

(2019) 03 CAT CK 0080

In the Central Administrative Tribunal

Case No : Original Application No. 4084 Of 2015

Praveen Kumar

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 03 CAT CK 0080

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : K.P.S. Dayal, Anil Karnwal, V.K. Jain, K.M. Singh

Final Decision : Dismissed

Judgement

1. The applicant's father was a regular and permanent employee working as Beldar in Municipal Corporation of Delhi (MCD). He unfortunately died on 24.11.2007 while still in service after completing approximately 27 years of service. The applicant applied on 12.06.2008 for his appointment on compassionate ground. There was no response. Subsequently, MCD advised him on 21.12.2010 that his request was considered on 02.08.2010 and since there was no vacancy, the decision on the case was postponed. Feeling aggrieved, the applicant had approached the Tribunal in OA No.1365/2011. This was decided on 15.04.2011 with following directions:

"4. As it is only just and proper that the applicant be apprised at least of the factual position of his case and the details of the consideration of his case by the Compassionate Appointment Committee, i.e., composition, parameters laid down, etc. - which would be available only with the respondents - we dispose of this OA, at the admission stage itself, by directing the respondents to look into his case, treating this OA also as a supplementary representation, and take a decision thereon in accordance with the rules and communicate the same to him by passing a reasoned and speaking order, within a period of six weeks from the date of receipt of a copy of this order, on the subject indicating thereon also the

factual position with regard to the vacancies available, the number of cases considered along with his, etc. 5. The OA stands disposed of in terms of the above directions. The applicant shall have liberty to challenge the order passed in accordance with law in the event any grievance still survives."

2. In compliance thereof, the respondents passed an order on 20.06.2011, relevant part of which is as under:

"The deceased is survived by his wife (housewife), two sons and two daughters. The elder son of the deceased is married and does the private job and earns Rs.200/- per month. The younger son who is unmarried and unemployed has applied for his compassionate appointment. Both the daughters are unmarried. The family resides in its own house measuring about 50 sq. Yards. The Committee considered this case in the years 2009, 2010 and 2011. But, lack of vacancies under quota, no relief has been given to the applicant. Finally, it is recommended to close the case, as provided under instructions."

On the above recommendation of the Committee, the compassionate appointment case of Sh. Parveen Kumar to the post of LDC has been closed by the Commissioner, MCD on 12.6.2011. The copy of the instructions is enclosed herewith."

3. Not being satisfied, the applicant filed a second OANo.3185/2011. This was decided vide orders dated 09.09.2011. The operative part reads as under:

"7. In view of the above request, the OA is disposed of, at the admission stage itself, by directing the respondents to pass a fresh order in supersession of the order dated 20.06.2011 at page 15A (Annexure A-1), indicating specifically and clearly details mentioned in the directions dated 15.04.2011 of this Tribunal. The order to be passed should be issued at an appropriate level after getting the same approved by the Commissioner, MCD and should be issued within six weeks from the date of receipt of a copy of this order. No costs."

4. In compliance thereof, the speaking order was passed on 13.01.2012. Relevant part is reproduced below:

"..... it is informed him that his case was placed before the compassionate appointment committee in the years 2009, 2010 & 2011. His case was considered in terms of the criteria made by the Labour Welfare Deptt. He scored only 01 point, while the cases of the widow candidates having 4 points have been recommended and approved for making compassionate appointment to the post of Peon. Finally, in the years 2011, the case of the applicant closed, as provided under instructions on the subject.

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Since, there is no circumstantial change in the facts of the case, his case has been rejected."

5. The applicant was still aggrieved and as such a third OA was filed vide

No.3715/2012. This was decided vide orders dated 09.01.2014. By this time, the time limit of three years for consideration of compassionate ground appointment request was also done away with vide DOP&T OM dated 26.07.2012. The Tribunal gave following directions:

"4. Therefore, matter is remitted back to the respondents. They shall once again consider the applicant and issue him with a speaking order but this shall also contain the details of consideration in all those years earlier and with full details provided. It is to be noted that applicants case for compassionate appointment secures legitimate expectation of being told the entire factors, Page 1/2 CENTRAL ADMINISTRATIVE TRIBUNAL (OA) Original Appl./3715/2012 JUDGEMENT if his case is to be rejected. This cannot be treated as a private matter within the absolute discretion of concerned authorities. Original Application is allowed and the matter is remitted for appropriate and fresh consideration. No costs."

6. Since no action was taken by the respondents, the applicant preferred a CP No.438/2014. However, before a decision could be recorded on the contempt petition, the respondents had already passed a speaking order dated 21.05.2014. When this was brought to the notice of Tribunal, following orders were passed in the contempt petition on 10.07.2015:

"This Contempt Petition has been filed alleging non-obedience of the order of this Tribunal. Learned counsel for the petitioner himself submits that respondents have since passed a speaking order, which he would be challenging in separate proceedings. Therefore, the CP has become infructuous and is, therefore, dismissed."

7. Meanwhile, the applicant had also filed a writ petition before Hon'ble High Court of Delhi vide WP (C) No.9026/2015 wherein following orders were passed on 21.09.2015:

"Learned senior counsel for petitioner seeks permission of this Court to withdraw this petition, with liberty to file a fresh petition before the Central Administrative Tribunal to claim the relief, as claimed in this petition. This petition and application are accordingly dismissed as withdrawn, with liberty as aforesaid."

