
(2013) 09 DEL CK 0249
In the Delhi High Court
Case No : Writ Petition (C) 7123 of 2012

Ms. Rajesh Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0249

Hon'ble Judges : V. Kameswar Rao, J;Gita Mittal, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Geeta Sharma, Ms. Sadhvi Shahi and Ms. Vanessa Singh, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—Pursuant to the order passed on 1st August, 2013, the petitioner has been subjected to a medical examination by the Board appointed by the Commandant, Army Hospital (Research & Referral), Delhi Cantt., New Delhi. The original report has been perused by learned counsel of both sides which certifies medical fitness of the petitioner. The present matter has to be considered in the light of this medical report.

2. The issues raised in the present matter are within a narrow factual matrix.

3. The petitioner's husband late Constable/GD Sumer Singh, the employee of the CRPF died in harness on 16th May, 1997. On this date, the petitioner, six year old daughter and three years old son and old parents were fully dependant on him. The death of Constable/GD Sumer Singh was held to be attributable to service which entitled the petitioner for grant of service pensionary benefits as well as consideration for appointment in the organization on compassionate grounds. The petitioner had made an application in this regard. The respondents subjected the petitioner to the selection process on more than one occasion in which she succeeded and was found fit for appointment to the post of peon. However the appointment was not effected.

4. The petitioner earlier filed W.P.(C) No. 12697/2005 which was disposed of on the 21st of February, 2008 based on the statement made on behalf of the respondents that the petitioner was waitlisted. As nothing happened despite the above assurance, the petitioner served legal notice dated 22nd November, 2011 calling upon the respondents to expedite the issuance of the appointment letter.

5. In the meantime, the petitioner's son Mr. Raja Yadav who was born on 15th June, 1994 cleared his 10+2 Senior Secondary Examination in the year 2011 and attained the age of majority, i.e., 18 years on the 15th of June, 2012. As such he became eligible for appointment in the CRPF. The petitioner submitted that she would have no objection if her son Raja Yadav was appointed on compassionate ground instead of herself.

6. It is noteworthy that the present writ petition came to be filed on or about 2nd November, 2012 inter alia seeking a writ of mandamus to issue to the respondents directing them to appoint her in any of the Group-D posts on compassionate grounds or in the alternative direct the respondents to consider the case of her son Raja Yadav for appointment as he is eligible for recruitment in terms of Recruitment Rules on compassionate basis. The petitioner had objected that she had undergone the entire selection process and had been validly waitlisted. Therefore, she could not be denied recruitment.

7. The counter affidavit however states that Inspector General (Police), North Western Sector had directed that her son may apply for compassionate appointment. It is further informed that in view of this direction, the son of the petitioner, Raja Yadav was provided an opportunity to make such application.

8. In the proceedings recorded on 2nd April, 2013, this court had noted the above fact and had directed the respondents to disclose to the court a reasonable time within which the petitioner's son Raja Yadav could be offered the appointment as the family was struggling for several years after the death of the primary bread earner.

9. Be that as it may, the order dated 2nd April, 2013 records that the petitioner's son Raja Yadav had applied for compassionate appointment on 18th March, 2013. The record would disclose that respondents have considered and processed the application of Raja Yadav and found him eligible. It is undisputed before us that candidature of Raja Yadav was considered favourably by the respondents and that there is no objection on any ground for want of educational qualification, age or any other criterion.

10. Pursuant to the order passed on 29th May, 2013, the petitioner's son Raja Yadav was subjected to medical examination by the respondents on the 11th June, 2013. The medical report of such examination was placed before us on the 1st of August, 2013 when we have noted thus:-

2. Learned counsel for the respondents has today produced before us the medical examination of the petitioner's son Raja in which, it has been opined

that he was medically unfit for the reason based on the radiologist opinion that petitioner's son Raja has "old - 9th and 10th rib on right side and 9th rib on left side and thickening of left C.P. angle". The respondents have also recorded that the ECG of Raja, the son of late Constable/GD Sumer Singh reflects "Sinus Rhythm, Right ventricular hypertrophy.

3. The record placed before us further shows that no test was performed by the CRPF and reliance is placed on the x-ray and the ECG which was carried out in a private facility. We are informed that this was for the reason that no functional hospital of the CRPF is available at Gurgaon, the place where the petitioner is residing.

11. In view of the above, to obviate any controversy, we had directed a fresh examination of Raja Yadav, the son of the petitioner by the Board to be appointed by the Army Hospital (Research & Referral), Delhi Cantt., New Delhi. The detailed medical examination of Raja Yadav was conducted by three senior experts in the field of surgery and CT surgery, Cardiology and classified specialist (respiratory). The Board has reported the following findings:-

3. The board examined the candidate and findings are as follows:-

(a) There is no evidence of fracture ribs on pleural thickening

(b) Incomplete RBBB. No structural defection echocardiography

4. Opinion of the Board of officers:-

(a) candidate is "fit" for-"fracture ribs, thickening L CP angle"

(b) candidate is "fit" from cardiology for-"sinus rhythm, right ventricular hypertrophy".

12. In view of the above, the objection of the respondents on the ground of want of medical fitness of Raja Yadav also does not survive. There is no impediment for the appointment of Raja Yadav, the son of the petitioner on compassionate grounds.

There is nothing on record which discloses that there is no vacancy.

In this background, matter deserves to be proceeded expeditiously in accordance with prescribed procedure for completing formalities for appointment of Raja Yadav on compassionate basis.

In view of the above, we direct as follows:-

(i) The respondents shall ensure that all procedural requirements and formalities are completed and the appropriate order towards the appointment of Raja Yadav, the son of late Constable/GD Sumer Singh on compassionate grounds to the Group D post for which he was favourably considered is issued within six weeks from today.

This writ petition is allowed in the above terms.

Dasti to counsel for the parties.