

(2007) 08 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) No. 10191 of 2006

Sandeep Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Citation : (2007) 115 FLR 664 : (2008) 2 SLJ 378

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : R.S. Thapliya and K.R. Rehman, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—Late Smt. Rani Arora was working as a Switch Board Operator (CSBO) Group-III in the Signal Regiment of the Indian Army. She died in harness on 3.2.1987 leaving behind two minor children including the petitioner herein. An application for a compassionate appointment against a Group C post was filed by the petitioner in the year 1999 after he attained majority. Since this application did not evoke any response from the respondents, he filed C.W.P. No. 8818/2003 in this Court for a mandamus directing the respondents to consider his request which petition was eventually disposed of by this Court by an order dated 11.5.2005 with a direction to the respondents to consider the petitioner's claim for a compassionate appointment on merits in accordance with the scheme that envisages such appointments.

2. The petitioner's case was pursuant to the above direction considered by a Board of Officers on 11.7.2005 against one of the 10 vacancies available with the Army by reason of the raising of South Western Command. According to the respondents, there were in all 55 candidates seeking compassionate appointments against the said ten vacancies. On the basis of the inter se merit of the candidates which was in turn determined in accordance with the provisions of the scheme, the petitioner was placed at serial No. 8 and recommended for

appointment to the Government against one of the available vacancies. The Board also recommended a relaxation of the period within which an application for compassionate appointment could be filed under the scheme.

3. When the matter came up before the Secretary, Ministry of Defence for grant of approval to the appointment of the petitioner, the Secretary found fault with the determination of the vacancies for making appointments on compassionate basis. He was of the view that appointments on compassionate basis could be made only against the existing vacancies and not against the vacancy that became available on account of raising of new battalions. The matter was accordingly remitted back to the authorities below to correctly determine the number of vacancies against which compassionate appointments could be made keeping in view the guidelines issued on the subject. The Secretary also observed that the High Courts and Administrative Tribunals cannot give a direction for appointment of a person on compassionate grounds but simply direct consideration of the candidates for such an appointment. The relevant portion of the Secretary's order reads:

The Supreme Court has held that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment. In this case the High Court of Delhi has directed to reconsider the petitioner's case and examine the merit of his claim in the light of the policy and pass appropriate orders in the matter. Therefore the case of Shri Sandeep Kumar may be considered in the light of the existing DOP&T guidelines on the subject.

4. A fresh consideration of the petitioner's claim for a compassionate appointment was then accorded in which he was placed at Serial No. 12 of the merit list. According to Ms. Acharya, Counsel for the respondents, at the time of the fresh consideration of the petitioner's claim, there were, as against 55 candidates considered earlier, a total of 56 candidates. This implied that one more candidate, who was not earlier considered, had also joined the race for an appointment when the petitioner was considered by the review board held on 17.10.2005. The respondents' further case is that in consequence of the recommendations of the second/review board only two persons were appointed by the respondents one of whom was appointed against a Group C vacancy while the other was appointed against a Group D vacancy. Since the petitioner was much below in the order of merit, he could not, according to the respondents, be offered any appointment. Aggrieved, the petitioner has filed the present writ petition seeking a mandamus directing the respondents to appoint him on compassionate basis by reference to the recommendations made by the Board of Officers pursuant to its meeting held on 11.7.2005.

5. When this matter came up before us on 13.3.2007 we directed the respondents to place on record the following information:

(a) The number of vacancies available for being filled up on compassionate basis.

(b) The proceedings of the Board of Officers referred to in order dated 22.2.2006 impugned in the petition.

(c) The proceedings of the Board of Officers referred to in order dated 19.12.2005.

(d) Copy of the order passed by the Defence Secretary in relation to the compassionate appointment of the petitioner.

6. In compliance with the above direction, the respondents have filed an additional affidavit in which they have disclosed the vacancy position for the year 2000 to 2005 as reflected in a statement marked Annexure R-I to the additional affidavit. They have further pointed out that there is no vacancy as on date for being filled up on compassionate basis. It is also stated that out of 31 vacancies filled up on compassionate basis between 2000 and 2006, 12 vacancies were of Group C while the remaining were of Group D.

