

(2009) 04 CAL CK 0054
In the Calcutta High Court
Case No : W.P.C.T. No. 626 of 2003

Shri Biswajit Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2009) 04 CAL CK 0054

Hon'ble Judges : Tapas Kumar Giri, J; Amit Talikdar, J

Bench : Division Bench

Advocate : Pankaj Halder, for the Appellant; R.N. Bag, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—An Order dated 3rd October, 2002 in O.A. No. 1339 of 2001 passed by the Calcutta Bench of the Central Administrative Tribunal has been sought to be assailed in this Application.

2. By the impugned Order, the learned Tribunal refused the prayer of the petitioner for compassionate appointment in the place of his deceased father, who passed away just before few months of his superannuation while he was working under the respondent No. 3 (Manager, Telecom Factory, Calcutta).

3. Learned Counsel appearing in support of the application has submitted that after his father passed away on 15/02/1996, his mother approached the respondent No. 2 (Chief General Manager, Telecom Factory, Calcutta) on 12/04/1996 for compassionate appointment in his favour.

4. Thereafter she applied in the prescribed Format for appointment on compassionate ground on 28.8.1996 as per the instructions of the respondent No. 2. However, the same was refused by the respondent No. 2 on 11.4.1997.

5. Thereafter she again approached the respondent No. 2. Finally, her prayer was turned down on 6.3.1998.

6. Again she prayed for reconsidering the said decision before the respondent No. 2, which was ultimately refused by the respondent No. 2.

7. Hence the Tribunal was approached, which resulted in the impugned Order inter alia holding that compassionate appointment could not be claimed as a matter of right and as the family had managed to survive for the last six years, there was no reason to conclude that they were indigent and in need of financial assistance.

8. Learned Counsel appearing on behalf of the petitioner has submitted that immediately after the death of his father, prayer for compassionate appointment was made but the same was refused by the respondent No. 2 without proper application of mind and in a mechanical fashion.

9. The finding of the Tribunal, according to the learned Counsel for the petitioner, was also cryptic and suffered from non-consideration of the entire materials brought before it, which requires interference by this Court.

10. As a part of his submission he has referred to a Division Bench decision of this Court in Nazrullslam & Anr. vs. State of West Bengal & Ors., (2009)1 Cal HN 339 : (2009)1 WBLR (Cal) 985 to illustrate his point that in the absence of any subjective satisfaction on the part of the respondents to conclude that the family is not facing economic hardship, no contrary opinion can be formed against the applicant and that payment of retiral benefits cannot be a ground for denying a compassionate appointment.

11. He has also referred to the Division Bench decision of this Court reported in (2009)1 Cal HN 23 [Tapan Kumar Barman vs. State of West Bengal & Ors.] to show that payment of retiral dues would not, by itself absolve the authorities from considering the prayer for compassionate appointment.

12. The learned Counsel for the petitioner also referred to the decisions of the Supreme Court in Govind Prakash Verma vs. Life Insurance Corporation of India & Ors., (2005)10 SCC 289 and Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, on the same point.

13. The learned Counsel for the respondents controverted the arguments advanced on behalf of the petitioner and submitted that the respondent No. 2 has rightly refused the prayer for compassionate appointment of the petitioner, which was tested before the Tribunal and there is no scope for this Court to reconsider the same in the absence of any illegality.

14. Affidavit was also used by him incorporating the Scheme for compassionate appointment, which came into effect on 10.2.1999 (Annexure? R1).

15. The learned Counsel for the respondents further submitted that there is a scheme formulated by the Central Government which governs the criteria for compassionate appointment. Since the petitioner did not fall within the same, his case could not be considered.

16. He was of the view that as a matter of right the compassionate appointment cannot be claimed.

17. He relied on the decision of the Supreme Court in Andhra Pradesh State Road Transport Corporation, A.P.S.R.T.C., Musheerabad and Others Vs. Sarvarunnisa Begum, to show that since the mother of the petitioner received sufficient monetary compensation after the death of his father, they had no claim for compassionate appointment.

18. He submitted that the Division Bench decision of this Court in Tapan Kumar Barman vs. State of West Bengal & Ors. (supra) cited on behalf of the petitioner was based on the decision of Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors. (supra) which was distinguished by the Supreme Court in Union Bank of India and Others Vs. M.T. Latheesh, As such, the said decision of Tapan Kumar Barman vs. State of West Bengal & Ors. (supra) would be of no avail to the petitioner.

