

SUPREME COURT OF INDIA

Dir. Gen.of Post

Vs.

K.Chandrashekhar Rao

C.A.No.9049 of2012

(Swatanter Kumar, Sudhansu Jyoti Mukhopadhaya,JJ.)

13.12.2012

JUDGEMENT

Swatanter Kumar, J.

1. Leave granted in all the SLPs.

2. By this common judgment we shall dispose of all the above mentioned appeals which are directed against the judgments of the High Court of Andhra Pradesh at Hyderabad passed on different dates vide which the Court, while relying upon its judgment dated 23rd July, 2008 passed in Writ Petition (C) No. 15820/2008, has dismissed the writ petitions filed by the concerned government authority.

3. Thus, it is not necessary for us to notice the facts of each appeal separately. Though, the judgments are of different dates, they are primarily based upon the judgment of the High Court dated 23rd July, 2008. For the purpose of convenience, we would be referring to the facts of SLP(C) No.19871/2009.

4. The Department of Personnel and Training (for short DoPT), Ministry of Personnel, Public Grievances and Pension, Government of India, issued a memorandum dated 9th October, 1998 containing the scheme for compassionate appointment with an object to give a source of employment to the dependent family members of the government servant dying in harness or one who has retired on medical grounds. This scheme was declared on 9th October, 1998. The scheme stipulated that the compassionate appointment could be made upto a maximum of 5 per cent of the vacancies falling under Direct Recruitment Quota in Group C or D post.

5. According to the appellants, the scheme of compassionate appointment is always treated as an exception to the general rule of recruitment.

6. The father of the respondent was employed with the appellants in a Group D post. Unfortunately, the father of the respondent died on 19 th April, 2000.

7. On 16th May, 2001, the DoPT issued an office memorandum in view of the policy of the Government of India that fresh recruitment should be limited to one per cent of the total strength of civilian staff. The basis for the same appeared to be that about three per cent of the staff retired every year and thus, the reduction in manpower would reduce to 2% p.a. if fresh recruitment is limited to 1% p.a. This would achieve a deduction of ten percent in five years. It was decided that each Ministry and Department would formulate an Annual Direct Recruitment Plan through the mechanism of Screening Committee. Para 2.2 of this memorandum provided that while preparing the Annual Recruitment Plan, the concerned Screening Committee was to ensure that the direct recruitment did not exceed one per cent of the total sanctioned strength of the Department. Since three per cent of the staff retired every year, this would translate only to one- third of the Direct Recruitment vacancies occurring in each year being filled. Thus, the recruitment would be limited to filling one-third of the vacancies of Direct Recruitment arising in the year, subject to a further ceiling, that it does not exceed one percent of the total sanctioned strength of the Department. In terms of Para 2.4 of the memorandum, it was further stated that the vacancies so cleared by the Screening Committee will be filled up by applying rules for reservation, handicapped, compassionate quota therein.

8. However, the Special Circle Relaxation Committee, approved the names of the candidates in the category of compassionate appointment on the basis of 5 per cent of the existing vacancies occurring in the year 2000, 2001 and 2002. In face of the memorandum dated 16th May, 2001, on or about 13th March, 2002, 69 names were approved. On 4th July, 2002, the DoPT issued a clarificatory memorandum that the five per cent quota for compassionate appointment was to be calculated on the basis of direct recruitment vacancies finally cleared by the Screening Committee and not on the basis of the total vacancies occurring in the Department. The respondent, on 6th August, 2002 was communicated the intimation with regard to the approval of his name for appointment to Group D post, which he joined on 22nd August, 2002.

9. It is the case of the appellants now that the mistake of appointment in excess of the prescribed quota was detected and vide letter dated 12th March, 2003 it was communicated that it was not possible to adjust the candidates who were recommended in excess of the quota because the recommendation for compassionate appointment was to be made on the basis of five per cent of the approved vacancies cleared by the Screening Committee. In furtherance to this, a decision was taken on 17th May, 2004 to select only the most indigent persons against the available vacancies within the prescribed ceiling of 5 per cent of the vacancies finally cleared by the Screening Committee. In furtherance to the decision taken by the competent authority, a meeting of the Special Circle Relaxation Committee was convened and appointment of total 21 candidates on the basis of five per cent approved vacancies cleared by the Screening Committee was approved. The remaining 48 candidates were terminated/not permitted to continue/dropped on 12th October, 2004. On 12th January, 2005, the appellants noticed that the candidates, whose names had been cleared for compassionate

