

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9530 of 2018

1. The Union of India
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Assistant Director Recruitment O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Superintendent of Post Offices, Sitamarhi Division, Sitamarhi.

... .. Petitioner/s

Versus

Darshana Kumari @ Jha wife of Late Sanjeev Kumar Jha, Resident of Village and Post- Shrikhandi Bhittha, P.S.- Sursand, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Verma, ASG
For the Respondent/s : Mr.Satyavrat Verma

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 08-01-2020

Heard learned counsel for the petitioners and learned counsel for the respondent.

2. The instant writ petition has been filed by the petitioners for setting aside the order dated 30.11.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') in O.A. No. 050/00208/2017 whereby the Tribunal has disposed of original application filed by the respondent holding therein that the case of the respondent for appointment on compassionate ground be considered afresh and untrammelled by the earlier consideration and merit points and



it ought to be considered in terms of the new letter of 30.05.2017 within a period of 2 months.

3. Learned counsel appearing for the petitioners, submitted that the order impugned is bad in law as also on facts. The case of the respondent for engagement on compassionate ground was considered on the basis of instructions prevailing at the time of consideration of such engagement. The Tribunal erroneously allowed the application ignoring the order dated 26.12.2016. He contended that the revised scheme for compassionate appointment vide letter dated 30.5.2017 will come into effect from the date of issue of the letter and will be applicable to all cases pending and arising on or after the said date. According to him, the cases which have already been settled cannot be reopened on the basis of the revised letter dated 30.05.2017. He has further contended that the letter dated 30.5.2017 will have prospective effect but vide impugned order the Tribunal has made the application of the said letter retrospectively which is not permissible in law. In this regard he has placed reliance on the judgments of the Supreme Court in the matter of **State Bank of India and Ors. Versus Jaspal Kaur** since reported in (2007) 9 SCC571, **Canara Bank and another versus M. Mahesh Kumar** since reported in (2015)7



SCC 412 and a decision of Division Bench of this Court in the matter of **Rajendra Singh versus State of Bihar** since reported in **2015 (4) PLJR 243**.

4. Per contra, learned counsel appearing for the respondent submitted that there is no error in the impugned order passed by the Tribunal. He contended that since the order impugned was passed on 30.11.2017 the revised scheme for compassionate appointment vide letter dated 30.5.2017 would be applicable in the case of the respondent. According to him, since the case of the respondent was not settled on or before 30.5.2017 the Tribunal rightly directed the petitioners to consider the case of the respondent in the light of the revised letter dated 30.5.2017.

5. In reply, learned counsel for the petitioners submitted that in view of the judgments upon which reliance has been placed by the respondent the crucial date for consideration of application of the respondent for compassionate engagement would be the date on which his application was made and not the date on which the decision was taken.

6. We have heard learned counsel for the parties and carefully perused the record.

7. The brief facts of the case are that late Rajendra Jha,



father-in-law of the sole respondent died on 10.05.2015 while working as GDSMD/MC at S. Baitha Branch Post Office in Sitamarhi Postal Division. After his death the respondent submitted her application before the postal department with request for appointment of the respondent on compassionate ground. The Circle Relaxation Committee (for short 'CRC') examined the case of the respondent in view of the prevailing instructions of the department for engagement on compassionate ground and awarded her 19 merit points according to the parameters laid down in the department. As the respondent did not earn minimum 36 points or above, her case was not recommended by the CRC for compassionate appointment in its meeting held on 23.12.2016 and the respondent was informed in this regard on 26.12.2016.

8. Being aggrieved by non-recommendation of her case the respondent filed an original application vide O.A.No. 050/00208/2017 before the Tribunal which was disposed of vide impugned order dated 30.11.2017 after holding that her case be considered afresh and untrammelled by the earlier consideration and merit points and it ought to be considered in terms of the new scheme introduced vide letter of 30.05.2017 and to pass a fresh order within a period of 2 months.



