

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7165 of 2018

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

Versus

Prasoon Kumar Son of Late Gangadhar Rai, Resident of village and P.O.-
Laxmipur Kakorba, Via- Biraul, P.S. Jamalpur, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Verma A.S.G.
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 05.01.2018 passed by the Central Administrative Tribunal, Patna Bench (for short 'the Tribunal') in O.A. No. 050/00677/2017 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 back to the authorities concerned for a fresh consideration in terms of the letter dated 30.05.2017 whereby a new scheme for compassionate engagement was introduced and for issuance of an appropriate order within a



period of 2 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 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, and **Canara Bank and another versus M. Mahesh Kumar** since reported in



(2015)7 SCC 412 and a judgment 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 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 above cited decisions 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 GDS BPM at Laxmipur Karoraba Branch Post Office in Darbhanga Postal Division. He died on 11.10.2012. 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 claim of the respondent was rejected vide letter dated 23.5.2014 issued by the Assistant Director(Recruitment), Bihar Circle, Post Master General Office, Patna by referring Postal Directorate, New Delhi letter dated 09.10.2013 on the ground that he was married. The respondent challenged the aforesaid order dated 23.5.2014 before the Tribunal vide OA/050/00407/2014 which was allowed holding the order dated 23.5.2014 to be arbitrary and contrary to statutory law and statute. The letter dated 09.10.2013 of the Postal Directorate was also quashed holding the same to be arbitrary and unconstitutional being against the norms of Hindu Succession Act. The petitioners were directed to consider the case of the respondent in the next Circle Relaxation Committee (for short 'CRC') meeting in accordance with other criteria fixed by the respondent.

8. Thereafter, the case of the respondent was reconsidered



by the CRC which awarded him 28 points and vide order dated 11.01.2016 passed by the Assistant Director (Recruitment), Bihar Circle he was informed that as he did not earn minimum 50 points or above, his case was not recommended by the Committee.

9. Being aggrieved by non-recommendation of his case for engagement on compassionate ground the respondent filed M.A./050/00132/2016 in O.A./050/00683/2015 before the Tribunal which was allowed vide order dated 30.03.2017 with a direction to the petitioners to consider the case of the respondent in the next CRC and till then keep further action on the order dated 11.02.2016 in abeyance.

10. Once again the CRC considered the case of the respondent on 27.09.2017 in terms of the instruction issued by the Postal Directorate from time to time. The CRC awarded him 31 merit points as per parameters laid down under the prevailing for compassionate appointment. Since the respondent failed to secure minimum 50 merit points or above, his case was not recommended by the Committee.

11. Feeling aggrieved by the non recommendation of his case for compassionate appointment vide CRC meeting on 27.09.2017, the respondent preferred O.A./050/00677 of 2017 before the Tribunal which was allowed by quashing the order



dated 27.09.2017 and the matter was remanded to the authority for afresh consideration in terms of letter dated 30.05.2017 whereby a new scheme for compassionate appointment was introduced.

12. The respondent again approached the Tribunal vide O.A.No.050/00677/2017 which was disposed of vide impugned order dated 05.01.2018 after quashing the order dated 27.9.2017 and the matter was remanded back to the authorities concerned for a fresh consideration in terms of the latest letter of the Department introduced on 30.05.2017 within a period of 2 months from the date of communication of the order.

13. 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.

14. 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.3 taking into consideration the prevailing instructions for engagement on compassionate ground.

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. 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.



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 which came into force much after the claim.

18. 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...”

19. 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."

20. 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.

21. 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.

22. In view of the discussions made hereinabove, 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 been directed to consider the case of the respondent again in the light of the revised letter dated 30.5.2017 cannot be sustained.

23. Accordingly, the same is set aside.

24. The writ petition stands allowed.

25. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	
Uploading Date	17.01.2020
Transmission Date	

