

In the High Court of Judicature at Madras

Reserved on	02.04.2019
Pronounced on	10/04/19

Coram:

The Hon'ble Mr. Justice M. VENUGOPAL
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.28451 of 2018 and
W.M.P.No.33185 of 2018

1. Union of India,
Rep. By the Secretary,
Ministry of Communications & IT,
Department of Posts, Dak Bhavan,
Sandad Marg, New Delhi - 110 001.
 2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 600 002.
 3. Asst. Chief Accounts Officer (Admin),
O/o The General Manager,
Postal Accounts & Finance,
Tamilnadu Circle,
Chennai - 600 008
 4. Senior Accounts Officer (Admin),
O/o The General manager,
Postal Accounts & Finance,
Tamilnadu Circle,
Chennai - 600 008
- ..Petitioners

Vs.

1. Dinesh Kumar
 2. The Central Administrative Tribunal,
rep. By its Registrar,
Madras Bench,
High Court, Chennai - 600 104
- ...Respondents

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Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorari by calling for the records relating to the order passed by the 2nd Respondent / Tribunal in O.A.No.1060 of 2014 dated 20.03.2018 and quash the same.

For Petitioners : Mr.Venkataswamy Babu
Senior Panel Counsel

For First Respondent : Mr.R.Malaichamy

For Second Respondent : Tribunal

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2. According to the Petitioners, the 1st Respondent / Applicant's father was working as 'Senior Accountant' in the office of the 3rd Petitioner, viz., the General Manager, Postal Accounts and Finance, Tamilnadu Circle, Chennai - 600008 and expired on 31.12.2003 leaving behind him and others as his 'Legal Heirs'. The 1st Respondent made an application to the Petitioners seeking an 'Appointment' on 'Compassionate Ground'. Subsequently, in the year 2012, the 1st Respondent's case was taken up by the Petitioners and was rejected by them. The stand of the Petitioners is that the 1st Respondent / Applicant's case could not be considered because of the pendency of Civil Appeal No.7773 of 2009 before the Hon'ble Supreme Court of India.

3. It comes to be known that the 1st Respondent preferred O.A.No.820 of 2012 before the 2nd Respondent / Tribunal being dis-satisfied with the rejection order dated 29.06.2012. In fact, the aforesaid Original Application was allowed by the Tribunal through an order dated 25.03.2014 and that the Tribunal had directed the Petitioners to reconsider the case of the 1st Respondent taking account of his real and economic status. Further, the 2nd Petitioner reconsidered the case of the 1st Respondent subsequent to the orders passed by the Tribunal in O.A.No.820 of 2012 and rejected the claim on 22.05.2014 because of the reason that there were no grounds to change the decision already taken in the 1st Respondent's case.

4. At this stage, the Learned Counsel for the Petitioners brings it to the notice of this Court that the 1st Respondent filed O.A.No.1060 of 2014 before the 2nd Respondent / Tribunal assailing the rejection order dated 22.05.2014 and that the Tribunal had disposed of the Original Application on 12.04.2016 even without providing an opportunity to the Petitioners to file

their reply statement on 12.04.2016. The aforesaid order of the Tribunal dated 12.04.2016 was questioned by the Petitioners in W.P.No.14812 of 2017 and this Court on 29.06.2017 had set aside the order of the Tribunal and remitted back the matter for fresh consideration, of course, after affording opportunity to the Petitioners to file their reply statement. Thereafter, the Petitioners projected their reply statement in the Original Application and that the Tribunal erroneously went into the aspect of 'Award' of Relative Merit Points [RMPs].

5. The Learned Counsel for the Petitioners submits that the 1st Respondent's family indigent circumstances was taken into consideration by the Circle Relaxation Committee and that the Tribunal cannot substitute the view of the said Committee. Moreover, the Tribunal had allowed the Original Application filed by the 1st Respondent on 20.03.2018 and directed the Petitioners to consider the issue afresh. Hence the Petitioners / Respondents have filed the present Writ Petition.

6. The Learned Counsel for the Petitioners contends that the Hon'ble Supreme Court in S.L.P.No.3548 of 2006 dated 18.08.2006 in the case of Union Bank of India and Others V. M.T.Latheesh had categorically held that the 'Expert Committee Opinion' cannot be interfered with by the Tribunal. As such, the Impugned Order of the Tribunal dated 20.03.2018 in O.A.No.1060 of 2014 is a legal one.

