
(2005) 05 AHC CK 0260

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55885 of 2003

Rajesh Kumar

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench, The Union
of India (UOI)

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Citation : (2005) 5 AWC 4898 : (2005) 3 ESC 2070

Hon'ble Judges : V.M. Sahai, J;M.K. Mittal, J

Bench : Division Bench

Advocate : Ravi Kant and Manoj Kumar Pandey, for the Appellant; B.N. Singh, S.S.C., Aradhana Chauhan and Addl. S.C., for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—This petition has been filed against an order dated 26.9.2003 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, whereby the original Application No. 1242 of 2001 filed by Rajesh Kumar the present petitioner, has been dismissed.

2. The facts as mentioned in the petition, in brief are that the father of the petitioner was working as watchman of 24, E.D. A.F.S. Manauri, Allahabad, for the last 27 years. He died on 4th July 1999 during his service tenure at Allahabad. At the time of the death of the petitioner's father, he was living with his two sisters. The mother of the petitioner had already died in the year 1997. The petitioner's two elder brothers are married and living separately., They are petty daily wage earners (Mazdoors). The petitioner was studying at the time of the death of his father. Now he has also the responsibility of marrying his two sisters, who are living with him. The petitioner is not working anywhere and his family is without any source of Income. According to the petitioner, the supernumerary benefits received after the death of the father were equally divided amongst the three brothers and the petitioner received about Rs. One lakh but his amount was utilized in repaying the debts taken for the treatment of

hi father. The petitioner has also to spend Rs. 1000/- per month towards the treatment of his younger sister who is suffering from mental illness. In the circumstances, petitioner applied for appointment on compassionate grounds on 14.12.1999 for the post of L.D.C. (Typist Clerk) of Grade-III post. When no action was taken, he made several representations on 31.10.2000, 15.2.2001, 1.8.2001 and 24.8.2001. The representation date 24.8.2001 was decided by the Head Quarters, Maintenance Command I.A.F. Nagpur and the contention of the petitioner that he was, living in indigent circumstances, was not accepted and his application was rejected vide, order dated 24.9.2001. According to the petitioner, this rejection was not legal because no member of the family of the petitioner or for that matter, of the deceased employee, i.e. father of the petitioner, is employed anywhere.

3. The petitioner also contended that the Tribunal failed to consider the clause "d" and "e" of the compassionate employment scheme formulated by the respondents. According to him his two brothers are not supporting other members and the family is facing economic distress. The two brothers of the family are also living separately.

4. Against that order the petitioner filed Original Application before the Central Administrative Tribunal, the same was contested and the respondents took the plea that two brothers of the petitioner were gainfully employed and, therefore, it cannot be said that after the death of the father, the family was living in indigent circumstances. It was not possible to extend the benefits of the compassionate appointment scheme to the petitioner. After considering the respective contention of the parties, learned Tribunal came to the conclusion that the two brothers of the petitioner were gainfully employed and, therefore, it cannot be said that the family was living in indigent circumstances. According to learned Tribunal petitioner's family cannot be said to be living in an indigent condition when two sons of the family were already working on daily wages and getting a sum of Rs. 18000/- per year. It further held that for all these, the death of the father cannot be taken as a source to get the entry in the Government Service. If the applicant is not employed and is educated, he has to compete with other persons, in accordance with rules and then only he can get the employment. Compassionate appointment has not to be taken as a line of succession. Consequently, the application was dismissed. Feeling aggrieved this petition has been filed.

5. The main contention of the respondents No. 2 and 3 is that at the time of the death of the petitioner's father his two elder sons were doing casual jobs on daily wages and the petitioner is also doing casual job on daily wages in construction work as per 14 P&B (U), AF report. As per guidelines, there are limited numbers of vacancies within the 5% quota of compassionate appointment. Two elder brothers of the petitioner who are earning members, also have responsibility towards their unmarried sisters.

6. In his rejoinder affidavit, the petitioner has contended that he is not doing job

and is still unemployed and his brothers are not supporting his sisters. In supplementary counter affidavit, the respondents have contended that the petitioner is doing casual job on daily wages in construction work, and in this connection, report of 14 P&S (U), AF has also been annexed as Annexure -1 to the supplementary counter affidavit, which shows that Rajesh Kumar, the petitioner is working on casual basis. In supplementary rejoinder affidavit, the petitioner has stated that he was working as daily wage in some construction work but the daily wages are not permanent in nature and therefore he is still unemployed.

