

(2012) 11 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11420 of 2012

Jawari Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) LabIC 682

Hon'ble Judges : Vineet Kothari, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition is directed against the order dated 6.9.2012 as passed in Original Application ("OA") No. 321/Jodhpur/2011 whereby the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("CAT") rejected the claim of the petitioner-applicant of compassionate appointment in the respondent-department. The brief facts of the case are as follows: The father of the petitioner, who had been working as GDS, MC/MD in the Department of Post, Branch Office Salawas, expired on 15.5.2009 after putting in 45 years of service but two years prior to superannuation. The petitioner-applicant applied for compassionate appointment on 7.7.2010. However, by an order dated 4.8.2010 issued from the Office of the Chief Postmaster General, Rajasthan Circle, Jaipur, the petitioner-applicant was informed that after conducting the objective financial assessment of his family, the Circle Review Committee (in short, "Committee") did not find his family in indigent condition and hence, his case was not recommended for compassionate appointment. It was stated that as per the report made by the Committee, the family of the deceased employee (father of petitioner-applicant) was comprising of widow, three married sons and three married daughters; it had received the terminal benefits of Rs. 58,000/-; owns a house they were living in; and holds a land property admeasuring 6.5 bighas and valued at Rs. 5.4 lacs. Besides, the Committee also observed that all the three

sons of the deceased employee were settled with each earning Rs. 48,000/- per annum from private jobs. On the basis of this report, the respondent-department refused to grant appointment to petitioner-applicant on compassionate basis.

2. Before the CAT, the petitioner-applicant stated the grievance that he possessed adequate academic and professional qualifications to be considered for appointment and that his case was not considered in accordance with the mandatory provisions contained in the circulars (DOP & T OMs) issued by the Government of India on 4.7.2005 and 5.5.2003 according to which, a case for compassionate appointment is required to be considered three times. The respondent-department contested the case and submitted that the deceased employee had served for about 45 years and expired just two years prior to his attaining superannuation age; and the family of the deceased employee was not in indigent condition.

3. The CAT, after considering all the material aspects, dismissed the OA while emphasizing on the object of Compassionate Appointment Scheme. The CAT observed that the very object of the Scheme was to enable the family in indigent condition to meet with the crisis arising out of the sudden death of the Government servant; and, for assessing the degree of indigence, the Committee objectively assesses each case within prescribed parameters and its recommendations cannot be brushed aside. While dealing with the ground of non-compliance of relevant provisions, the CAT observed that appointment on compassionate basis was limited to 5% of the direct recruitment vacancies in Group "C" and Group "D" posts and for this reason, the Government of India, Department of Personnel and Training had decided to consider each applicant at least thrice in three consecutive years for grant of compassionate appointment; but, when the case of the applicant was not even recommended, there was no question of considering him thrice. The CAT also observed that there was no arbitrariness or illegality in the Committee not recommending the case of the applicant who was 45 years in age and whose family was comparatively well-settled.

4. While challenging the order so passed, it is submitted that the CAT has erred in ignoring the fact that the original report of the Committee was not submitted by the respondent though specifically an order was passed on 13.7.2012 directing the respondents to submit the original report so as to examine as to whether the rejection of the case of the applicant for compassionate appointment was based on comparative merits and demerits. The learned counsel for the petitioner-applicant also submitted that the Committee has not correctly carried out the necessary calculations on the financial condition of the family. The learned counsel further submitted that the CAT has erred in not directing the respondents to comply with the mandatory requirements prescribed by DOP & T, of considering his case thrice in three consecutive years.

5. Having given thoughtful consideration to the submissions made by the learned counsel for the petitioner-applicant and having examined the record, we are

unable to find any merit in this writ petition.

6. The relevant factual aspects of the matter make it clear that father of the petitioner had put in about 45 years of service and had about 2 years" service remaining before superannuation. The petitioner-applicant himself is in the mature age of about 46 years and has been shown earning about Rs. 48,000/- per annum in private job. His other brothers are also said to be the earning members. The family is said to be having 6.15 bighas of agriculture land at Salawas and a pucca house on a land admeasuring 28 x 131 ft. It is difficult to find it to be a case of the family being in hardship and in such a penurious condition which is required to be met by providing compassionate appointment to one of its members. The case of the petitioner has been objectively examined by the respondents and has been rejected with reference to the findings of the Committee that the family was not in an indigent condition. The CAT has thoroughly examined all the related aspects of the matter and has rejected the claim of the petitioner on relevant considerations.

7. We are unable to find it to be a case of any jurisdictional error resulting in failure of justice as to warrant interference in the writ jurisdiction. In the given set of facts and circumstances, it would hardly matter if the original report of the Committee was placed before CAT or not because it appears that the petitioner is not in a position to controvert the core and basic facts regarding the overall financial condition of the family as appearing on the record.

8. Compassionate appointment, an exception to the general rule of open recruitment, is intended to meet the immediate financial problems, if so faced by the bereaved family of the deceased employee. The very object of providing compassionate appointment to a dependent of the deceased employee who dies in harness is to relieve the family of hardship and distress caused due to sudden demise of its bread-earner. Such provisions for compassionate appointment, by their very nature, are in exception to the general procedure prescribed for making appointments; and are required to be applied while keeping in view the fact that by making such appointments, other eligible persons are deprived of their chance to seek employment. The Hon"ble Supreme Court in the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, has pointed out:--

The object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet a provision is made for giving gainful appointment to one of the dependent of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without

following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee.

9. Applying the principles aforesaid to the facts of the present case, we are unable to find any reason where for the appellant could have been granted the relief of consideration of his claim for compassionate appointment.

10. In the overall analysis, we are satisfied that CAT has rightly declined the prayer as made by the petitioner and no case for interference is made out. Accordingly and in view of the above, the writ petition stands dismissed.