
(2023) 04 CAT CK 0010
In the Central Administrative Tribunal
Case No : Original Application 3539 Of 2022

Pinki

APPELLANT

Vs

GNCT Of Delhi & Ors

RESPONDENT

Date of Decision : 06-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 04 CAT CK 0010

Hon'ble Judges : Dr.Chhabilendra Roul, Member (A)

Bench : Single Bench

Advocate : Ranbir Singh Sandhu, Amit Yadav, Ridhi Dua

Final Decision : Disposed Of

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present OA has been filed by the applicant against the order dated 22.07.2022 by the Office of Deputy Commissioner of Police, Rohini District Delhi keeping the application of the present applicant for compassionate appointment pending because of filing OA No. 2554/2021 by Smt. Bedo Devi at Delhi, the mother of the deceased Constable of late Shri Anil Kumar.

2. The brief facts of the case are that late Constable Shri Anil Kumar No. 1627/RD was posted at District line Delhi since 24.3.2006. The applicant got married to Late Shri Anil Kumar on 11.12.20018, which has not been disputed by the respondents. On 25.05.2021 Shri Anil was admitted to Forties Hospital, Shalimarbagh Delhi and subsequently at ILB Hospital, Vashantkunj on 31.05.2021. On 31.5.2021, Shri Anil Kumar died in the hospital. At the time of his death he has completed 15 years of service. The family pension case of late Shri Anil Kumar could not be finalized, as per the statement of respondents in their counter affidavit, because the mother of the deceased Shri Anil Kumar had filed OA No. 2554/2021 for obtaining 50% share of the family pension, gratuity and other financial benefits due to the deceased employee Shri Anil Kumar.

Mrs. Pinky the widow of late Shri Anil Kumar Constable, the present applicant, submitted an application on 20.09.2021 for her consideration as a women constable on compassionate appointment in Delhi Police. The Delhi Police initiated preliminary check regarding physical measurement and other details regarding the income and asset liability of the family. However, vide order dated 27.07.2022 (impugned order) the respondents have kept pending the representation of the present applicant for compassionate appoint because of the pendency of the OA No. 2554/2021. Being aggrieved, the present applicant has come to this Tribunal in the present Original Application.

3. On admission of the OA notices were issued to the respondents and they have filed their counter affidavit to which the applicant has also filed his rejoinder to the same.

4. The main grounds undertaken by the applicant in her OA are as follows:-

(i) The applicant's husband died due to illness on active government service and the applicant is blessed with a baby boy on 06.01.2022 after the death of her husband late Shri Anil Kumar. The family members of her husband and in-laws forced her to leave their house after demise her late husband and she is compelled to stay with her parents.

(ii) After the demise of her late husband, she has no other source of income for her survival and to lookafter herself and the new born baby.

(iii) The impugned action/ inaction of the respondents in not finalizing her representation for compassionate appointment is illegal and arbitrary. OA No. 2554/2021 has no bearing on her appointment on compassionate grounds.

5. Learned counsel for the applicant drew attention of this Tribunal to the standing order No. Welfare 04/22 of Delhi Police for compassionate appointment. According to which the whole object of granting compassionate appointment is to enable the family to tide over the sudden crises and relief to the family of deceased from financial destitution and to get over the emergency. For that reason, the standing order mentions that the family members of the deceased employee can be considered for compassionate appointment for overcoming the financial conditions from penury for a family which have no other means of livelihood. The definition of dependent family includes the following:-

i). Spouse; or

ii). Son (including adopted son); or

iii) Daughter(including adopted daughter); or

iv). Brother or sister in the case of unmarried Government servant, who was wholly dependent on the deceased employee.

"Government Servant' for the purpose of these instructions means a Government Servant appointed on regular basis and not one working on daily wages or casual

or apprentice or contract or re-employment basis.

"Service includes extension in service (but no re-employment) after attaining the normal age of retirement.

"Re-employment" does not include employment of ex-serviceman before the normal age of retirement.

6. The counsel for the applicant further averred that eligibility criteria for appointment on compassionate grounds states that the members of dependent family can be considered for appointment on compassionate grounds, if the family is indigent and deserves to immediate relief from financial destitution. The fact that the respondents initiated inquiry regarding movable /immovable property, number of dependents, financial position, etc. in respect of the applicant shows that the applicant is a deserving candidate for being considered for appointment on compassionate grounds. The mere pendency of OA No. 2554/2021 should not have deterred the respondent taking initial inquiry for compassionate appoint to its logical end. The very purpose of providing immediate relief for financial assistance to the deceased employees' family will be defeated by keeping the applicant's application for consideration for appointment on compassionate grounds in abeyance. He drew attention of this Tribunal to the judgment of Hon'ble Supreme Court of India in Umesh Nag Kumar Nagpal vs. State of Haryana; 1994 SCC (4) 138, wherein the Hon'ble court has observed that such inordinate delay for consideration on compassionate appointment will be counter productive. Particularly in Para 6 of the said judgment, reads as follows:-

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole 1(1989) 4SCC468:1989S CC(L&S)662:(1989) 11ATC8 78:(1989)4SLR327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. In view of the above, the counsel for the applicant argued that keeping the application of the applicant pending for compassionate appointment will violate the Article 14 & 16 of the Constitution of India.