appointment on 13-15th March, 2002 or in the year 2002 were still temporary servants. 48 names were in excess of the quota, therefore, a notice of termination under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 was issued and as already noticed, the services of the 48 persons, whose names were recommended in excess of the quota, were terminated. These appointees, including the respondent in the present appeal, challenged the said order of termination before the Central Administrative Tribunal (for short CAT). The CAT granted an interim stay during the pendency of the hearing of the application vide its order dated 8th February, 2005. The present appellants also point out that two other applications, being OA No. 434/2005 and OA No. 761/2005 filed by similarly situated employees, came to be dismissed vide orders of the CAT dated 20th October, 2005 and 19th April, 2007 respectively.

10. The application filed by the present respondent came up before the CAT for hearing on 31st October, 2007. While allowing the application of the respondent, the CAT held that the appointment of the respondent- applicant before it, was not liable to be terminated inter alia, but primarily for the following reasons:-

“Therefore, it has been proved and established that the instructions dated 16.05.2001 in so far as it relates to compassionate appointment, frustrate the very object of the scheme for compassionate appointment. The scheme for compassionate Director General Of Posts & Ors vs K.Chandrashekar Rao on 13 December, 2012 appointment is a rehabilitation scheme. Therefore, the subsequent instructions, the application/operation of which frustrates the very object of the scheme or make the scheme not practically applicable, cannot be said to be valid instruction(s). Therefore, even if there had been any instructions of 2001 to consider the cases for compassionate appointment to the extent of 5% of the approved vacancies cleared by the screening committee (which could not be produced by the respondents before us), any appointment made without following such instructions cannot be said to be irregular appointment. More over, the administration should be more particular while considering the cases of compassionate appointment so that the persons appointed will not be terminated for any irregularity in the appointment. In no case, the family which has been provided with compassionate appointment to enable the family to meet with the indigent conditions caused due to the death of the employee would be put to distress again due to the fault of the administration. We may, at the cost of repetition, mention that (i) when the very instruction dated 16.05.2001 in so far as it relates to compassionate appointment, has been proved to be frustrating the very object of the scheme which is a rehabilitation scheme, even if any appointment is made without following such instruction, cannot or does not make the appointment irregular. (ii) The applicants who have been given appointment against 2000 vacancies following the instructions/scheme of 1998, their appointments do not, in any way, come within the purview of the DOPT instructions of 2001. Therefore, their appointments can in no way be terminated by applying the instructions of 2001. (iii) All the applicants who were considered and approved and were given compassionate appointments in 2002 cannot be terminated after they have worked for a considerable period. More particularly, when the scheme is a rehabilitation scheme and the 2001 instructions in so far it relates to compassionate appointments frustrates the very object of the scheme and make the scheme

practically inapplicable as mentioned vide instructions cannot be said to be valid. For the reasons mentioned above, it will not be out of place to mention that in the case of Union of India and Others vs. K.P. Tiwari [2003 SCC (L&S) 1233] Honble Supreme Court declined to interfere with the appointment made 5 years back and said that: It is unnecessary in the present case to examine either questions of law or fact arising in the matter. Suffice to say that the respondent was appointment and has been in service for more than five years. It would not be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood. Since the appropriate instructions dated 14.06.2006 have already been issued to consider the cases for compassionate appointment to the extent of 5% of total vacancies against the direct recruitment quota, no further order is necessary to that effect. Therefore, such appointment which is made without following the said instructions cannot be terminated for the reasons mentioned above. “

11. Therefore, in view of the above discussion, we hold that the respondents are not justified in issuing the impugned notice of termination/order of notice to delete the names of the applicants from the list of approved candidates. The applicants are entitled to continue in service on the strength of the appointment given to them. We, therefore, quash and set aside the impugned orders/notices issued by the respondents in all the applications. Interim order granted by this Tribunal stands absolute. Being aggrieved from the judgment of the Tribunal, the appellant filed a writ petition, being W.P.(C) No. 20655/2008 before the High Court. The High Court by that time had already disposed of Writ Petition (C) No. 15820 of 2008 filed by the Government Department entitled Superintendent of Post Offices, Anantpur Division, Anantpur vs. R.S. Madan Lal vide its judgment dated 23rd July, 2008, the subject matter in SLP(C) No. 19872/2009 which is also listed along with the present bunch of matters. While the High Court upheld the order of the CAT, it not only accepted its reasoning but in addition thereto held as under:-