7. The Learned Counsel for the Petitioners projects an argument that in the Order in W.P.No.9737 of 2014 between Krishna Babu Kshirsagar V. The State of Maharashtra and Others dated 04.10.2017, the High Court of Bombay Bench at Aurangabad had observed that the purpose of 'Appointment on Compassionate Ground' is to provide an immediate relief to the family of a person, who had retired due to invalidation or one who died in harness and 13 years had rolled by and as such, the Impugned Order of the Tribunal in the present case is to be quashed.

8. Added further, the Learned Counsel for the Petitioners comes out with a plea that the 1st Respondent / Applicant in the Original Application claimed 84 'Relative Merit Points' and in the Rejoinder, he had reduced his claim as 71 'Relative Merit Points'. Hence, the 1st Respondent had taken an inconsistent stand as regards the award of 'Relative Merit Points'. Also on this ground, it is the stand of the Petitioners that the Impugned Order of the Tribunal dated 20.03.2018 in O.A.No.1060 of 2014 is to be set aside in the interest of justice.

9. The core contention advanced on behalf of the Petitioners is that when the Circle Relaxation Committee [Expert Committee] had gone into the issue of Indigent circumstances of the 1st

Respondent and rejected his claim, the Tribunal ought not to have been gone into the aspect of Award of 'RMPs' because of the fact that the assessment made by the Committee was at ground reality.

10. The Learned Counsel for the Petitioners draws the attention of this Court that the 2nd Respondent / Tribunal should have considered that the award of 'Relative Merit Points' was introduced by a Scheme dated 20.01.2010 and that the 1st Respondent's family indigent circumstances was considered based on the scheme dated 20.01.2010 and as such, the consideration cannot be back dated viz., on the date of death of the deceased employee. In short, the version of the Petitioners is that the Scheme dated 20.01.2010 cannot be given retroactive effect, dating back to the death of an employee.

11. It is represented on behalf of the Petitioners that the 2nd Respondent / Tribunal placed a reliance on the Judgment of the Hon'ble Supreme Court in Canara Bank and Another V. M.Mahesh Kumar reported in 2015 (7) SCC at page 412 and in fact, the said Judgment is very much against the 1st Respondent. The Learned Counsel for the Petitioners contends that the 'Compassionate Appointment is not a matter of Right'.

12. The Learned Counsel for the Petitioners relies on the Judgment of the Hon'ble Supreme Court between Union of India and Ors. V. M.T.Latheesh dated 18.08.2006 in Appeal [C] No.3548 of 2006 whereby and whereunder at Paragraph No.29, it is observed as under:

'29.It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full fact should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities the Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial

condition of the family. The respondent is not entitled to claim relief under the new scheme because the financial status of the family is much above the criterion fixed in the new scheme'.

13. The Learned Counsel for the Petitioners cites the order of the Hon'ble Supreme Court in Special Leave Petition [Civil] No.30335 of 2017 between State Bank of India & Ors. V. Sheo Shankar Tewari wherein at Paragraph Nos.7 to 10, it is observed as under:

7. In these decisions, the original scheme under which appointment on compassionate grounds could be made, was substituted by one under which only ex gratia payment would be made over to the dependants. The decisions relied upon by the petitioner proceed on the premise that there is no vested right to have the matter considered under the former scheme and the governing scheme would be one which was in force when the applications came up for consideration. On the other hand, the decision relied upon the respondent proceeds on a different principle and stipulates that the governing scheme would be former scheme and any subsequent that came into force after the claim was raised would not be applicable. The decision of this Court in Canara Bank (2015) 7 SCC 412 did notice the earlier two decisions in State Bank of India (2010) 11 SCC 661 and MGB Gramin Bank (2014) 13 SCC 583.

8. All the aforesaid three decisions as well as one is Jaspal Kaur (2007) 9 SCC 571 were rendered by Benches of two Hon'ble Judges of this Court.

9. The principles emanating from these two lines of decisions, in our considered view are not consistent and do not reconcile. The matter therefore requires consideration by a larger bench of at least three Hon'ble Judges of this Court.