8. Learned counsel for the respondents relied upon counter affidavit filed by the respondents whereby he has stated that the respondents have considered the representation of the applicant for appointment on compassionate grounds and initiated the preliminary investigation. However, because of the mother of the deceased constable Shri Anil Kumar, Smt. Bedo Devi filed OA No. 2554/2021 claiming 50 % share of the family pension, gratuity and other retiral benefits of the deceased employee late Shri Anil Kumar, the department is unable to process the case of compassionate appointment to the applicant because of these

benefits will have bearing on the financial status of the applicant. He further stated that the mother of the deceased constable Shri Anil Kumar got benefits under the Central Government Employees Insurance Scheme (CGEIS) because of she was nominated by late Shri Anil Kumar during his life time for those benefits. However, the applicant was also sanctioned and paid Rs.7,50,000/- as financial assistance from the Delhi Police Martyrs Fund as per her entitlement. Moreover, the details of financial benefits like monthly pension, DCRG, leave encashment and other admissible retiral benefits are relevant factors for considering the compassionate appointment to any dependent family member. These matters have been become sub-judice in the aforementioned OA. As per the standing order No. Welfare 04/2022, these are the relevant factors for considering the eligibility of any applicant for compassionate appointment. As these are yet to be decided, the financial health of the applicant and other dependent family member could not be ascertained. It was appropriate that the application for compassionate appointment of the applicant was kept pending by the respondents.

9. I have gone through the records of the case and heard the argument of the counsels for the parties carefully. The instructions regarding the compassionate appointment follows from the DOP&T O.M. No. 14014/6/94-Estt(D) dated 9.10.1998. The Delhi Police standing order No. Welfare 04/2022 is based on the above guidelines of the DOP&T. These guidelines quote the Hon'ble Supreme Court's decision in the case of Umesh Kumar Nagpal vs. State of Haryana and others wherein the Hon'ble Supreme Court has laid down important principles for compassionate appointment in government offices. The Hon'ble Supreme Court has observed that:

"an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind."

10. In view of the observation of the Supreme Court in the aforementioned in Local Department's case (supra) it would defeat the very purpose of compassionate application if the application of present applicant for compassionate appointment is kept abeyance by linking such consideration to the finalization of the decision in OA No. 2554/2021. In all such compassionate appointments, immediate financial position of the dependent family is of prime importance. If the application for consideration of the applicant is kept pending , over a period of time it may lose importance and sanctity. Moreover in case of Umesh Kumar Nagpal vs. State of Haryana(supra), as it has been rightly averred by the counsel for applicant, it is held that consideration for such employment is not a vested right which can be exercised at any time in future. The whole object

of granting compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family of the deceased from financial destitution and to help it get over the emergency to overcome financial crises immediately after the death of the deceased employee who is the sole bread earner of the family. Moreover, the respondents are competent to work out as how much of family pension will be admissible to the members under the family pension scheme. The mother of the deceased constable has sought relief for the 50% of family pension in OA No. 2554/2021. Even if 100% family pension goes to the widow of the deceased employee, whether that amount is sufficient or not for considering her case for compassionate appointment, is a matter to be decided by the respondents. Such decision should be taken immediately without waiting for the decision in OA No. 2554/2021 regarding who is entitled to how much of admissible family pension. The totality of the financial condition of the dependent family members, moveable / immoveable property and employment or non-employment of other family members should be considered as per the prevalent government instructions issued from time to time.

11. In view of the above, it is the bounden duty of the respondents to consider the case of the applicant for compassionate appointment and take appropriate decision depending upon the relevant factors like availability of the vacancy, educational qualification, physical fitness and financial position of the applicant viz-à-viz all other competitive applicants under the compassionate appointments considered in a particular cycle of consideration for such appointment in Delhi Police. If the case of the applicant is delayed because of the ongoing litigation and her case is pushed down to the other cycle, she may be facing a situation where she has to compete with other applicants with whom she was not supposed to be compete in the first cycle of such consideration. That would amount to discrimination and violation of Articles 14 & 16 of Constitution of India.

12. In view of the above, the respondents are directed to consider the case of the applicant for compassionate appointment within a period of six weeks from the date of receipt of a certified copy of this order, irrespective of the decision in OA No. 2554/2021.

13. The OA is disposed of in above terms. There shall be no order as to costs.

All pending MAs are also disposed of accordingly.