

(2023) 05 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 11672 Of 2019

Om Prakash

APPELLANT

Vs

Commissioner Of Police And Anr.

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Citation : (2023) 05 DEL CK 0020

Hon'ble Judges : V. Kameswar Rao, J;Vikas Mahajan, J

Bench : Division Bench

Advocate : Anil Mittal, Shubham, Avnish Ahlawat, Tania Ahlawat, Nitesh Kumar Singh, Palak Rohmetra, Laavanya Kaushik, Aliza Alam

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated August 14, 2019, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', in short) in Original Application No.3102/2018 whereby the Tribunal has dismissed the OA by stating as under:

"5. Heard learned counsel for the parties and carefully perused the pleadings on record. It is observed that admittedly the applicant's case for compassionate appointment was rejected on the ground of being overage as his case does not come within the ambit of the provisions of the Standing Order No.39/2014, which provides of consideration of candidature for appointment to the post of Constable (Driver) within maximum of 30 years of age only and applicant at the time of submission of his application has already attained the age of 31 years and seven months, which decision was communicated to the applicant vide order dated 9.2.2017. It is to be noted that applicant's mother has also sent her application to the Hon'ble Lt. Governor, Delhi, who also rejected the case of the applicant due to overage, as his case was not covered under the eligibility criteria of Standing Order No.39/2014 issued by Delhi Police. It is also to be noted that

compassionate ground appointment is not a vested right but a consideration that needs to be extended to the bereaved family to provide immediate help and to avoid conditions of penury. This has been extended twice but did not succeed and objective reasons have been advised to the applicant. While there is need to extend sympathetic consideration, but needs of public service shall continue to be paramount and hence, the conditions of employment need to be in conformity with the relevant rules. These are governed by Standing Order No.39/2014 in the instant case, which have been scrupulously followed by the respondents. Hence, this Tribunal does not find any infirmity in the impugned order dated 6.4.2018 passed by the respondents denying compassionate appointment to applicant."

2. The challenge of the petitioner in the OA was to an order dated April 6, 2018, whereby the respondents have rejected the request of the mother of the petitioner for his appointment on compassionate ground because of the death of her husband, late Sub Inspector, Rajender Singh, on the ground that the case is not covered under the Standing Order No.39/2014, being overage.

3. The father of the petitioner had joined Delhi Police as Constable in the year 1978. While he was working as Sub Inspector, on December 17, 2015 he unfortunately died. In April, 2016, petitioner's mother applied for appointment of the petitioner on compassionate grounds in Delhi Police. The petitioner is 12th pass and trained driver and holding a valid driving license and his date of birth is November 14, 1984. Further, request was made on May 2, 2016 for appointment of the petitioner on compassionate ground.

4. It was the case of the petitioner before the Tribunal that the respondents vide letter dated May 12, 2016, ordered a detailed enquiry into the members of the petitioner's family, source of income and financial condition etc. It appears, the case of the petitioner was that he has brother, who is unemployed and his sister is married and living in her matrimonial home and they have given their no objection for appointment of the petitioner.

5. As no reply was received on the representation, the petitioner's mother sent an application dated July 22, 2017 to the Lt. Governor of Delhi requesting him to intervene in the matter and to grant appointment to the petitioner as Constable (Driver) in the Delhi Police on compassionate ground.

6. It was finally, vide letter dated April 6, 2018, the Department of Home, Govt. of NCT of Delhi informed the petitioner that in view of Standing Order No.39/2014 issued by Delhi Police, the petitioner being over age, he could not be appointed on compassionate ground as Constable Driver.

7. The case of the respondents before the Tribunal was that the petitioner's case was considered by the Police Establishment Board in its meeting held on January 13, 2017 but could not be approved due to overage, in terms of Standing Order No.39/2014.

8. A reference is made to the judgment of the Supreme Court in the case of

Umesh Kumar Nagpal v. State of Haryana & Ors., 1994 (4) SCC 138. It was also the case that as the petitioner being overage, the administrator can give relaxation on any of the provision of the said Rules with regard to any class, category of persons or posts or in an individual case, whereas the request of the mother of the petitioner was considered and rejected by the Hon'ble Lt. Governor due to overage.

9. Suffice to state, the Tribunal rejected the OA in terms of paragraph 5 which we have already reproduced above.

10. The short issue is whether the Tribunal is right in rejecting the OA filed by the petitioner. At the outset, we may state that in terms of order dated October 7, 2022, this Court had directed the respondents to produce the relevant record wherein consideration of the case of the petitioner was made. The file has been produced.

11. Having said that there is no dispute, the date of birth of the petitioner is November 14, 1984, and the request for compassionate appointment was made on April 2016 and the age of the petitioner was above 30 years which is the maximum age limit for a general candidate. In that sense, the Standing Order on which reliance has been placed by the respondents the clauses 8 and 9 are the provisions related to appointment on compassionate ground and relaxation of age limit. There is no dispute that the petitioner was beyond the age of 30 years which is the age limit.

12. During the course of hearing, Mr. Mittal had relied upon a communication dated February 09, 2018 from the office of the Lt. Governor which depict that the office of the Lt. Governor has returned 44 files, with a request to resubmit the same with recommendations for consideration of the Lt. Governor, after examining as to whether the applicants therein should be granted relaxation for appointment on compassionate ground under the provisions of rules.

13. I note that the issue was again examined in the context of age relaxation and in that regard reference was made to Clause 9 of the standing order to state that the maximum age required for the post of Constable (Driver) is 30 years for General Candidate and the petitioner herein had already completed the age of 31.7 years as on July 01, 2016, the cut of date for fixing the age of the candidate. In other words, it was clearly stated that the petitioner is overage. The said position was approved by the Hon'ble Lt. Governor on April 04, 2018, hence, reliance placed by Mr. Mittal would be of no consequence as rather it shows proper application of mind on the part of the authorities. What is important in the case in hand is that, at the time of the death of the father of the petitioner, the family had received following financial benefits:

A

D.C.R.G

Rs. 1000000/-

B

G.P.F.

Rs. 2901713/-

C

C.G.E. INSURANCE

Rs.80787/-

D

D.P.W.S

Rs.500000/-

E

Encashment of leave

Rs. 400110/-

F

Others

Rs. 60000/-

Total

Rs. 4942610/-

14. We have been informed that the mother of the petitioner is also getting family pension of ₹10,000/- per month. Apart from the ground on which the compassionate appointment was rejected, we are also of the view, given the financial benefits received by the family, the petitioner shall not be entitled to the compassionate appointment. The Supreme Court in the case of Umesh Kumar Nagpal (*supra*) has in paragraph 4 held as under:-

"4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II

post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments."

15. Accordingly, we are of the view that the present petition is devoid of any merit and the same is dismissed.