9. It would be pertinent to note that on 30.5.2017 a new policy was brought by the petitioners whereby the point system has been dispensed with and the dependents of the deceased Gramin Dak Sevaks have been made eligible for engagement on compassionate ground.

10. Having noticed the facts of the case and the arguments advanced on behalf of the parties, the only question to be determined by us is whether the letter dated 30.05.2017 whereby revised scheme for compassionate engagement of Gramin Dak Sevak was brought into effect could have been taken into consideration by the Tribunal for overlooking the order passed by the petitioner no.3 in terms of the prevailing instructions for engagement on compassionate ground.

11. An appointment on compassionate ground is not a source of recruitment. It is an exception to the general rule that the public services should be made on the basis of merit by open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of the employees who died in harness do not have any special claim or right to employment except by way of concession that may be extended by the employer under the rules or by a separate scheme. The scheme of a compassionate appointment does not



create a vested right in favour of the claimant. Since it is an exception to the general rule carved out in the interest of justice in certain exigencies by way of policy of an employer the policy is binding both on the employer and the employee. Being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

12. By now it is well settled that the claim of compassionate appointment under the scheme of a particular year cannot be decided in the light of subsequent scheme which came into force much after the claim. It is true that the scheme of compassionate appointment to the deceased Gramin Dak Sevak was revised subsequently on 30.5.2017 whereby point system has been dispensed with and the scheme has been extended to the dependent of the missing Gramin Dak Sevaks also.

13. However, the case of the respondent for engagement on compassionate ground was considered on the basis of instructions prevailing at the time of consideration of her engagement.

14. In **State Bank of India & Ors. versus Jaspal Kaur** (supra) the supreme Court observed as under:

“...the High Court also erred in deciding the matter in favour of the



respondent applying the scheme formulated on 4.8.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005...”

15. In **Rajendra Singh versus State of Bihar** (surpa) a division bench of this Court held in paragraphs 11 and 12 as under:

“11. In our opinion, if a person had a right to be considered for appointment on compassionate ground and he applied for such appointment, his eligibility has to be tested on the basis of the law existing on the date of his application and subsequent amendment, prescribing enhanced educational qualification or change in other eligibility criteria will not render him unsuitable for being considered for such appointment.

12. In view of the discussion as above, we hold that in the matters of appointment on compassionate grounds, the eligibility of a person, seeking such appointment, shall be tested on the basis of the eligibility criteria under the law as existing on the date of such application. Subsequent change in the eligibility criteria will not



take away such person's claim to be considered for appointment on compassionate ground.”

16. The ratio laid down by the Supreme Court in **State Bank of India versus Jaspal Kaur** (surpa) and **Rajendra Singh** (Supra) would make it clear that in the matter of appointment on compassionate grounds, the eligibility of a person seeking such appointment is required to be tested on the basis of eligibility criteria under the law as existing on the date of such application. Any subsequent change in the eligibility criteria will neither confer any vested right on the claimant nor take away such person's claim to be considered for appointment on compassionate ground.

17. In the case in hand the respondent had made her application for compassionate engagement in the year 2015. Hence, her case was considered by the petitioner no.3, Assistant Director (Recruitment) on the basis of the instructions prevailing at that point of time. The subsequent change of policy vide revised scheme dated 30.05.2017 could not have been made applicable in the case of the respondent for the purpose of ignoring and overlooking the impugned order dated 26.12.2016.

18. In view of the discussions made hereinabove and the



ratio laid down in the above cited decisions we are of the opinion that the order impugned dated 30.11.2017 passed by the Tribunal whereby the order of non recommendations of compassionate engagement of the respondent has been ignored and overlooked and the petitioners have been directed to consider the case of the respondent afresh in the light of the revised letter dated 30.5.2017 and to pass a fresh order cannot be sustained.

19. Accordingly, the same is set aside.

20. The writ petition stands allowed.

21. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Bibhash/-

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CAV DATE	
Uploading Date	17.01.2020
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