“We do not find any error in the above reasoning adopted by the Tribunal. The respondent and others who were given appointments against vacancies arising in 2000 ignoring the scheme-1998 cannot be removed from service, pursuant to the instructions issued in 2001. Therefore, the candidates who were considered and given compassionate appointment in 2002 cannot be removed from service. At this stage, it is pat (sic-apt) to note that the Government taking into consideration the difficulties being faced by various Ministries in implementing the scheme for compassionate appointment issued certain instructions in memo dated, 14.6.2006. Para-3 of the said instructions reads thus:

“On a demand raised by Staff Side in the Standing Committee of the National Council (JCM) for review of the compassionate appointment policy, the matter has been carefully examined and taking into account the fact that the reduction in the number of vacancies for Group C and D posts (excluding technical pots) that have arisen in the year. Total vacancies available for making direct recruitment would be calculated by deducting the vacancies to be filled on the basis of compassionate appointment from the vacancies available for direct recruitment in terms of existing orders on optimization. From the above, it is clear that the vacancies meant for direct recruitment shall have to be calculated only after earmarking the vacancies required

for compassionate appointment. In words, the direct recruitment vacancies shall have to be arrived at only after deducting the vacancies required for compassionate appointment under the scheme. The Tribunal while allowing the O.As, has also taken into consideration, the aforementioned instructions issued by the Government of India.

Admittedly, the notice of termination was issued on 24.11.2005, i.e., prior to the instructions of the Government of India, dated 14.6.2006. Therefore, the authorities have to reconsider the matter in the light of the instructions issued I memo, dated

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14.5.2006. The Tribunal on a careful consideration of the relevant material on record has rightly come to the conclusion that the persons appointment in the year 2002 cannot be terminated from service. We find no error in the order of the Tribunal warranting interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India.

The writ petition fails and the same is accordingly dismissed, at the admission stage.

No costs.”

12. As is clear from the above factual matrix of the case that the issue revolves around the scope, interpretation and applicability of the office memorandums issued by the Do PT and other concerned authorities from time to time.

13. The Ministry of Personnel, Public Grievances and Pension, Government of India had issued a circular on 9th October, 1998 declaring its policy in the form of a Scheme for Compassionate appointment under the Central Government. This Scheme provided that the policy shall be applicable to the family members of a government servant who dies while in service including death by suicide or is retired on medical grounds, but subject to fulfilment of the conditions stated therein. It is not necessary for us to go into other clauses of this Scheme inasmuch as there is no dispute to other clauses except the clause relating to prescription of percentage in relation to direct recruitment for the purposes of compassionate appointment. It may be noticed that this Scheme of Compassionate Appointment can be applied only to the following;

- “i) The post should be falling in Group C and D posts,
- ii) It should be in relation to direct recruitment as specified.”

14. The Scheme provided for power of relaxation with the authorities in regard to age etc. Clause 7 of the Scheme is the relevant clause with which we are concerned. The same reads as under:-

“Determination/Availability of Vacancies

- a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.

b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group C or D post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz. SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.

d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by (sic) any other vacancy e.g. sports quota vacancy.

e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/ Departments/ Offices of the Government of India to provide at any early date appointment on compassionate grounds to those in the waiting list.”

15. Before, we proceed to analyse the above clause as well as examine its impact in view of the amended OMs of the Government of India, we must notice that under clause 16(c) of this Scheme, it was specifically noticed that Scheme of Compassionate Appointment was conceived by the Government of India as far back as 1958. Since then, a number of welfare schemes have been introduced by the Government which has made a significant difference in the financial position of the families of the government servants dying in harness/retired on medical grounds.

16. Clause 16(d) further provides that a compassionate appointment should not be denied or delayed merely on the ground that there is re-organisation in the office of the Ministry. The post should be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the Scheme.

Not only this, under clause 16(f), a compassionate appointment will have precedence on absorption of surplus employees and reorganisation of daily wage/casual worker with or without temporary status.

