
(2012) 10 DEL CK 0091
In the Delhi High Court
Case No : Writ Petition (C) 7693 of 2011

Birmati

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0091

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.K. Rungta with Mr. Prashant Singh, for the Appellant; M.K. Bhardwaj, for the Respondent

Judgement

Gita Mittal, J.—The instant writ petition has been filed by Smt. Birmati, the widow of Constable Zile Singh No. 7637230 who was serving with the CISF. Unfortunately, Constable Zile Singh died on 16th June, 1995 while on duty at the Tikri Kalan LPG unit. At the time of his death, his family consisted of the following:-

(i) Birmati, petitioner herein.

(ii) Mahabir Singh (who is actually known as "Mahabir Dahiya"), son aged 9 years, then a student.

(iii) Surgit Dahiya, son aged 6 years, then a student.

The writ petition has been necessitated for the reason that despite pendency of applications since 1995 for appointment of one of the family members of deceased constable on compassionate basis, the application has been rejected by an order dated 2nd/5th April, 2011 on the ground that it was belated.

2. The facts giving rise to the petition are in a narrow compass and are briefly considered hereafter.

3. Given the reason for denial of the petitioner's application, we had called for

the records of the respondents which have been produced before us. A perusal thereof would show that it contains several applications since 1995 till 30th June, 2009 made by Smt. Birmati as well as by her son Mahabir Dahiya as well as the manner in which these applications have been processed by the respondents. The same are briefly summed up hereafter:

(i) In 1995, immediately after the death of Constable Zile Singh, an application was made by Smt. Birmati informing the respondents of the dire straits of the family; that she belongs to a poor family; had two sons aged 9 and 6 years; was an illiterate woman and unable to do official work; her children were studying and there was no source of income to look after them. She requested that the name of her son Mahabir Dahiya be enlisted and considered on his attaining majority for compassionate appointment.

(ii) On 14th November, 1995, a communication was made by the Deputy Commandant, CISF to the Deputy Inspector General with regard to the applications seeking their processing.

(iii) A letter was written on 7th December, 1995 by the Deputy Commandant of CISF forwarding four proformas to Smt. Birmati enable further processing of the case.

(iv) Mahabir Dahiya son of Zile Singh and Birmati attained majority on 4th June, 2005.

(v) On 24th July, 2006, an application was made by Mahabir Dahiya seeking compassionate appointment.

(vi) An application was also made by Smt. Birmati on December, 2008 reiterating the above position including details about the dire straits of the family and the inability to even educate her children further.

(vii) A communication dated 3rd February, 2009 by Shri Ratandeep Joshi, Assistant Inspector General to the Inspector General is on record informing that there is a change in the policy for compassionate appointments.

(viii) A letter dated 21st February, 2009 was written by Deputy DIG to the DIG (Northern Region), CISF Headquarters referring to the applications of Birmati seeking opinion with regard to the same.

(ix) On 16th March, 2009 a communication was sent by the Group commandant to the Deputy Inspector General (Northern region) requesting that an officer be sent to Delhi to conduct inquiry from the nearest unit of the native of the deceased government servant with regard to the family of deceased Zile Singh.

(x) A further communication was sent on 30th March, 2009 directing inquiry in terms of the above.

(xi) The Assistant Commandant of the CISF sent a verification report dated 2nd June, 2009 to the Group commandant in respect of the application made by Smt.

Birmati for compassionate appointment of her son which verified the financial incapacity of the family of Zile Singh. This verification report also verified that his family was physically unable to do more labour and did not have the capacity to bear further expenses.

(xii) The required proforma was also filled on 30th June, 2009 by Mahabir Dahiya son of Late Constable Zile Singh seeking appointment on compassionate basis.

(xiii) On 9th August, 2009 a request was made for fresh inquiry in terms of CISF guidelines into the application of Birmati.

4. There are several other communications by the respondents seeking removal of objections and other documents from the petitioner manifesting further processing of the application of the petitioner and her son.

5. The respondents have placed before this court a copy of the verification effected by the respondents on 14th September, 2009 as also recommended by the Joint Deputy Inspector General which is available at the end of the verification report. The recommendation for the petitioner's appointment for the post of Constable/GD was made to the Sector Inspector General.

6. It is urged by the respondents that the case of the petitioner was considered with several other persons by the Ministry of Home Affairs which has passed an order dated 2nd May, 2011 denying the compassionate appointment to the petitioner as the deceased had expired more than 15 years prior to 1st April, 2011.

7. The above narration would show that the petitioner's applications made in 1995; 24th July, 2006; December, 2008 and 30th June, 2009 which were pending with the respondents. In fact the applications were being processed by the respondents and the inquiries were being made with regard to the subject matter thereof. The same culminated in the recommendation of the Sector DIG. The verification was completed and recommendation for the appointment of the petitioner on the post of Constable/GD was made only on 14th May, 2010.