7. We have heard learned Counsel for the parties at some length and perused the record. The material facts are not in dispute. It is not in dispute that the petitioner was, in terms of the prevalent policy, entitled to be considered for appointment against a Group C post on compassionate basis. It is also not in dispute that an application for such an appointment had been made by the petitioner in the year 1999 after he had attained majority. It is common ground that the petitioner had not been considered for any such appointment till the time this Court issued a mandamus directing the respondents to do so. According to Ms. Acharya the petitioner was not considered earlier as his application had been rejected on the ground that the same was beyond the period of three years from the date the mother of the petitioner had passed away. That rejection was on the face of it unjustified having regard to the fact that the petitioner was a minor till as late as the year 1998. There was, therefore, no question of any period of limitation running against the petitioner so as to disentitle him to the consideration otherwise due to him. Be that as it may, the fact remains that between the years 1999 and 2005 a number of appointments on compassionate basis were made. If the statement produced along with the additional affidavit of the respondents is taken as correct, as many as 14 such appointments were made between the years 2000 and 2005. When petitioner was eventually considered for one such appointment in the year 2005 pursuant to the direction of this Court, he was not only found to be eligible for appointment but was placed at serial No. 8 in the order of merit. In the ordinary course an appointment in favour of the petitioner ought to have been made on the recommendation made by the Board to that effect. The proposal submitted by the Board of Officers however ran into rough waters because the Secretary found fault with the calculation of the vacancies. According to him, the vacancies for compassionate appointment could not be calculated by reference to the new raising.

8. For purposes of the present writ petition, we shall assume that to be so, we

will assume that the vacancies for purposes of determining 5% quota to be filled up on compassionate basis had to be calculated by reference to the pre-existing vacancies and not vacancies available on account of a new raising. The question, however, is whether denial of an appointment to the petitioner despite the recommendations made by the Board was justified even when 14 other persons had been appointed between 2000 and 2005 on compassionate basis during which period the petitioner even though entitled to consideration for an appointment based on his merit was not so considered. Our answer to that question is in the affirmative. If there were as many as 14 vacancies that were filled up between 2000 and 2005, it was obligatory for the respondents to consider the petitioner against one such vacancy particularly when he was eligible for the same. Non-consideration of the petitioner would render the entire process of appointment between 2000-2005 illegal. The minimum he was entitled to was an appointment on a preferential basis against the next available vacancy in the category of compassionate appointment. The next available vacancy arose in the year 2005-06 when the petitioner was placed at serial number 8. The petitioner was not, however, favoured with an appointment. Instead he was pushed down in the merit list from serial No. 8 to No. 12 in the review Board held on 17.10.2005. We fail to appreciate how a person who was placed at serial No. 8 in the merit when there were a total of 55 candidates could be pushed down to number 12 in a review process when the number of candidates had risen by only one candidate. Even assuming that the new candidate who had, in the meantime, become eligible for consideration was more deserving and meritorious than the petitioner, the petitioner could have at best suffered a set back by only one step pushing him down to serial No. 9. The process of evaluation of the merit of the candidates and the parameters for such evaluation remaining unaltered the placement of the petitioner at serial No. 12, is incongruous and makes the fairness of the entire process suspect.

9. There is yet another dimension to the controversy. According to the respondents, as many as 17 vacancies, are expected to be released from ADRP for being filled up on compassionate basis. A third Board of officers was, according to Ms. Acharya, held on 31.1.2006 against these anticipated vacancies in which the petitioner did not according to the respondents even make the grade. This is, according to the petitioner entirely mala fide and intended to somehow defeat the directions issued by this Court from time-to-time. The petitioner's case is that there is a certain amount of reluctance on the part of the respondents in giving to the petitioner his due not because he does not deserve it but because he has approached this Court for grant of relief to him.

10. We do not in the present proceedings propose to go into the question whether the refusal on the part of the respondents to give a compassionate appointment to the petitioner is really mala fide as alleged by the petitioner and whether the same is intended to somehow defeat the directions issued by this Court. We say so because a direction to the respondents to appoint the petitioner against one of the anticipated vacancies out of 17 that are expected to be

released by ADRP, should, in our opinion, meet the ends of justice. It is true that in the ordinary course, Courts do not direct appointments to be made and a fair consideration of the claim for appointment is what is considered sufficient. But looking to the history of this case and the peculiar facts and circumstances in which the petitioner has been made to run from pillar to post for the past many years, an effective order no matter unconventional in certain respects alone would meet the ends of justice.

11. We are also of the view that we need to suitably would the relief not only to save appointments already made by the respondents from being quashed but also to avoid multiplicity of litigation which would be inevitable if the petitioner's claim is rejected by the respondents once again on one pretext or the other.

12. We accordingly allow this petition, quash the impugned orders and direct that the respondents shall appoint the petitioner against a Group C post on compassionate basis no sooner a vacancy in the compassionate quota becomes available either because of release by ADRP or otherwise. The needful shall be done expeditiously but not later than two months from the date the vacancy becomes available. No costs.