
(2007) 04 DEL CK 0043

In the Delhi High Court

Case No : Writ Petition (C) No. 9851 of 2006

Amit Yadav

APPELLANT

Vs

DDA and Another

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 140 DLT 157

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Naushad Khan and Mohd. Misbahuddin Siddiqui, for the Appellant;
Manu Mridul and Gaurav Singh, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioner has filed the present writ petition praying inter alias for issuance of directions to the respondents to consider the case of the petitioner for seeking employment on compassionate ground with the respondent No. 1 DDA.

2. The brief facts relevant for deciding the present writ petition are that the father of the petitioner expired in the year 1983. The mother of the petitioner, Smt. Meena Yadav was appointed in DDA on compassionate ground, upon the death of her husband and was employed on the post of Work Charge Mate till she expired on 13th March, 1990. The petitioner was a minor at the relevant time. As Clause V (vi) of the Guidelines adopted by DDA for compassionate appointment permits an application to be made by a son/daughter of a deceased employee, for being considered for compassionate appointment, as soon as he/she attained majority. On 25th February, 2002, the petitioner on attaining age of majority, made an application for appointment on compassionate ground. Subsequently on 23rd September, 2002, the petitioner moved another application for his appointment on compassionate ground. Vide letter dated 25th February, 2003, the respondents replied to the application of the petitioner and communicated to

him that his case shall be considered as and when his turn comes, depending on the availability of the vacancies. On 26th August, 2003, the petitioner was visited by the Welfare Inspector of the respondent No. 1 at his residence and enquiries were made about the family, financial status and the liabilities of the petitioner.

3. It is contended by the petitioner that instead of verifying the correct facts, the petitioner was called outside his house and his signatures were obtained on certain papers and a false report was submitted by the Welfare Inspector on 27th August, 2003 to the effect that the petitioner had rental income from inherited property located at Haiderpur village to the tune of Rs. 5,000/- per month. Thereafter, the aforesaid report of the Welfare Inspector was placed before the Screening Committee of the DDA for consideration. The Screening Committee held a meeting on 16th January, 2004 and gave a report in respect of the petitioner and 16 other cases pending for consideration for appointment on compassionate basis. As per the said report, the case of the petitioner was not recommended by the Screening Committee for appointment with the respondent No. 1 on compassionate grounds as it was observed that there was no other liability on the petitioner, except to look after himself and that he had a rental income of Rs. 5,000/- per month from inherited property located at Haiderpur village and also had a colour TV, mobile and a basic phone.

4. Aggrieved by the aforesaid recommendations of the Screening Committee, the petitioner made a number of representations to the respondents. It is contended that no reply was given to any of the representations till the petitioner filed an application with the respondents on 26th April, 2006 under the Right to Information Act so as to know the reason for rejection of his case for appointment on compassionate basis with the respondent No. 1. It was only after the said application was allowed and the petitioner was permitted to inspect the file of the respondents that the petitioner came to know the reasons for rejection of his case and thereafter preferred the present writ petition.

5. Learned Counsel for the respondents has relied upon the guidelines adopted by the respondents for compassionate appointment, particularly Clause III (a) (v), to state that the petitioner was not a person eligible to be appointed on compassionate grounds as the said benefit of compassionate appointment was already extended once by the respondents in favor of the deceased mother of the petitioner who was appointed on compassionate basis after the demise of the father of the petitioner. The relevant clause is reproduced hereinbelow for ready reference:

III. Persons eligible to be appointed on compassionate grounds.

(a) Near relative:

(v) Once a "near relative" is appointed on compassionate grounds, no further appointment shall be given later to a son, or daughter of the widow of the employee, on compassionate grounds.

6. Learned Counsel for the respondents further states that the contention of the petitioner that the report submitted by the Welfare Inspector is incorrect and was obtained without permitting the petitioner to peruse the same, is false and contrary to the records. He has produced the records of the respondent No. 1 which contains the proforma for physical verification in respect of the application of the petitioner for compassionate appointment. The said application contains the relevant details of the petitioner. As per Clause (iii) of the proforma which pertains to immovable properties, it has been indicated that the petitioner is receiving rental income of Rs. 5,000/- per month from inherited property located at Haiderpur village. The said form has been signed by the petitioner on the second page and duly attested by two witnesses, who are the neighbours of the petitioner. Learned Counsel for the respondents states that the petitioner was well aware of the contents of the aforesaid report of the Welfare Inspector but did not choose to assail the same. He submits that the claim of the petitioner today, to the effect that the same was obtained under force or coercion is baseless, inasmuch as the said plea has been raised for the first time by the petitioner and that too only after the rejection of his application by the Screening Committee and not earlier.