8. The respondents have submitted that after completion of all the mandatory requirement, formalities and documents, Mahabir Dahiya, son of Zile Singh and Birmati, had submitted his application in prescribed proforma on 22nd April, 2010. Fifteen years from the date of death of Constable Zile Singh were not over however on this date.

In this background, there is force in the submission of learned senior counsel appearing for the petitioner to the effect that the case of the petitioner was not one which was beyond 15 years on the 1st of April, 2011 and could not have been rejected for this reason.

9. We may note that learned counsel for the respondents has submitted that expedition is inherent in the consideration of an application for compassionate post. It has been held by the Supreme Court that delay would reflect the

family's ability to come over the difficulties which would manifest that there is no need for compassionate appointment. This well settled principle cannot be disputed. However, the same would not apply in the instant case.

10. Learned counsel for the parties have placed before us the scheme of the respondents which is followed by the respondents for compassionate appointment which was initially circulated vide office memorandum dated 9th October, 1998 which postulates belated requests for compassionate appointment and their processing.

11. Our attention has also been drawn to the CISF circular no. 11/2007/R & S dated 24th-25th September, 2007 which provides additional instructions regarding appointment on compassionate grounds and the manner in which belated cases (more than 5 years old) are required to be considered. In this regard, para B of these instructions deserves to be considered in extenso and reads as follows:-

(B) REQUEST FOR CONSIDERING WARDS ON ATTAINING 18 YEARS (beyond 5 years)

We have been receiving applications where the widow has requested that her ward be considered for compassionate appointment on attaining the age of 18 years which would happen at a future date beyond five years from the date of death/retirement on medical grounds. As per our present policy guidelines such cases to be considered only if the ward attains the age of 18 years within five years of the date of death/retirement on medical ground of Government servant (Para - 3 (A) (v) of Circular under reference).

It is now decided that such cases may be considered beyond 05 years subject to the following:-

- i) The request is initially made within one year of the death/retirement on medical grounds of the CISF personnel for cases after the issue of this Circular.
- ii) This criteria need not be insisted on for old cases.
- iii) The widow of the deceased employee should not have re-married.
- iv) The benefit of compassionate appointment should not have been given at any time to any other member of the family.
- v) Another request is made at the time of the ward attaining the requisite age.
- vi) There has been no change in the financial condition of the dependents and the situation still warrants compassionate appointment.

The examination and processing of such cases will be on similar lines as for belated cases i.e. more than 5 years old.

In such case the individual making request initially could be informed that:-

- a) To apply when the ward attains requisite age.
- b) The acceptance of application does not guarantee compassionate appointment.
- c) That the request will be subject to the availability of vacancies and policy and guidelines in vogue in future.
- d) Intimation about such cases should be given to the Zone, Sector and FHQrs.

12. In view of the above, the respondents have themselves stipulated that deserving cases for appointment on compassionate grounds which are belated and even beyond 5 years would be scrutinized, examined and processed.

13. The impugned communication dated 2nd/5th April, 2011 noticed by us hereinbefore refers to cases which were beyond 15 years.

14. Constable Zile Singh is stated to have expired on 16th June, 1995 while on duty. In this background, there was no prohibition to the consideration and grant of the petitioner's case under the applicable scheme. The petitioner who was 9 years of age on the date his father expired, majority attained i.e. 18 years of age within 10 years of his father's death. The application for his appointment on compassionate ground was made by his mother in 1995 which was immediately after the demise of the CISF personnel. He attained majority within nine years thereafter. Several applications were made thereafter as noticed above. These applications remained pending even on 2nd/5th April, 2011.

15. As noticed above, the respondents have verified the dire straits of the family of the petitioner. All requisite inquiries with regard to the application as well as the petitioner's eligibility for appointment have been effected and the petitioner's case has been recommended for appointment by the Inspector General concerned as well. The petitioner fulfilled all requirements in the CISF Circular dated 24th-25th September, 2007.

16. It is not disputed that this circular has to guide consideration of an application such as the petitioner's. The rejection of the petitioner's application on the ground that the same is more than 15 years of 1st of April 2011 is factually incorrect. The above narration also manifests that the first application for compassionate appointment was made by the petitioner to the respondents in June, 1995 immediately after the death of her husband. Even the proforma filled by Mahabir Dahiya, son of Late Constable Zile Singh and Birmati on 30th June, 2009 was only about 14 years after his death. Prior applications by Mahabir Dahiya have also been noticed here to forth. The objection is not permissible under the applicable policy.

17. In this background, it would appear that all formalities for processing the case of the petitioner appear to have been undertaken. In view of the above, we direct as follows:-

(i) The order dated 2nd/5th April, 2011 to the extent that it relates to the petitioner as well as order dated 30th May, 2011 rejecting the petitioner's

application are hereby set aside and quashed.

(ii) The respondents are directed to consider the case of the petitioner afresh in the light of the above observations for appointment on compassionate ground in terms of the applicable policy. The order passed thereon shall be communicated forthwith to the petitioner, in any case, within a period of eight weeks from today.

This writ petition is allowed in the above terms.

Dasti.