7. We have heard learned counsel for the parties and perused the record.

8. The contention heard learned counsel for the petitioner is that the petitioner is entitled to be employed on compassionate basis after the death of his father because he is living in indigent circumstances and is unemployed. He has further contended that two elder brothers of the petitioner are also casually employed and are living separately and are not supporting the petitioner or his two sisters. Against it the learned counsel for the respondents contended that the petitioner is not living in indigent condition and that he is employed as daily wage in construction work. He further contended that two elder brothers also took share in the supernumerary benefits of the father of the petitioner and that they have also responsibilities towards their sisters. He vehemently contended that the applicant petitioner cannot be treated as living in indigent circumstances and that the applicant petitioner cannot claim the job on compassionate basis as a matter of right. He further contended that the learned tribunal has rightly rejected the application of the petitioner and this writ petition is liable to be dismissed.

9. We have considered the arguments as advanced on both the side and are of opinion and that the petitioner is not entitled to any compassionate basis as he cannot be treated as living in indigent condition. The Hon'ble Apex Court has laid down in the case of *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994) SCC 138 the following guidelines for granting compassionate appointment:-

- a. Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- b. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.
- c. Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
- d. The Government or the Public Authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment the family will not be able to meet the crisis, that job is to be offered to the eligible member of the family.

e. Compassionate appointment cannot be granted after lapse of a reasonable period and it is not vested right which can be exercised at anytime in future.

10. Therefore, while granting appointments on compassionate basis the financial condition of the family of the deceased has to be seen.

11. Learned counsel for the petitioner referred to clause "d" and "e" of the scheme of compassionate appointment and contended that the brothers of the petitioner were not supporting and therefore the petitioner was living in indigent condition. In clause "d", it has been provided that while considering the appointment on compassionate basis the concerned authority has to satisfy about the number of dependents, assets, liabilities left by the Govt. servant, income of the earning members as also liabilities including the fact that the earning members residing with the family of the Government servant and whether he should not be a source of support to other members of the family. Clause "e" of this scheme provides that in cases where any member of the family of the deceased is already in employment and is not supporting the other members of the family of the Govt. servant, extreme caution has to be observed in ascertaining the economic distress of the members of the Govt. servant so that facility of the appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

12. Therefore, if the earning members of the family are not supporting the other members of the family of the deceased it can be a circumstance to suggest that the family is not having good financial condition but in this case it appears that the petitioner did not take any plea before the concerned authority or even before the Tribunal that his brothers were not supporting the petitioner or his two unmarried sister. The petitioner only took the case that his brothers were living separately. But even the case that brothers were living separately is not corroborated by the representations as made by the petitioner himself. In his representations dated 18.9.2000, 10.8.2001, 24.8.2001 he has mentioned his family consisting of seven brothers and sister. Only in representation dated 15.2.2001 he mentioned that his two brothers have separated but in later representations he again reverted to his earlier case that family consisted of seven brothers and sisters. It shows that the two brothers who are earning members in the family have not separated. Even if, for arguments sake the petitioner's case that his two brothers are living separately is accepted, it does not show that these two brothers are not supporting the petitioner and his two unmarried sister on the basis of mere separate living of a member of the family, it cannot be presumed that he is not supported the other family members. Admittedly these two brothers took their share in the supernumerary benefits and as such are liable to share the responsibilities for the sisters also. Therefore, the petitioner has failed to show that his brothers who are earning members are not supporting him and his two sisters.

13. Again it has come on record that the petitioner himself is employed as casual

labour in construction work and therefore, it shows that the petitioner is also the earning member in the family.

14. In the circumstances, we come to the conclusion that the petitioner has failed to show that he is living in indigent condition. Therefore, we are of the opinion that the learned Tribunal has rightly dismissed the Original Application and the petition, being devoid of any merits, is liable to be dismissed.

15. The writ petition is hereby dismissed: No order as to costs.