
(2014) 01 JH CK 0126

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7842 of 2011

Bibhishan Mahato

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Citation : (2014) 1 AJR 697

Hon'ble Judges : R. Banumathi, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : A.K. Sahani, for the Appellant; Prabhash Kumar, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—The petitioner is aggrieved by the judgment and order dated 14th November 2011 passed in O.A. No. 185/2009 (R) by the Learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Court at Ranchi). It is the case of the petitioner that his father while working as a Postman, died in harness on 13th March 2000. His mother made an application on 15th may 2000 to the Senior Superintendent of Post Offices, Singhbhum Division, Jamshedpur seeking appointment of her son i.e. the present petitioner on compassionate grounds. The deceased employee had left behind his widow and two daughters aged 25 and 22 years respectively and the petitioner-son aged 30 years. He had undertaken heavy debts in course of his medical treatment for his kidney ailment. The family pension received by the family was Rs. 33,324/- per annum and the income from agriculture was Rs. 5000/- per annum. The landed property in the name of the petitioner's family was 1 acre 32.5 and ? decimals. The petitioner's date of birth is 26th December 1974 and possesses qualification of Intermediate in Arts as also Diploma in Computers. He therefore made claim for appointment as Postal/Sorting Assistant.

2. Before the instant O.A., the petitioner had preferred two Original Applications being O.A. No. 76/2003 and thereafter, O.A. No. 43/2004. In the first O.A.

76/2003 preferred for a direction upon the respondents for considering his application for appointment on compassionate grounds, the learned Tribunal vide order dated 27th March 2003 directed the competent authority to pass a reasoned and speaking order on the representation of the applicant within a specified period. Consequent thereto, the Chief Postmaster General, Jharkhand Circle, Ranchi passed an order on 10th July 2003 that due to non-availability of the vacancies under the prescribed ceiling of 5% direct recruitment quota for the years 2000-01, Circle Relaxation Committee (CRC) could not examine such cases including that of the petitioner and his case would be placed before the Committee if such vacancy was available.

3. The petitioner contended that in view of Department of Personnel & Training (DOPT) Office Memorandum dated 5th May 2003, the case of the deserving candidates would be considered for a period of three years under a vacancy of 5% prescribed quota. On getting information through a newspaper that 37 vacancies were available for the post of Postal Assistant, the petitioner preferred a representation before the Chief Postmaster General, Jharkhand Circle for reconsideration of his case. On account of the fact that no decision was taken on his fresh representation, he again preferred Original Application being O.A. No. 43/2004 inter-alia challenging the reasoned order dated 10th July 2003 passed by the Chief Postmaster General. The learned Tribunal directed the respondent to consider his case as and when vacancies arose for appointment on compassionate grounds and to record a speaking order if the case of the petitioner did not find favour. The petitioner preferred a contempt petition before the learned Tribunal which was however withdrawn with liberty to file a fresh O.A. In between the petitioner got an information under the RTI that 29 persons have been appointed during the period 2000-07 and the case of the applicant was placed before the CRC in its meeting held on 12th December 2006 which did not find him a suitable candidate as per the prescribed parameters. In the aforesaid background, the petitioner once again filed the instant O.A. No. 185/2009 (R) from which the impugned order arises.

4. It is the contention of the petitioner that by the impugned judgment, the learned Tribunal has dismissed me application without appreciating the fact that the respondents have not considered the case of the petitioner properly in the light of the prevailing circular and the criteria laid down by themselves.

5. Learned counsel for the petitioner has assailed the impugned order on the ground that earlier, the case of the petitioner was not considered in 2003 on the grounds that there were no vacancies available. However, the petitioner under the RTI has got an information that 29 persons have been appointed during the period 2000-07. In the subsequent exercise conducted on 12th December 2006 by the CRC, it is submitted that six cases were recommended in which two of them were widows who did not possess any landed property while the other three persons had the landed property and one Deepak Kumar did not possess any property. Learned counsel for the petitioner has strenuously tried to point

out that amongst the three persons who possess the landed property, one Mahabir Mahato had 2.75 acres of landed property while the petitioner had only 1.32 and ? acres of landed property. It is further submitted that the number of dependents of other four persons have been shown to be 5, 6, 5 and 5 respectively. The other candidate Mahabir Mahato had five dependents compared to 4 of the applicant is submitted that, in the comparative assessment of the candidature of the respective candidates, the Circle Relaxation Committee (CRC) gave weightage to Mahabir Mahato over the petitioner, though he had less landed property than the other recommended person. It is further submitted on behalf of the petitioner that the family pension and other service benefits paid to the family of the petitioner on the death of his father also show that family pension of only Rs. 1940 + DR per month was being paid. At the time of death of his father, there were two unmarried daughters. In these background, the indigent family of the petitioner was entitled to compassionate appointment under the scheme framed by the respondent themselves keeping into regard the various factors such as family size, age of children, financial conditions including landed property, availability of own house, etc. The relevant prescribed factors were not considered by the Circle Relaxation Committee in proper perspective and the learned Tribunal has failed to appreciate that the decision making process has suffered.

6. Respondents have appeared and filed their counter affidavit. It has been stated on their part that after receipt of application in prescribed proforma for compassionate appointment of the petitioner being sponsored by the widow of the deceased on 20th August 2001, the matter was examined and it revealed that the deceased had left behind the following dependents.