10. We, therefore, request the Registry to place the papers of this case before the Hon'ble the Chief Justice of India for constituting a Bench of appropriate strength to dispose of the present petition.

14. The Learned Counsel for the Petitioners refers to the Communication of the Government of India, Ministry of Communications & IT, Department of Posts, SPB-1/C Section dated 20.01.2010 wherein at Paragraph No.4, it is observed as under:

4.The existing position has been reviewed in this Department and it has been decided by the competent authority that to achieve the objective of the scheme

of the Compassionate Appointment and to ensure complete transparency, merits of the cases can be conveniently decided by allocating points to the applicants, based on various attributes indicated in the references of DOP&T from time to time. Accordingly the Department has worked out a system of allocation of points to various attributes based on a hundred point-scale as indicated in the tables below:

' (a) Family Pension (Basic excluding DA & Allowances)

Sl.No	Points	Proposed Slab for Deptt. Of posts
1	20	Upto 5000
2	18	5001-8000
3	16	8001-11000
4	14	11001 - 14000
5	12	14001-17000
6	10	17001-20000
7	8	20001-23000
8	6	Above 23000

(b) Terminal benefits (DCRG, GPF, CGEGIS, Leave Encashment & Pension Commutation)

Sl.No	Points	Proposed Slab for Deptt. Of posts
1	10	Upto 1,40,000
2	9	140001 - 168000
3	8	168001 - 196000
4	7	196001 - 224000
5	6	224001 - 252000
6	5	252001 - 280000
7	4	280001 - 308000
8	3	308001 - 336000
9	2	336001-364000
10	1	364001 - 420000
11	0	420001 & Above

(c) Monthly Income of Earning Members and Income from Property

Sl.No	Points	Proposed Slab for Deptt. Of posts
1	5	No income
2	4	2500 or less

Sl.No	Points	Proposed Slab for Deptt. Of posts
3	3	2501 - 3500
4	2	3501 - 4500
5	1	4501 - 5500
6	0	5501 & above

(d) Moveable / Immovable Property

Sl.No	Points	Proposed Slab for Deptt. Of posts
1	10	Nil
2	8	Upto 150000
3	6	150001 - 300000
4	3	300001-600000
5	1	600001-1000000
6	0	Above 10,00,000

(e) No. of dependents Points

- (i) 3 and above 15
- (ii) 2 10
- (iii) 5

(f) No. of Unmarried Daughters Points

- (i) 3 and above 15
- (ii) 2 10
- (iii) 1 5
- (iv) None 0

(g) No. of Minor Children Points

- (i) 3 and above 15
- (ii) 2 10
- (iii) 1 5
- (iv) None 0

(h) Left over service Points

- (i) Over 20 years 10
- (ii) Over 15 & upto 20 years 8
- (iii) Over 10 & Upto 15 years 6
- (iv) Over 5 & Upto 10 years 4
- (v) 0-5 years 2

In addition to the above, cases where the wife of the deceased official has applied for compassionate appointment for herself, she shall get 15 Additional Points as grace points. This will be in preference for compassionate appointment.

The above system of weightage not only awards objectivity to the entire method but also ensures complete transparency and uniformity in the selection process. The above method should be strictly followed

with immediate effect, keeping in view the instructions issued by the Department of Personnel & Training from time to time.

This has the approval of Secretary (Posts).

15. The Learned Counsel for the Petitioners adverts to the Memo of the 2nd Respondent / the Chief Postmaster General, Tamilnadu Circle, Chennai - 600 002 dated 22.05.2014, in respect of the 1st Respondent wherein it is observed as under:

'The CRC did not recommend the case of the applicant for the following reasons:

i. He is less indigent as per the relative merit points compared to the candidates who applications were processed along with him and whose cases were found be more deserving.

ii. Non availability of 5% Direct Recruitment Vacancy.

According to the rulings of the DOP&T and upheld by the Hon'ble Supreme Court of India, compassionate appointment can be made against only 5% of Direct Recruitment vacancies earmarked for compassionate appointment, that too only on merit and it cannot be claimed as a matter of right. The relative merit points awarded to the applicant was only 51 which is less than that of the selected candidates in PA/SA/PM/MTS cadre. Hence, his case was not recommended by the CRC for compassionate appointment.