17. Reverting to clause 7 of the Scheme, it is stipulated under the Scheme that appointment on compassionate grounds should be made only on regular basis and that too if regular vacancies meant for that purpose are available. The compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any group C or D post. The appointing authority may hold back upto 5% of the vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds.

18. Clause 7(f) needs to be emphasised as it contemplates that even if sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list.

19. The above clauses clearly show that the Scheme of 1998 for compassionate appointment is a welfare activity carried out by the Government of India. It is a benevolent act on the part of the State. Keeping in view the dire economic and social crisis to which the family of a deceased government employee in Class C or D is exposed, the government through this Scheme offers a helping hand. This is a voluntary act of generosity on the part of the State. The generosity once extended in the form of exercise of a subordinate legislative power by formulating the said Scheme, will have the force of law. It is enforceable to its limited extent and within its prescribed parameters. The purpose of the 1998 Scheme was to provide employment and preferably as part of the regular cadre subject to availability of vacancies. Then the Central Government issued Office Memorandum dated 16th May, 2001. This Memorandum did not refer to the circular of 1998 as such, however, the essence of this memorandum was that while presenting the Budget for the year 2001-2002, the Finance Minister stated that all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1 per cent of total civil staff strength. As about 3 per cent of the staff retire every year, this will reduce the manpower by 2 per cent per annum achieving a deduction of 10 per cent in five years as announced by the Prime Minister. Under clause 2.2 of this Memorandum, it was further stated that while preparing the Annual Recruitment Plans, the concerned screening committees would ensure that direct recruitment does not in any case exceed 1 per cent of the sanctioned strength of the department and accordingly direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to further restriction that this will not exceed 1 per cent of the total sanctioned strength of the department.

20. In furtherance to this Memorandum, the Government of India, DoPT issued a clarification on the guidelines for compassionate appointment to Group C and D posts on 4th July, 2002. It clarified that 5 per cent quota for compassionate appointment is to be worked out with

reference to DR vacancies in each recruitment year finally approved for filling up by the Screening Committee under the optimisation policy of the Government contained in Office Memorandum dated 16th May, 2001. In other words, this Memorandum merely reiterated the applicability of the Office Memorandum dated 16th May, 2001.

21. Finally on 14th June, 2006, Scheme for Compassionate Appointment under the Central Government Determination of Vacancies was clarified. In this Office Memorandum, an attempt was made to clarify the optimisation of direct recruitment to civilian posts as contained in the Office Memorandum dated 16th May, 2001 to say that the recruitment does not exceed 1% of the total sanctioned strength of the department. It noticed that there had been a continuous reduction in the number of vacancies for direct recruitment, thus, very few vacancies or, in fact, no vacancies were available for compassionate appointment. In light of this, the earlier instructions including the instructions dated 9th October, 1998 stood modified to the extent mentioned therein.

22. From the above Scheme and Office Memorandum, it is clear that where on the one hand, the State had formulated a welfare scheme for compassionate appointments, there on the other, because of limitations of its financial resources it decided to take economic measures by reducing the extent of appointment by direct recruitment from the financial year 2001-2002. Both these matters falling in the domain of the Government and being matters of policy, the Court is hardly called upon to comment upon either of them. These are the acts which fall in the domain of the State and do not call for any judicial interference. All that we propose to hold is that State has to abide by the Scheme it has floated for compassionate appointment. The 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. That is the reason why the Government specifically states in its Scheme that efforts should be made to appoint the members of a distressed family to the post provided he/she satisfies the other parameters stated in the Scheme.

23. The appellant was admittedly appointed to the post, in furtherance to the 1998 Scheme, in the year 2002 (while other appellants were appointed during the period of 2001-2003). The instructions which specifically dealt with the compassionate appointments were issued by office memorandum dated 4th July, 2002. Neither the Memorandum dated 16th May, 2001 nor Memorandum dated 4th July, 2002 stated that the restrictions sought to be imposed were applicable retrospectively or even retroactively. The rights of these persons had been settled, the respondent and others had been appointed to the posts and they had already worked in their respective posts before the notice of termination were issued to them at the end of year 2004. No data or material has been placed by the government before us even to support the contention that under the effect of the instructions of the year 1998, these persons were appointed in excess of the posts provided under the Scheme. Both these office memorandums were expected to operate prospectively and thus the rights which had been settled could not be re-settled. The stand of the appellant that it was a discrepancy or an error does not stand to

any reason and must be rejected. It is also undisputed before us that the appointments of the respondent and others were made on the basis of the vacancies existing against the year 2000 when the instructions of 1998 were in operation, free of any restriction.

