

(2024) 12 PAT CK 1248

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.18671 of 2024

Sanjay Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-2024

Acts Referred:

Citation : (2024) 12 PAT CK 1248

Hon'ble Judges : Purnendu Singh, J

Bench : Single Bench

Advocate : Bipin Kumar, Amarnath

Final Decision : Disposed Of

Judgement

Purnendu Singh, J

1. Heard the matter in "Virtual Hybrid Mode".

2. Learned counsel appearing on behalf of the Union of India joined the proceeding through video conferencing and heard Mr. Bipin Kumar, learned counsel along with Mr. Amarnath, learned counsel appearing on behalf of the petitioner.

3. The petitioner in paragraph no. 1 of the present writ petition has sought, inter alia, following relief(s), which is reproduced hereinafter:-

"I. For the issuance of writ/writs in the nature of mandamus commanding the respondents to immediately appoint the petitioner to the post of cleaning worker under C.T./S.K. to which the petitioner is rightfully entitled and legally eligible.

II. For the issuance of writ in the nature of mandamus as to why the petitioner has not been appointed as cleaning worker under C.T./S.K. despite the fact that the petitioner is eligible for the same as compassionate appointment.

III. For any other writ/writs, order/orders, direction/ directions as this Hon'ble court may deem fit and appropriate in the facts and circumstances of this case."

Brief Facts:

4. The brief facts of the case are that the father of the petitioner died in harness on 18.04.2022 while he was serving as ASI/GD in Jammu and Kashmir under Battalion No. G/187 and Force No. 820300034. The petitioner being dependent and for survival of his family, he applied for considering his case for being appointed on compassionate ground for the post of Constable (GD), but he was not selected. Thereafter, the petitioner expressed his willingness to be appointed as cleaning worker in CT/SK and in this regard filed a representation dated 17.09.2023 (Annexure-P/3) before the Commandant, 187th BN CRPF Battalion. In response to the representation of the petitioner, a notice for pre-selection training was issued to the petitioner, wherein name of the petitioner appears at Sl. No.4 and a pre-selection training was scheduled to be held from 27.05.2024 to 10.06.2024 for the post of Constable/GD (Driver, Cook, Cleaning Worker, Water Carrier, Bigular). The petitioner appeared in the pre-selection training and he along with 25 other applicants were subjected for medical test, in which the petitioner was found unfit and for the said reason, his case for compassionate appointment was not considered.

Submission on behalf of the parties:

5. Learned counsel appearing on behalf of the petitioner contended that the petitioner applied before the authority for considering his appointment on compassionate ground after his father died in harness on 18.04.2022. The learned counsel further stated that thereafter the petitioner was called for medical examination and after examining the petitioner by Dr. Santosh Suman, nominated for DME of the candidates at CRPF Group Centre, Mokamaghat, Patna, the petitioner was declared unfit by the doctor due to deviated nasal septum, bilast hydrocele and mild bronchitis and his application for compassionate appointment was rejected. Learned counsel further contended that non-consideration of the entitlement of the petitioner for considering his appointment for the post of Constable/SK in light of the Standing Order No. 05 of 2001 of the CRPF and several law laid down by the Apex Court will amount to defeating the objective of the compassionate appointment.

6. Per contra, learned counsel appearing on behalf of the Union of India submitted that the case of the petitioner cannot be considered in view of the fact that the petitioner has been found medically unfit during medical assessment test, as it would appear from letter issued to Deputy Inspector General of Police, Composite Hospital, Keripuwal, Muzzafarpur. (Annexure P/6 of the writ petition).

Analysis and Conclusion:

7. Heard the parties.

8. The law is well settled in respect of appointment on compassionate ground. The Apex Court relying on the ratio of Umesh Kumar Nagpal v. State of Haryana and Others reported in (1994) 4 SCC 138, further in Paragraph No. 7.2 in the

case of *The State of West Bengal Vs. Debabrata Tiwari & Ors. Etc.* passed in Civil Appeal nos. 8842-8855 of 2022, has laid down following principles of compassionate appointment, which are reproduced hereinafter:

"7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

9. In the case of *Jagdish Prasad v. State of Bihar* reported in (1996) 1 SCC 301, Hon'ble Apex Court, while considering the object of compassionate appointment held that the object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

10. In case of *State of U.P. v. Paras Nath*, reported in (1998) 2 SCC 412, the Hon'ble Apex Court held that the purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. It was further observed that none of these consideration can operate while the application is made after a long period of time.

11. In the present case, it appears that the application of the petitioner was considered and he was called for medical fitness examination and consequently,

he was declared medically unfit by the doctor, as it would appear from Annexure P/6. Standing Order No.05 of 2001 makes it clear that there is no prescription of physical standard for the post of Constable (Daftry/Peon/Safai Karamchari (Min.) /Farash) and for Constable (Library Attendant) which disentitles the petitioner for being considered to be appointed on compassionate ground.

12. I find that in view of the Standing Order No. 05 of 2001 and also the order dated 06.05.2024 passed in L.P.A. No. 1356 of 2019, wherein this Court taking into consideration the physical standard prescribed for open competitive recruitment on various posts, as well as, the Standing Order No. 05 of 2001 relating to the compassionate appointment has made a clear distinction and in paragraph no.6, wherein, it has considered that in light of the principle laid down by the Apex Court, the appellant's grievance being against the CRPF organisation in seeking compassionate appointment, the CRPF has to follow the Standing Order No. 05 of 2001.

13. The competent authority is directed to consider the case of the petitioner in the light of the law laid down by the Apex Court referred hereinabove and the Standing Order No. 05 of 2001 of the C.R.P.F.

14. The writ petition stands disposed of.

15. There shall be no order as to costs.