7. Learned Counsel for the petitioner has placed reliance on a judgment of the Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana and Ors. reported as 1994 SCC 930 wherein the Supreme Court has held that as a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favor of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. Reliance placed by the petitioner on the aforementioned case is misplaced. The said judgment does not hold that even where the family of deceased employee can meet the financial crisis resulting from the employee's death, compassionate appointment ought to be given.

8. In the present case, the petitioner on his own showing admits having a rental income of Rs. 5,000/- per month and the petitioner has no other minor brother or sister nor any sibling to take care of which shows that the petitioner is not facing any such financial hardship or penury, so as to make him eligible for appointment on compassionate grounds. The report of the Welfare Inspector has been duly considered by the Screening Committee while rejecting the case of the petitioner.

9. It is appropriate to note certain basic parameters as laid down by the Supreme Court, that are to be kept in mind while dealing with the cases of compassionate appointment. While considering the case of compassionate employment, it is to be kept in mind that it is not unduly unfair to the rights of

those other persons who are eligible to seek appointment against a post which would have been available but for the provision enabling appointment being made on compassionate grounds to the dependents of the deceased employee. Reliance in this regard can be placed on the judgment rendered by the Supreme Court in the case of *State of Manipur Vs. Md. Rajaodin*, . Appointment on compassionate grounds cannot be claimed as a matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible keeping in view the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administrative instructions and orders in this behalf must stand the test on the touchstone of Articles 14 and 16 of the Constitution of India. Appointment on compassionate basis is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the effect of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over the sudden financial crisis. But again such appointments on compassionate ground have to be made only in accordance with the rules, regulations or administrative instructions and taking into consideration the financial condition of the family of the deceased. Support is drawn from the following judgments:

(i) *Umesh Kumar Nagpal (supra)*

(ii) *State of Haryana and Others Vs. Rani Devi and Another*,

(iii) *State of Haryana and Another Vs. Ankur Gupta*,

10. It is evident from the facts of the present case that there is a scheme in place with the respondents for appointment on compassionate basis up to 5% of total Group "C" and "D" posts for direct recruitment. Furthermore, reliance of the respondents on the guidelines laid down by DDA for compassionate appointment is well placed as Clause III (a) (v) of the guidelines are clear and categorical where it is stated that once a near relative is appointed on compassionate grounds, no further appointment shall be given later to a son, or daughter of the widow of the employee on compassionate grounds. It may be relevant to note that the said guidelines have not been assailed by the petitioner in the present writ petition. It is to be noted that the object of compassionate appointment is not to create a post that is hereditary in nature, and since such appointments are made as an exception to the regular mode of recruitment, they have been made strictly in conformity with the rules laid down with regard to such appointment.

11. Even otherwise, the fact that the petitioner has something to fall back on by way of rental income to the tune of Rs. 5,000/- per month, precludes him from claiming that he is facing great financial crisis which entitles him to compassionate appointment. The object of compassionate appointment being to enable the family to get over the financial crisis which it faces at the time of

death of the sole breadwinner, compassionate employment cannot be claimed and offered after a long lapse of time and after the crisis is over. The said view has been taken by the Supreme Court in the case of Umesh Kumar Nagpal (*supra*) referred to hereinabove.

12. It is difficult to believe the contention of the petitioner that his signatures were obtained by the Welfare Officer fraudulently on blank papers. A perusal of the grounds taken in the writ petition indicates that the contention of the petitioner that he signed the application form without perusing the same and without knowing the contents thereof, is rather hard to believe because the petitioner himself claims that at the relevant time he was a graduation student studying in third year. It is not as if the petitioner was illiterate and did not know the English language and was unaware of what he was signing. The court is unable to be persuaded to accept the contention of the petitioner that the witnesses who attested the form were also unknown to him, particularly since both of them were neighbours of the petitioner. The petitioner cannot be heard to say that the said witnesses were not independent witnesses. No motives or malafides can be attributed to the Welfare Inspector, as claimed by the petitioner. It is not as if the Welfare Inspector had any animus against the petitioner, on which account a false report was submitted to the Respondent No. 1. Also, no vested interests or ulterior motive can be attributed to the Welfare Inspector for having committed the alleged act. It is evident from the report of the Screening Committee that not only the case of the petitioner, but cases of another 16 applicants were considered together and proper reasons have been given for recommending or not recommending an applicant for compassionate appointment, which hardly leaves any scope of mala fides or arbitrary action on part of the Screening Committee.

13. Keeping in view all the aforesaid facts and circumstances, the Court finds force in the contention of the counsel for the respondents that the petitioner having no liability and having a rental income of Rs. 5,000/- per month, is not facing any financial crisis or financial difficulty for being appointed on compassionate grounds. There is no illegality or perversity in the recommendations of the Screening Committee rejecting the case of the petitioner. The writ petition is, Therefore, dismissed as being devoid of merits. There shall be no order as to costs.