19. According to the learned Counsel for the respondents that even after the death of the bread earner, the family of the petitioner has survived for a substantial period which shows that there was no need for offering any compassionate appointment. He referred to the decision of the Supreme Court in State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, on this point.

20. The learned Counsel for the respondents has also relied on the decision of the Supreme Court in State Bank of India and Another Vs. Somvir Singh, to show that this Court, while considering the prayer for compassionate appointment is only confined to the limited question as to whether the decision making process rejecting the claim for such appointment has been vitiated by arbitrariness and beyond this nothing can be taken into consideration.

21. Summing up-learned Counsel for the respondents submitted that even after the death of the petitioner's father the family has survived and as already his mother has received more than Rupees one lakh as retiral benefits apart from family pension the question of family being affected by the financial stringency owing to the death of the breadwinner cannot arise and the application was required to be dismissed.

22. After we have heard the submissions made on behalf of the respective parties and have considered the affidavits, we find certain facts remain undisputed:

Shri Abani Nath Das, the father of the petitioner was working as a Group?-D staff under the respondents.

His date of retirement was on 30.9.1998.

He had put in 34 years 7 months service in the Telecom Factory, Calcutta. He died while in service on 15.2.1996.

The Mother of the petitioner approached the respondent No. 2 praying for

absorption of the petitioner on compassionate ground on 1-2.4.1996 (Annexure-P3).

On 28.8.1996 she filed an application in the prescribed Format to that effect before the respondent No. 2.

On 15.4.1997 such prayer was regretted on behalf of the respondent No. 2 (Annexure- R3 of the Affidavit-in-Opposition).

On 28.4.1997 she prayed before the respondent No. 2 for reconsideration of his decision communicated to her on 15.4.1997.

Ultimately, on 6.3.1998 the same was again regretted.

It appears that on 21.5.1999 the same prayer was again reiterated.

23. After we have seen the aforesaid basic tenets of the present case, we would now proceed to consider the prayer for compassionate appointment made on behalf of the petitioner in the present application in the light of the arguments and the decisions cited at the Bar.

24. Before proceeding further, the Affidavit-in-Opposition filed on behalf of the respondents is required to be looked into

25. The same has been affirmed by one Shri Premangshu Sekhar Joardar. He has described himself as "...the authorised agent and Constituted Attorney of the Department...." and stated "...I am authorised to make and affirm this Affidavit on behalf of the Department as well as the respondents hereinabove...."

26. Neither he has annexed with the affidavit any authorisation or affidavit of competency nor has he described his designation. Be that as it may, we would find that in paragraph 9 of the said affidavit the deponent, while dealing with the case of the petitioner for compassionate appointment stated as true to his knowledge "Smt. Das, wife of the deceased employee is having three grown up sons who may be cable to earn in various means. Since the family is able to maintain their livelihood for more than seven years, the condition of indigent position and economic distress of the family is not at all justified...."

27. It is by now a trite position of Law that compassionate appointment is an exception to the normal rule of appointment. Several guidelines are required to be followed for the purpose of offering a compassionate appointment. The same cannot be claimed as a matter of right.

28. In the present case, as we have seen the father of the petitioner, while in service, passed away on 15/02/1996. His mother approached the respondent No. 2 within less than two months of the sad demise of his father i.e. on 12/04/1996 and made an application in the prescribed Format on 28/ 08/1996 which was finally turned down on 06/03/1998 and the said decision was again reiterated on 21/05/1999. Since then petitioner's mother prayed for reconsideration of the decision.

29. At first, we would find that reference made by the learned Counsel for the respondents on the scheme for compassionate appointment (Annexure? R1 of the Affidavit) would have no manner of application in respect of the prayer made on behalf of the petitioner for compassionate appointment.

30. His father passed away on 15/02/1996 and prayer for compassionate appointment was made in 1996, which was turned down in 1998. The scheme came into force w.e.f. 10/02/1999. The said scheme clearly shows that it supersedes all existing instructions. The same cannot have any retrospective effect. As such, we will not be required to look into the said scheme.

31. Now, we will consider the submissions made at the Bar and see as to whether the Order passed by the learned Tribunal affirming the decision of the respondent No. 2 can be sustained in the light of the decisions, which we have seen earlier.