However, in compliance with the orders of the Hon'ble Tribunal dated 25.03.2014, the case was reconsidered by the Circle Relaxation Committee members who were of the view that implementing the orders of Hon'ble CAT in this case i.e. OA 820/2012 (i.e. Reconsidering the claim of the applicant taking into account the real and economical status of the applicant and her family details immediately after the death of the deceased employee), will result in a conflicting situation and all other cases placed before the above CRC will have to be re-opened and re-processed, which is not possible at this juncture. Also, the vacancies which existed for the year 2000 to 2008 were utilized for regularizing the services of 202 respondents and 37 interlocutory applicants of SLP No.2976/2008 (CA No.7773/09) and 30 other SLPs. As such there is no vacancy earmarked under 5% DR quota available.

Appointment on compassionate ground cannot be claimed as a matter of right nor an applicant become entitled automatically for appointment, rather it depends on various other circumstances i.e., eligibility and financial conditions of the family, etc., the application has to be considered in

accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date the cause of action had arisen, i.e. date of death of the incumbent of the post, and case has to be considered only under the new scheme. The applicant cannot claim his case to be considered as per the scheme existing on the date the cause of action had arisen, i.e., date of death of the incumbent of the post, and case has to be considered only under the new scheme. The applicant cannot claim his case to be considered as per the scheme existing on the date the cause of action had arisen, i.e., date of death of the incumbent of the post, and case has to be considered only under the new scheme, which has been upheld by the Hon'ble Supreme Court in the Judgment dated 07.08.2013 in the case of CA No.6348/2013 filed by MGB Gramin Bank V. Chakravarti Singh.

Hence, the Circle Relaxation Committee members were of the considered opinion that the decision taken in the case of Shri. D.S.Dineshkumar in the meeting held during 14th to 16th March 2012 holds good.' and ultimately came to the conclusion that there were no grounds to change the decision already taken in respect of the 1st Respondent.

16. The Learned Counsel for the Petitioners refers to the Communication dated 15.12.2015 of the Office of the General Manager, Postal Accounts and Finance, Tamil Nadu Circle, Chennai wherein in respect of the 1st Respondent, it is mentioned that his request for compassionate appointment in this office could not be considered on the under mentioned grounds:

- '1. Less indigent as per Relative Merit Points under RRR quota
2. Non-availability of Direct Recruitment Vacancy'

17. In response, it is the submission of the Learned Counsel for the 1st Respondent that from the year 2000 - 2012, the Petitioners had not taken any action for granting 'Compassionate Appointment' to an eligible person including the 1st Respondent and after framing fresh Scheme dated 20.01.2010, they had not taken any timely step to consider his case and others and only in the year 2012, the selection through Circle Relaxation Committee headed by the 2nd Petitioner and if the Circle Relaxation Committee was conducted / held in the year 2003 or 2004, then, the 1st Respondent would have secured the appointment on 'Compassionate Ground' and would have rendered around 15 years of service as on date.

18. The Learned Counsel for the 1st Respondent points out that the 2nd Petitioner had conducted Circle Relaxation Committee in the year 2015 and subsequently, had not conducted any Circle Relaxation Committee till date and if the said CRC was conducted / held in each year, then, the eligible person would have secured appointment in time.

19. The Learned Counsel for the 1st Respondent submits that by means of a Scheme dated 20.01.2010, the Selection / Appointment 'On Compassionate Ground' was made mainly by awarding points to various attributes in the name and style of 'Relative Merit Points' and Points are awarded towards minor children, unmarried daughters and therefore, the minors could not remain as minors till Circle Relaxation Committee was conducted. Apart from that, the unmarried daughter was not expected to marry till their cases are considered by the said Circle Relaxation Committee. Therefore, it is the plea of the 1st Respondent that his case is covered by the Judgment of the Hon'ble Supreme Court in the case of Canara Bank V. Maheshkumar and the Division Bench Order of this Court in W.P.No.434 of 2018 [R.Vasanth's case] dated 27.08.2018.

20. The Learned Counsel for the 1st Respondent contends that as per the Scheme, the 1st Respondent was awarded with only 51 points and Circle Relaxation Committee had rejected his claim and when the 1st Respondent filed O.A.No.820 of 2012 before the 2nd Respondent / Tribunal, the Tribunal had disposed of the Original Application by passing an order on 25.03.2014.