24. In the meanwhile and as already noticed, another office memorandum came to be issued on 14th June, 2006 amending the restrictions placed by the office memorandum dated 16th May, 2001. The memorandum of 14th June, 2006 in fact requires as to how the vacancies available for making direct recruitment are to be calculated. It is not even the case of the appellants before us that in face of the memorandums, this exercise in terms of this memorandum was ever undertaken by the appellants. It will be a contradictory stand, if on the one hand, the appellants are permitted to treat office memorandums including office memorandum dated 16th May, 2001 as retrospective while on the other they treat office memorandum dated 14th June, 2006 as prospectively. The High Court in the operative part of its judgment has clearly observed that the authorities have to reconsider the matter in the light of instructions issued in the memorandum dated 14th June, 2006. We are unable to find any error of jurisdiction or otherwise in the said finding returned by the High Court.

25. Despite the fact that the judgment of the Central Administrative Tribunal (for short the Tribunal) has been upheld by the High Court, we are unable to contribute and sustain the view taken by the Tribunal that the Memorandum dated 16th May, 2001 frustrated the very object of the Scheme for Compassionate Appointment and on that ground alone, it was liable to be declared invalid. As already noticed, both the matters are policy matters of the State and for valid and proper reasons, without infringing the spirit of Article 14 and 16 of the Constitution. The State can frame its policy, where it is for economic reasons, least such decision would be open to judicial review to that extent. In the present case, there is some ambiguity created by issuance of office memorandums dated 16th May, 2001 and 14th June, 2006 and the enforcement of the former vide office memorandum dated 4th July, 2002 in relation to the implementation of Compassionate Appointment Scheme of 1998. Thus, it is not only desirable but necessary that the competent authority should issue comprehensive guidelines squarely covering the issue, but they cannot tamper with the existing rights of the appointees.

26. To contend that the existing status should not be disturbed by this Court, the learned counsel appearing for the respondent heavily relied upon the judgment of this Court in *Union of India and Others v. K.P. Tiwari* [(2003) 9 SCC 129], where the Court noticed in para 4 of the judgment that it is unnecessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood.

27. As is evident from this judgment, no law has been stated by the Court, however it was stated that in the facts of that case, it was not appropriate to disturb the appointment at that stage. We may usefully refer to another judgment of this Court in the case of *Balbir Kaur and*

Anr. v. Steel Authority of India Ltd. and Others etc. etc. [(2000) 6 SCC 493], where this Court held as under:-

“Mr Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction. Director General Of Posts & Ors vs K.Chandrashekar Rao on 13 December, 2012.”

28. In the above case, the Court has placed emphasis upon the concept of socio-economic justice and granted relief to the appellant and, in addition, directed employment of one of the family members.

29. In view of the above settled position of law and the fact that the memorandums could not be given retrospective effect, we do not consider it appropriate to interfere with the judgment of the High Court. The spirit of the Scheme was to provide relief to the family members of the deceased persons and thus on the yardstick of social justice, such relief cannot be withdrawn on the ground of some alleged discrepancy which has not been supported by any data, is unreasonable and therefore, even unsustainable. The appellants must state appropriate reasons and provide the expected data on record if they expect the Court to come to a different conclusion. As already noticed, the appellants have miserably failed to place any such data on the basis of the Memorandum dated 14th June, 2006.

30. For the reasons afore-stated, we dismiss all these appeals and further issue the following directions;

“A) The appointments of the respondents will not be interfered with by the appellants on the strength of the memorandum dated 4 th July, 2002.

B) The Office Memorandum dated 16th May, 2001, 14th June, 2006 and 4th July, 2002 have in relation to the 1998 Scheme for Compassionate Appointment caused some confusion on the one hand and while on the other they have prejudicially affected the rights of large number of heirs of the employees who died in harness. Thus, we direct the appellants to issue comprehensive, certain and unambiguous directions which shall put an end to such unnecessary controversies.

31. However, there shall be no orders as to costs.

