

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3562 of 2018

1. The Union of India
2. The Chief Post Master General, Bihar Circle, Patna- 800001.
3. The Assistant Director Recruitment O/o the Chief Postmaster General, Bihar Circle, Patna- 800001.
4. The Superintendent of Post Offices, Patna Division, Patna - 848101.

... .. Petitioner/s

Versus

Pinku Kumar Son of Late Radh Krishna Singh, Resident of Village and P.O.-
Kansari, P.S.- Gaurichak, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Verma, A. S. G.
For the Respondent/s : Mr.Rajesh Kumar 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 15.11.2017 passed
by the Central Administrative Tribunal, Patna Bench (for short
'the Tribunal') in O.A. No. 051/00674/2017 whereby the
Tribunal has allowed the original application filed by the
respondent after quashing the order dated 27.09.2017 and the
matter has been remitted to the authorities concerned to issue
appropriate orders keeping in view the revised scheme for
appointment on compassionate ground again within a period of



3 months from the date of communication of the order.

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 after quashing the order dated 27.9.2017 considering the subsequent letter dated 30.5.2017. 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 Circular 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** reported in (2007) 9 SCC571 and **Canara Bank and another versus M. Mahesh Kumar** reported in (2015)7 SCC



412 and the judgment of a Division Bench of this Court in the matter of **Rajendra Singh versus State of Bihar** reported in **2015 (4) PLJR 243**. He has also placed reliance on a judgment of this Court passed in C.W.J.C. No.16652 of 2017 decided on 7.1.2020.

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 27.9.2017 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 the father of the respondent was working as GDSBPM at Kasari Branch Post Office in account with Hazrat Sai Sub Post Office in Patna Postal Division. He died on 11.3.2013. After his death the mother of the respondent submitted her application before the postal department with request for appointment of the respondent on compassionate ground. The committee examined the case of the respondent in view of the prevailing instructions of the department for engagement on compassionate ground and awarded the respondent 34 points as per the parameters laid down. As the respondent did not earn minimum 50 points or above for recommendation, his case was not recommended by the Committee.

8. Being aggrieved by non-recommendation of his case for engagement on compassionate ground and rejection of his application, the respondent filed the original application vide O.A.No. 050/00752/2015 before the Tribunal which was disposed of vide order dated 11.1.2017 with a direction to the authorities to consider the case of the respondent for compassionate appointment as per the existing scheme within a period of 3 months from the date of passing of the order.



9. After the aforesaid order dated 11.1.2017 the case of the respondent was again considered on 7.9.2017 in the light of the parameter fixed by the department and it was found that he could secure only 34 points. Thus, his application was rejected vide order dated 27.9.2017.

10. The respondent again approached the Tribunal vide O.A.No.051/00674/2017 which was disposed of vide impugned order dated 15.11.2017 after quashing the order dated 27.9.2017 and the matter was remanded back to the authorities concerned to issue appropriate orders keeping in view the revised scheme for appointment on compassionate ground within a period of 3 months.

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

12. The Tribunal set aside the order dated 27.09.2017 whereby the claim of the respondent for compassionate engagement was rejected and the petitioners were directed to consider the case of the respondent again in the light of the letter dated 30.5.2017.

13. 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 quashing the order passed by the petitioner no.4 taking into consideration the prevailing instructions for engagement on compassionate ground.

14. As far as the claim of the respondent regarding his entitlement to additional points is concerned, we are of the opinion that the same is totally misconceived. The sons of the daughter of the deceased GDS cannot be termed as 'dependent family member' as per the scheme of the compassionate engagement of the deceased Gramin Dak Sevak.

15. We find substance in the submission of the learned counsel for the petitioners that the revised scheme for engagement of Gramin Dak Sevak dated 30.5.2017 will have prospective effect.

16. It is now well settled that 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.

17. 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 that come 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.

18. 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 his engagement.

19. 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...”

20. 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."

21. 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.

22. In the case in hand the respondent had made his application for compassionate engagement in the year 2013. Hence, his case was considered by the Assistant Director



(Recruitment), the Office of the Chief Postmaster General, Bihar Circle, Patna 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 setting aside the impugned order dated 27.09.2017.

23. Keeping in mind the discussions made hereinabove and the ratio laid down in the cited decisions we are of the opinion that the order impugned passed by the Tribunal whereby the order of non recommendations of compassionate engagement of the respondent has been set aside and the petitioners have directed to consider the case of the respondent again in the light of the revised letter dated 30.5.2017 cannot be sustained.

24. Accordingly, the same is set aside.

25. The writ petition stands allowed.

26. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	NA
Uploading Date	17.01.2020
Transmission Date	