21. It is the stand of the 1st Respondent that for 'Terminal Benefits', they awarded only '4' points and further that, no one is employed in their family and hence he is entitled to '5' points against Item No.3.

22. The Learned Counsel for the 1st Respondent informs this Court that Item No.6, pertains to number of unmarried daughters, 'Nil' point was awarded, but at the time of death of 1st Respondent's father, viz., the only daughter of the deceased employee was 13 years old and therefore, he is entitled to another 5 points. In regard to Item 7 pertaining to number of minor children, they have to award another 10 points [one son viz., Monesh Kumar, 17 years and Bhuvana was 13 years old at the time of death of 1st Respondent's father]. In this connection, the Learned Counsel for the 1st Respondent submits that if another 20 points are added to the points awarded by CRC [51], it works out to 71 points and therefore, the 1st Respondent is entitled to appointment to the post of Postal Assistant, as last selected candidate for the post of Postal Assistant was awarded

69 points in the year 2012-CRC and 66 points in the year 2015-CRC.

23. The Learned Counsel for the 1st Respondent contends that the Petitioners had admitted in their reply statement to the Original Application No. 1060 of 2014 that the request for compassionate appointment between the period 1990 and 1999 were kept in the waiting list for consideration and subsequently, 202+37 candidates were appointed on compassionate ground against 5% DR vacancies for the period from 2000 to 2012. Indeed, the vacancies meant in respect of the 1st Respondent and others or otherwise the candidates claiming appointment of the years 2000 to 2012 were filled up by the RRR Candidates of the years 1990 to 1999 and as such, rejecting the 1st Respondent's case by mentioning that 5% DR vacancies was not available is not a true one.

24. The Learned Counsel for the 1st Respondent comes out with a plea that the Petitioners in their reply statement to O.A.No.1060 of 2014 had admitted that the cases received from the year 2000 and upto 05.03.2012 were taken up for consideration by the Circle Relaxation Committee during the year 2012 and as such, the 1st Respondent and similarly placed persons like him were deprived of securing appointment on 'Compassionate Ground' against 5% DR Vacancies meant for them.

25. The Learned Counsel for the 1st Respondent submits that the Petitioners in their reply to the Original Application No.1060 of 2014 at Paragraph Nos.3.7 and 3.9 had tacitly admitted that they had considered the 1st Respondent's case and others by applying the Scheme dated 20.01.2010 only to the Posts of Postal Assistant [PA] / Sorting Assistant [SA], Postman and MTS. However, in the Postal Department, there are other categories by which the appointments were made by way of Direct Recruitment and that the Postal Department may direct the Recruitment to the under mentioned categories also and the same runs as under:

- '(i) Computer Operator, Data Entry Operator (Accounts), Sorter, Mail Guard in RMS, System Analyst, etc., particularly in almost Head Offices, Computer Operator post is available.
- (ii) Business Development Centre,
- (iii) LDC and Junior Accountant in the Office of General Manager, Postal Accounts, Chennai - 600 008 (through Staff Selection Commission).
- (iv) UDC in all Post Offices (Staff Selection Commission) and
- (v) Newly established Core Banking Wing.'

26. The Learned Counsel for the 1st Respondent contends that

'Circle Relaxation Committee' had not properly assessed the 1st Respondent's case with reference to the Judgment of the Hon'ble Supreme Court in the case of Canara Bank reported in 2015(7) SCC 412. Further, it is the stand of the 1st Respondent that he had worked out 84 points to be awarded to him by taking into the status of the minors in his family and in the rejoinder to the reply statement in O.A.No.1060 of 2014, he had correctly worked out the Relative Merit Points as '71'.

27. The Learned Counsel for the 1st Respondent relies on the Division Bench Order of this Court dated 07.06.2018 in W.P.No.132 of 2018 between Union of India rep. By the Chief Postmaster General, Tamil Nadu Circle, Chennai-2 and Another V. N.Arunan and Another wherein while dismissing the Writ Petition, a direction was issued to the Petitioners therein to convene the CRC Meeting and reconsider the case of the 1st Respondent therein on the basis of the revised weightage points arrived at, as per the guidelines and then consider the grant of compassionate appointment after following the laid down procedures, as directed by the Tribunal, by passing a reasoned and speaking order within a period of two months from the date of receipt of copy of this order.