I. Smt. Paido Devi - wife - 43 yrs (approx)

II. Sri Bibhishan Mahto - son - (petitioner)

III. Miss. Usha Kumari - Daughter

IV. Miss Puspa Kumari - Daughter

The financial status was also examined and the family was found to have been availed of death cum retrieval benefit such as:

7. The family of the deceased had 1.32 and ? acres of land and one ancestral mud house at village Serinagada in the district of West Singhbhum. There was no vacancy for compassionate appointment in Group C and D Cadre in Jharkhand Circle for the year 2000-01 under the prescribed ceiling of 5%. On the direction passed in O.A. No. 76/2003, the Circle Relaxation Committee considered the case of the petitioner in its meeting held on 28th July 2003 and recommended to carry over the same to be considered next year. Thereafter, reasoned order was passed on 10th July 2003 by the Chief Postmaster General, Jharkhand. Thereafter, the matter was again placed on 27th February 2004 before the CRC to consider altogether 27 cases including the case of the petitioner; Against five

such vacancies available in the year 2002, five most deserving cases were recommended on the criteria laid down such as liabilities, family size, age of children, financial condition, etc. The petitioner's case was not found deserving on the said yardstick and the same was communicated vide letter dated 16th April 2004. In the subsequent Original Application being O.A. No. 43/2004, once again the learned Tribunal on 6th September 2005 directed the respondent to consider his case under the extant rules and in accordance with law and to pass a speaking order. Thereafter, CRC in its meeting held on 12th December 2006 considered altogether 21 cases including that of the applicant and selected 06 most deserving cases. Based upon the assessment of the comparative merit of each of the candidates, the CRC found that they were more deserving than the applicant. It has been submitted on the part of the learned counsel for the respondents that in such circumstances, when the case of the petitioner has been considered time and again, on number of occasion by the CRC and not found amongst the deserving candidates on the laid down criteria, he cannot claim a right to be appointed on compassionate grounds. It is further submitted on their part that the family pension is subject to revision from time to time depending upon the pay revision implemented in the respondent department. It is further submitted that all these grounds raised by the petitioner were considered by the learned Tribunal and not found tenable. Learned counsel submits therefore that the petitioner has failed to make out a case for interference in the impugned order.

8. We have heard learned counsel for the parties and gone through the relevant materials on record including the impugned judgment. It is apparent from the narration of events as discussed herein above that father of the petitioner died on 13th March 200 in harness as Postman leaving behind his widow and two daughters apart from the petitioner-applicant who was aged 30 years. The family of the deceased got certain death-cum-retrial benefits which have been enumerated in the impugned judgment at para-6 as also referred to in the counter affidavit of the respondent and is not being disputed. The family of the petitioner had ancestral land to the extent of 1.32 ? acres and one house. The petitioner preferred successive original applications before the instant O.A. in which the learned Tribunal directed the respondents to consider his case and pass a reasoned and speaking order. Consequent to the direction passed in O.A. No. 76/2003, the respondent by the reasoned order dated 10th July 2003 communicated to the petitioner that his application for compassionate appointment could not be examined due to non-availability of vacancies under the prescribed ceiling of 5% direct recruitment quota for the years 2000-01. Subsequently, the case of the petitioner was considered in the year 2004 but case of the more deserving candidates were recommended for appointment on compassionate grounds against the vacancies available in the year 2002 based upon the laid down yard stick such as, family size, age of children, financial condition including landed property, availability of own house, etc. The learned Tribunal after examining the case of the parties, found that on the basis of

comparative assessment under the laid down criteria, the selection made by the CRC in 2004 was in order.

9. However, case of the applicant was once again examined on 12th December 2006 by the CRC against six vacancies available in the year 2005. In the said exercise, names of six such persons were recommended who were found to be more deserving which includes two widows and four other persons. The petitions has sought to allege that though, one Mahabir Mahato had more landed property to the extent of 2.75 acres compared to the petitioner i.e. 1.32 ? acres, but the other candidates was recommended ignoring the comparative merit of the respective candidates on the same yardstick. However, it is also not in dispute that the number of dependents of the said Mahabir Mahto were 5 i.e. more than the number of dependents of the family member of the petitioner i.e. 4. Besides that, such Mahabir Mahto also owned a house like the applicant. Learned Tribunal considered the aforesaid grounds raised by the petitioner in some detail and did not find any arbitrariness or discrimination in the exercise conducted by the CRC while making recommendation on the laid down parameters under which compassionate appointment is made. After giving anxious thought and consideration to the submission of the petitioner, we find that the petitioner has failed to make out any case of palpable arbitrariness or discrimination in the exercise conducted by the CRC on the uniform yardstick laid down for considering the comparative suitability of the candidates for making recommendation on compassionate grounds. If the decision making process did not appear to suffer from any arbitrariness in the matter of giving priority to more deserving candidates after assessment of their comparative suitability for compassionate appointment, the learned Tribunal was wholly justified in holding that the applicant/petitioner has failed to make out a case for compassionate appointment. Petitioner's father had died 13 years ago and the purpose of compassionate appointment is to give the benefit to the dependents of the deceased immediately after the death of the bread earner to prevent the family from destitution. Appointment on compassionate ground is to be made as per the scheme framed by the employer organization as it is in the nature of departure from the normal rule of appointment after giving due consideration to all eligible person. The aforesaid position has been reiterated time and again by the Hon''ble Supreme Court and also in the recent judgment in the case of State of U.P. and Others Vs. Pankaj Kumar Vishnoi, We therefore do not find any reason to interfere in the impugned judgment. The writ petition being devoid of any merit, is accordingly dismissed.