8. It is necessary to see the reasoning behind the order dated 21.05.2014 passed by the respondents. The parameters have been brought out, based upon which the points are to be awarded to various candidates under consideration. The specific items for evaluating the candidates are as under:

"(A) Housing Position of the applicant-

1. Own House-0.0 point
2. Rental House/Municipal Accommodation -01 point.

(B) Family Liabilities of the applicant -

1. Any other member in the family is earning -0.0
2. Applicant is the spouse without Liabilities/only child - 0.5
3. Applicant has unmarried brother/sister to support-01
4. Widow without children 1.5 point
5. Widow with children -03

(C) Terminal Benefits received by dependents -

1. Pension less than Rs.2000/- Per Month -02 points
2. Pension between 2001-2000 - Per Month -1.5 points
3. Pension between 3001-4000 - Per Month -1.0 point
4. Pension more than Rs.4000 - Per Month -0.0

(D) Other factors taken into consideration

1. Financial status of the family of the deceased.
2. Socio Economic condition of the family."

The respondents have also brought out the details in respect of consideration accorded to the applicant on 28.08.2009, 21.08.2010 and thereafter on 06.04.2011.

9. The applicant is, however, aggrieved that the Tribunal vide their orders dated 09.01.2014 in OA No.3715/2012 had directed fresh consideration (para 5 supra). The applicant pleads that the same has not been accorded by the respondents and they had only brought out the previous considerations, last being as of 06.04.2011. The applicant is also aggrieved that his fundamental rights under Clause 14, 16 & 21 of Constitution of India have also been violated. These grievances have been ventilated in the instant OA.

10. The respondents opposed the OA. Following averments have been made in the counter reply.

10.1 The Supreme Court has ruled in the cases of Himachal Road Transport Corporation vs. Dinesh Kumar, JT 1996 (5) SC 319 and Hindustan Aeronautics Limited vs. Smt. A.Radhika Thirumalai, JT 1996 (9) SC 197 that appointment on compassionate grounds can be made only, if a vacancy is available for the purpose.

10.2 The Supreme Court in the matter of the Life Insurance Corporation of India vs. Mrs. Asha Ramchander Ambedkar and others, JT 1994 (2) SC 183 had held that the High Courts and Administrative Tribunals cannot give directions for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

10.3 The Supreme Court's judgment dated May 4, 1994 in the case of Umesh Kumar Nagpal vs. State of Haryana and others, JT 1994 (3) SC 525 has laid down that compassionate appointment is not a vested right.

10.4 In SAIL vs. Madhusudan Das, 2008 (15) SCC 560 the Hon'ble Supreme Court reiterated the principles in respect of such appointments and had stated as under:

"..... This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

10.5 In General Manager, State Bank of India vs. Anju Jain, 2008 (8) SCC 475, following was clearly stated:

"..... Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment."

10.6 In Union of India vs. Shashank Goswami, 2012 (11) SCC 307, following was observed:

"9. the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right."

10.7 In SBI vs. Raj Kumar, 2010 (11) SCC 661, following was ruled:

"6.The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

10.8 In the Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat Singh, 2012 (13) SCC 412, following was observed:

"19. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion."

10.9 The respondents also relied upon following judgments:

(i) Umesh Kumar Nagpal vs. State of Haryana and others, JT 1994 (3) SC 525 (supra)

(ii) Sushma Gosain vs. Union of India, (1989) 4 SCC 468

(iii) Balbir Kaur vs. Steel Authority of India Limited, 2000 (4) SCALE 670

(iv) Yudhvir Singh vs. Indian Oil Corporation Limited, WP (C) No.7523/2010 decided on 11.07.2013 by Hon^{ble} High Court of Delhi.

11. The respondents thus pleaded that compassionate ground appointment is not a vested right. It is just a benevolent consideration which is to be extended by the respondents to provide immediate succour to the bereaved family and to avoid condition of penury. This consideration has since been extended thrice. However, since applicant secured lesser points and number of posts were less, his case could not succeed. The OA needs to be dismissed.

12. Matter has been heard at length. Sh. K.P.S.Dayal, Sh. Anil Karnwal and Sh. V.K.Jain, learned counsel represented the applicant and Sh. K.M.Singh, learned counsel represented the respondents.

13. Compassionate ground appointment is not a vested right. It is only a benevolent consideration to be extended by the respondents to take care of the immediate needs of the bereaved family when the bread earner is no more and

to avoid conditions of penury in such circumstances. This consideration has since been extended by the respondents thrice.

It is noted that in the first consideration on 28.08.2009, there were six widows also under consideration and who all had secured 4 points each whereas the applicant got only 2 points and in keeping with the number of posts available, one of the widow was appointed on compassionate grounds.

In the second consideration on 02.08.2010, four widows were also under consideration and had secured 4 points each and one of the widow was recommended for compassionate ground appointment and the committee recommended that the applicant's case be considered in the next year.

In the third meeting on 06.04.2011, four widows who were also under consideration, had secured 4 points each out of which two widows were recommended for compassionate ground appointment. The applicant's case could not be considered and accordingly the case was closed.

14. The contentions put forth by the applicant that his case has not been considered afresh, as was ordered by the Tribunal on 09.01.2014, is not maintainable. In compliance to the Tribunal's decision dated 09.01.2014, the respondents have passed a detailed speaking order on 21.05.2014.

This order was thus very much available and was in the knowledge of the applicant when contempt case was closed vide orders dated 10.07.2015. The applicant's writ filed in the High Court was also withdrawn by him on the plea that the applicant shall be making a fresh application to the Tribunal.

In view of this, the plea that fresh consideration has not been given, cannot be raised at this late stage.

15. In view of the foregoing, the applicant's plea is not finding acceptability. The OA is dismissed being devoid of merit. No order as to costs.