28. The Learned Counsel for the 1st Respondent cites the Division Bench Order of this Court dated 27.08.2018 in W.P.No.434 of 2018 between Union of India and Another V. R.Vasanth and Another wherein at Paragraph Nos.12 to 14, it is observed as under:

'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.'

29. The Learned Counsel for the 1st Respondent refers to the Division Bench Order of this Court dated 05.02.2019 between Union of India rep. By the Chief Post Master General, Tamil Nadu Circle, Chennai - 600 002 and Another V. A.Santhi and Another wherein at Paragraph Nos.14 and 15, it is observed as under:

'14. It comes to be known that the relative merit point of the Last Selected candidate in MTS Cadre was 91 and the First Respondent's merit point was worked out to 90. In this regard, it may not be out of place to mention of this Court to make a pertinent mention that the Petitioners have come out with an emphatic plea that the case of the First Respondent was considered by the Circle Relaxation Committee and decision about consideration of eligible cases against the 5% of vacancies reserved under direct recruitment quota was taken after 'Objective Assessment' of each case.

15. Be that as it may, in view of the upshot and this Court taking note of the entire conspectus of the

attendant facts and circumstance of the present case in an encircling manner, comes to an inevitable and irresistible conclusion that the impugned order of the Second Respondent / Central Administrative Tribunal, Madras Bench dated 13.07.2016 in O.A.No.805 of 2013, wherein, directions are issued to the Petitioners / Respondents to reconsider the Applicant's candidature as per the relevant Rules by placing it before the ensuing 'Circle Relaxation Committee', etc., do not suffer from any material irregularity and patent illegality in the eye of Law. Viewed in the perspective, the present Writ Petition is devoid of merits.'

30. The Learned Counsel for the 1st Respondent seeks in aid of the Division Bench Order of this Court dated 02.12.2016 in W.P.No.42353 of 2016 between the Secretary, Union of India, Department of Posts, Sansad Marg, Dak Bhawan, New Delhi - 110 001 and four others V. The Registrar, Central Administrative Tribunal, Chennai Bench, Chennai - 600 104 and another wherein at Paragraph No.14 it is observed as under:

'14. While considering the issue, as to whether, the scheme for compassionate appointment, as it existed, as on the date of death of the 2nd respondent's father in harness, would be applicable or the latter scheme would be applicable and taking note of Paragraph 17 of the decision in Canara Bank's case, which states that, 'considering the scope of the scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence.', the Central Administrative Tribunal, vide order, dated 28.03.2016, made in O.A.No.1006 of 2015 has rightly held that the petitioners have to apply the then existed scheme, relating to compassionate appointment, so to say the scheme, which existed as on 08.11.1999, i.e., the date of death of the applicant's father in harness. Going to the material on record, we are of the view that there is no error in the order, warranting interference.'

31. Before the Tribunal, the Petitioners / Respondents had filed a counter to O.A.No.1060 of 2014 wherein at Paragraph No.3.9 it was among other things mentioned that in CRC-2015, the Relative Merit Point for the last selected candidate in PA / SA cadre was 66, PM cadre was 73 & MTS Cadre was 85 and further that, since the 1st Respondent's RMP was only 51, his case was not recommended in CRC-2015 and also on the same grounds, it was

intimated by the Chief Postmaster General, Tamilnadu Circle, Anna Salai, Chennai - 600 002 [2nd Respondent] in O.A.No. 1060 of 2014 through Letter No.REP/47-3/2014 dated 25.08.2015 that, all the cases of CRC 2015 which were not recommended would be placed before the next CRC and examined on merit, along with the fresh cases, received subject to the availability of vacancies on RRR Quota.

32. Besides the above, the Writ Petitioners / Respondents before the 2nd Respondent / Tribunal in O.A.No.1060 of 2014 had categorically averred that in the Postal Department, the Scheme of 'Compassionate Appointment' issued in the year 1998 [modified from time to time], as per the instruction of Nodal Department viz., DoPT and even now, the same scheme is being followed. That apart, the 'Relative Merit Point System' was introduced as per the Postal Directorate's Letter dated 20.01.2010, which is covered by the decision of the Hon'ble Supreme Court of India in the case of Umesh Kr.Nagpal V. State of Haryana reported in 1994 (2) SLR 677 as cited in the order dated 18.05.2010 of the Tribunal, Ahmedabad in O.A.No.396 of 2009.

