment 11 years after the death of his father. Therefore, the postal authorities cannot use two different yardsticks in the context of passage of time for providing compassionate appointments.

No material is placed before this Court to demonstrate or justify the selection process adopted by the Circle Relaxation Committee while dealing with as many as 137 families in 2005. There is no indication of the parameters that the Committee would take into account while deciding as to which candidate should be provided compassionate appointment and which candidate should be refused such benefit. The entire process, on the face of it, appears to be opaque and self-serving. Given the lack of transparency in the manner in which the postal authorities dealt with the case of the petitioner-applicant, this Court is of the opinion that the rejection of his

candidature for appointment on compassionate grounds, be it on 18.04.2005 or under the impugned Memo dated 28.12.2015, cannot be sustained.

The writ petition is accordingly allowed setting aside the order passed by the Tribunal holding to the contrary along with the rejection orders. The respondents are directed to consider the case of the petitioner-applicant afresh for appointment on compassionate grounds, upon his furnishing an affidavit certifying his present financial condition. The respondents shall thereupon take an informed and reasoned decision in the matter and communicate the same, citing the details of the comparative analysis, if any, undertaken to evaluate his candidature. The exercise shall be completed expeditiously and in any event, not later than one month from the date of receipt of the affidavit of the petitioner-applicant detailing his financial condition.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

23rd APRIL, 2018

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