(2004) 10 DEL CK 0043

In the Delhi High Court

Case No : WP (C) . No. 9500 of 2003

Jaswant Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Citation : (2005) 80 DRJ 661

Hon'ble Judges : Manju Goel, J;B.A. Khan, J

Bench : Division Bench

Advocate : Puneet Verma, for the Appellant; Raman Oberoi, for the Respondent

Judgement

B.A. Khan, J.—Petitioner''s OA No. 2446/2001 seeking compassionate appointment has been dismissed by impugned order dated 6.6.2002. Hence this petition.

2. Petitioner''s father one Chander Singh was an employee of Government of India Press. He died on 21.7.1994 and his wife applied for grant of compassionate appointment for her son (petitioner) on 11.11.1995. Petitioner was interviewed on 16.9.1997 but the request for his appointment was rejected on 4.3.1998 on the ground that he could not be treated as dependent being of 27 years age and that the family of the deceased was not in financial disaster as petitioner had received terminal benefits of Rs. 1,76,625/-.

3. Petitioner challenged this in OA No. 2446/2001 which was opposed by the respondents on the plea that he could not ask for compassionate appointment as a matter of right and that his case was rejected by the Compassionate Committee in terms of provisions of OM dated 30.6.1987. It was submitted that his family was not indigent or in disaster as it had received terminal benefits of Rs. 1,76,625/- and family pension of Rs. 1,838/-. Several judgments of the Supreme Court were cited to show that compassionate appointment could not be sought as a matter of right, nor it could be granted as a matter of sympathy and that a mere death of an employee did not entitle any of his family members to

such appointment on mere asking.

4. The Tribunal, on consideration of the matter, rejected petitioner''s OA holding:-

"Once the respondents have considered the case of the applicant in the background of the instructions and procedure laid down, it is not for the Tribunal to substitute its judgment for that of the respondents. In this case, I find that the respondents have acted within the parameters of the instructions issued in this regard and the same cannot be faulted. Nothing further can be asked of them."

5. Petitioner''s case is that his claim for compassionate appointment was wrongly rejected and on a wrong premise. He could neither be denied status of dependent for being 27 years old, nor deprived of appointment for the terminal benefits received by his family.

6. Respondents reiterate that petitioner''s case was considered by the Compassionate Committee under O.M dated 30.6.1987 but his family was neither found indigent nor in great distress as that it had received terminal benefits of Rs. 1,76,625/- and family pension of Rs. 1838/-.

7. The only issue that arises for consideration is whether respondents had turned down petitioner''s request on legal valid grounds.

8. It is true that compassionate appointment is not any other source of recruitment. It is an exception to the normal recruitment process for helping out the family of deceased employee rendered without means of livelihood on his death. The purpose is to mitigate the hardship likely to occur to the family. The compassionate appointment can''t be claimed as a matter of right and is required to be granted in consonance with any policy or the guidelines adopted by the employer on the subject.

9. The grant or denial of compassionate appointment in the present case is governed by respondents'' OM dated 30.6.1987. Under this, a son or a daughter or a near relative of a Government servant who dies in harness and leaves his family in immediate need of assistance becomes entitled to compassionate appointment when there is no other earning member in the family. In exceptional cases this benefit can also be extended to a son or a daughter or a near relative of a Government servant who has retired on medical grounds before attaining the age of superannuation where the department is satisfied that the condition of the family is indigent and in great distress.

10. Clause 6 of this OM also provides for relaxation of recruitment procedure in respect of age limit, educational qualification, etc. and also permits even belated requests for compassionate appointment to be made in certain circumstances. Sub clause (d) of clause 9 also provides that while assessing the financial position of the family, the benefits received by it under various schemes introduced by the Government from time to time may also be kept in view. These include Central Government Employees Insurance Scheme, benefit of encashment of leave to the credit of the deceased at the time of his death,

improved family pension and assistance from Compassionate Fund.

11. It must be pointed out at the very outset that Respondents'' OM laying down principles for compassionate appointment nowhere provides that a claimant must be a dependent of the deceased employee. All it says is that the claimant must be a son, a daughter, or a near relative of the deceased Government servant for being eligible to seek the appointment. It is not disputed that petitioner was the son of the deceased and, Therefore, not have been held ineligible for being 27 years old and not a dependent because of his age. Even assuming that claimant had to be a dependent, even so his status could not be determined on the basis of his age. One could be of 27 years of age and married and yet dependent. There is also no age bar prescribed under the OM in this regard. It only provides for relaxation of the age limit which is otherwise applicable for recruitment in the Government service.

12. The other Explanation offered by respondents to support their rejection order is that their Compassionate Committee had not found the petitioner''s family indigent or in great distress or disaster after having received terminal benefits of Rs. 1,76,625/- and family pension of Rs. 1,838/-.

13. It would be instructive to note that respondents'' OM does not create a bar to the appointment where the family of claimant had received terminal benefits of the deceased employee which he would have otherwise received. It only provides for keeping the benefits under various schemes in view while considering the case of compassionate appointment which does not necessarily entail its rejection. There may be cases which may involve a one time lump sum payment to the family and yet expose it to hardship after this amount is exhausted. There can be cases where some benefits due to the deceased are received on his death but yet the family would remain in bad financial condition to deserve a compassionate appointment.

14. A reference to the Supreme Court judgment in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, would be in order. The court observed:-

15. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reasons of adaptation of a Family Benefit Scheme by the Employees'' Union, question of any departure there from or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any was in equated with the benefits of compassionate appointments. The sudden jerk in the family be reason of the death of the bread earner can only be absorbed by some lump sum amount being made available the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be replacement of the

bread earner but that would undoubtedly bring some solace to the situation."

16. Therefore, no straight jacket formula can be laid down in this regard and it would always depend on the circumstances of each case whether a compassionate appointment is warranted or not. The rationale behind this type of appointment is to be kept in view and if it is to replace the deceased bread earner, the terminal benefits received by the family should not operate as a bar.

17. In the present case, there are several representations by petitioner and his mother on record claiming that the amount received by the family was spent on the marriage of the deceased employee''s daughter. It is not known whether this aspect was considered by the Compassionate Committee of respondents and whether it was given any debit consideration while assessing the family''s financial position. This could have been ascertained from the report of the Committee which has not been made available by respondents. Petitioner''s case, Therefore, deserves a second look anyway.

18. It is also seen that Tribunal had given a short-shrift to petitioner''s case after it had taken the stand of respondents on its face value. Its order is bereft of any reasoning nor does it advert to the parameters adopted by respondents to reject petitioner''s case.

19. The inescapable conclusion is that petitioner''s claim for compassionate appointment has been rejected by respondents on untenable and invalid basis. The Tribunal has done no better. Its non-application of mind is writ large on its order which is set aside to allow this petition. Respondents are resultantly directed to accord a fresh consideration to petitioner''s case for compassionate appointment under the prevalent scheme at the relevant time and to pass appropriate orders within four months from receipt of this order.