33. Be it noted, that in the decision of Hon'ble Supreme Court between Umesh Kumar Nagpal V. State of Haryana reported in 1994 (2) SLR 677 it is observed that the only ground which justified compassionate appointment is a penurious conditions of the family of the deceased and further that, neither the qualifications of the dependent nor the post which the deceased held that the object of compassionate appointment is to enable the family to get over the financial crises, which it faces but the time of death of sole bread winner and the compassionate appointment cannot be claimed and offered whatever be the lapse of time and after the crisis is over.

34. The stand of the Petitioners / Respondents before the Tribunal in O.A.No.1060 of 2014 was that after complying with the orders of Hon'ble Supreme Court, the CRC Meeting took place in the year 2012 in which 876 Compassionate Appointment cases were examined against the 5% DR Vacancies of the year 2010-2012 and further that, final order was passed by the Hon'ble Supreme Court of India on 30.07.2010 in S.L.P.No.2976 of 2008 [C.A.No.7773 of 2009] and 30 other SLPs.

35. As seen from the reply statement of the Writ Petitioners / Respondents in O.A.No.1060 of 2014 before the Tribunal, it is quite evident that the Writ Petitioners had referred to an order dated 08.08.2011 in O.A.No.2775 of 2011, in the case of Smt.Somvati V. Union of India wherein it is held that 'It is settled law that case for compassionate appointment has to be

considered in terms of Policy decision, which is prevalent at the time of consideration'.

36. In substance, the contention of the Writ Petitioners/ Respondents is that all the cases for 'Compassionate Appointments' were processed uniformly, as per extant Rules / Instructions and awarded Relative Merit Points by taking various attributes into account for determining the most deserving cases and in fact, such deserving cases were offered appointment against their eligibility and available vacancies. In short, an applicant with less 'Indigence' was not recommended by the Circle Relaxation Committee.

37. Lastly, it is the stand of the Petitioners before the Tribunal that one Ms.Meenakumari, who filed O.A.No.1241 of 2017 before the Tribunal citing the Canara Bank Judgement, the said Original Application was dismissed by the Tribunal on 01.08.2017 at the admission stage with the following observation:

'It is seen from A19 Impugned Order dated 04.04.2017 that the applicant has been informed that her case would be placed in the ensuing CRC and examined on merit. Therefore, there is no cause of action to interfere at this stage. The relief sought by the applicant is untenable'

38. Insofar as the present case is concerned, the 1st Respondent / Petitioner in O.A.No.1060 of 2014, had averred that he and his family are in 'Penury Condition' and as such, he is eligible for appointment to any eligible post in 3rd and 4th Petitioners' / Respondents' Office. Further that, the Petitioners had not taken any action to appoint the 1st Respondent / Applicant on compassionate ground within the prescribed time and ultimately took up the matter in the year 2012 and decided the cases pertaining to the years 2000 to 2010 and his claim was rejected on 29.06.2012 by the 4th Petitioner / 4th Respondent. Continuing further, the 1st Respondent in O.A.No.1060 of 2014 had also stated that the date of death of an employee is a crucial date to decide the penury condition of the family to arrive at a decision to consider appointment on 'Compassionate Ground' and not the date of selection. However, the Writ Petitioners / Respondents had determined his case by taking into status of the family during the year 2012 of selection. Further, the Writ Petitioners / Respondents had omitted the 2nd Respondent's case for appointment for the reasons best known to them, though he was to be awarded more points, than, the Relative Merit Points of '69' awarded for the last selected candidate in PA/SA cadre.

39. In this connection, this Court pertinently refers to the order of Hon'ble Supreme Court in C.A.No.7773 of 2009 Union of

India and Another in M.Nallavan etc., batch order dated 30.07.2010 wherein among other things it is observed as under:

'.....It is evident from the affidavit that the entire matter was reconsidered by the Department and upon such reexamination based on humanitarian considerations, found that out of 204 respondents in all 202 respondents working in the Department against short term/leave vacancies can be accommodated against compassionate appointment vacancies for the years 2000-01 to 2009 as per the departmental guidelines. However, in the case of Postal Assistants (PA) and Sorting Assistants (SA) cadre, according to the Ministry, the number of vacancies is not enough to accommodate all of them in the cadre. It is stated that the number of vacancies earmarked for this period is only 113 whereas the number of respondents claiming the relief is 152. However, it is stated that as a one time measure, the Department is willing to accommodate them against residual vacancies of the Department. The statement made in the affidavit is made part of the record directing the respondents to act upon the same.

In the circumstances, the appellants are directed to regularize the services of all the 202 respondents who are working in the Department against short term / leave vacancies with effect from their date of appointment. However, the respondents shall not be entitled for payment of any arrears on account of such regularisation. But their pay and pensionary benefits are protected.

In view of this order, it is made clear that the findings recorded by the Tribunal and as well as the High Court with regard to the interpretation of office memorandums and circulars of the Department are set aside and those findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be pending.

The questions of law, if any, are left open.' and disposed of the Civil Appeals.

40. It is not in dispute that the 1st Respondent / Dinesh Kumar had passed HSC at the time of death of an employee and the said education qualification is the requisite factor for considering his case in respect of the vacant post under Direct Recruitment quota, for which undoubtedly, he was quite eligible as per Recruitment Rules, by including 5 points in respect of 'Monthly Income', 5 points against the Caption 'Unmarried Daughters' and 15 points against the column of 'Number of Minor Children', the 1st Respondent / Applicant was legitimately entitled to secure 25 more points and if the said points were included to the already secured points of 51, then, it would

work out to 76 points. To put it succinctly, if any individual, who was awarded less than 76 points was selected and appointed in PA/SA Postman / MTS Cadres within the available vacancies under 5% quota / ceiling, then, it is an illuminating example of a case whereby and whereunder the 1st Respondent's right, as per 'Scheme of Compassionate Appointment dated 20.01.2010' was ignored by the concerned in a nonchalant manner. It is to be remembered that the Last selected candidate in PA/SA cadre had secured the Relative Merit Point of '69'.

41. Suffice it for this Court to make a pertinent mention that the Writ Petitioners / Respondents cannot award marks to the 1st Respondent by assessing him in negation of the ingredients of the Circular / Proceedings No.37-36/2004-SPB-I/C, Government of India, Ministry of Communications & IT, Department of Posts, SPB-I/C Section dated 20.01.2010.

42. In view of the detailed qualitative and quantitative upshot and considering the present facts and circumstances of the instant case in a holistic manner this Court comes to an inescapable conclusion that the 1st Respondent / Applicant ought to have awarded with 76 points as per Scheme of Compassionate Appointment dated 20.01.2010 and when the last cut off marks for PA/SA Cadre indisputably was 69 and postman cadre was 75 in the year 2012, then, the rejection of the 1st Respondent's case for compassionate appointment is clearly unsustainable in the eye of Law. As a resultant logical corollary, this Court deems it fit and proper in directing the Petitioners to convene the Circle Relaxation Committee to consider the 1st Respondent's case within a period of four weeks from the date of receipt of a copy of this order and to determine the 1st Respondent's case and to act by taking into account that the 1st Respondent / Dinesh Kumar should have been awarded with a Relative Merit Point of '76'. Looking at from any angle, the view taken by the 2nd Respondent in O.A.No.1060 of 2014 is free from any material irregularities / patent legal infirmities. Consequently, the Writ Petition fails.

In fine, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court, Chennai - 600 104
2. The Secretary,
Union of India,
Ministry of Communications & IT,
Department of Posts, Dak Bhavan,
Sandad Marg, New Delhi - 110 001.
3. The Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 600 002.
4. Asst. Chief Accounts Officer (Admin),
O/o The General Manager,
Postal Accounts & Finance,
Tamilnadu Circle,
Chennai - 600 008
5. Senior Accounts Officer (Admin),
O/o The General manager,
Postal Accounts & Finance,
Tamilnadu Circle,
Chennai - 600 008

+lcc to Mr.Venkataswamy Babu, Advocate sr.35167

+lcc to Mr.R.Malaichamy, Advocate sr.35045

W.P.No.28451 of 2018 and
W.M.P.No.33185 of 2018

nr 12/06/2019

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