32. The Division Bench of this Court in Nazrul Islam & Anr. vs. State of West Bengal & Ors. (supra) that there should be a subjective satisfaction of the respondents to conclude the family of the deceased employee is not facing economic hardship. In the present case, we have found from the Affidavit affirmed by the deponent purely on the basis of surmise and conjectures Respondents came to the conclusion "Smt. Das, wife of the deceased employee is having three grown up sons who may be able to earn-various means...." and opined"...the condition of indigent position and economic distress of the family is not at all justified."

33. This finding cannot be accepted in the absence of any subjective satisfaction of the respondents.

34. Sitting in a coordinate jurisdiction, this Court has to abide by the ratio of the Division Bench decision in Nazrul Islam & Anr. vs. State of West Bengal & Ors. (supra).

35. If we see very closely the decision of the Supreme Court in Union Bank of India & Ors. vs. M. T. Latheesh (supra) relied on by the learned Counsel for the respondents we find in Paragraph 35 Their Lordships held:

...This is a general observation made by this Court in the context of compassionate appointment. The above Judgment, in our view, is distinguishable on facts and on law. This apart, the case on hand is directly covered by the scheme formulated by the Bank in regard to compassionate appointment.

36. The Supreme Court in Union Bank of India & Ors. vs. M. T. Latheesh (supra) also held the actual amount received by the widow out of the amounts of different benefits sanctioned by the Bank on the death of the employee and deposited by her in fixed deposit fetching a recurring monthly income of interest which coupled with the family pension exceeded the net salary of the deceased and on the basis of the Bank's Scheme, refusal to grant compassionate appointment was held as not arbitrary.

37. In the said decision the Supreme Court also held in paragraph 37 "...compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family....

38. In the present case, we are of the view, that the respondents has not taken into account the actual financial condition of the family in a subjective fashion and it cannot be concluded that the situation did not warrant in granting such appointment.

39. That apart, since the scheme, which has been very strongly relied on behalf of the respondents, having no manner of application there will be little strength left to rebut the prayer made on behalf of the petitioner in this context.

40. The Division Bench decision of this Court in Tapan Kumar Barman vs. State of West Bengal & Ors. (supra), which has relied on the decision of the Supreme Court in Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.(supra) cannot be absolutely washed away as have been sought to be earlier shown on behalf of the Respondents so also the impact of the ratio of the Supreme Court decision of Govind Prakash Verma vs. Life Insurance Corporation of India & Ors. (supra).

41. Once we have covered one phase of the argument of the learned Counsel for the respondents, we would now proceed to another aspect of his submission that in the absence of any arbitrariness in the decision making process rejecting the claim for compassionate appointment, this Court would not be in a position to look into the prayer of the petitioner.

42. The decision referred to in State Bank of India vs. Samvir Singh (supra) by the learned Counsel for the respondents, in our humble opinion, would have no manner of application and would be quite distinguishable in the facts and circumstances of the present case.

43. We have found from the various Annexure, both to the Affidavit as well as in the Writ Application that the prayer for compassionate appointment was refused on behalf of the respondent No. 2 in a most mechanical fashion.

44. We find that there was a printed form and in the vacant space the Name, Date and the Description of the petitioner was simply put in. Neither there has been any application of mind on the plight of the family of the deceased nor was there any subjective satisfaction as to why such appointment could not be offered.

45. The decision of the Apex Court in Andhra Pradesh State Road Transport Corporation Musheerabad & Ors. vs. Sarvarunnisa Begum (supra) relied on behalf of the respondents would, also not be applicable in the present case. In the said decision the Hon''ble Apex Court was also dealing with a case where the widow initially accepted appointment but later she expressed her desire to return the money and claimed compassionate appointment.

46. While dealing with the decision of State of J & K. vs. Sajad Ahmed Mir (supra) we find the said decision is quite distinguishable.

47. The Supreme Court held in that decision that once it is prove that in spite of death of the breadwinner the family survived and application for compassionate appointment was made after a substantial period of time ?claim for such compassionate appointment was not tenable. But as the fact here is quite otherwise, as we have found earlier that without any delay, immediately after the death of his father prayer for compassionate appointment was made and sitting over the matter for a long time ultimately, the decision was conveyed to the petitioner-as such, we would be of the most humble view that the said decision of the Supreme Court in State of J & K. vs. Sajad Ahmed Mir (supra) would not have square application in the fact situation of the present case.

48. If we recapitulate the facts, we would find that just within two months after the death of his father the petitioner's mother approached the respondent No. 2 for compassionate appointment which was finally turned clown in 1998. It cannot be said that there has been any delay whatsoever in praying for compassionate appointment. There has been no subjective satisfaction of the respondents to the effect that either the family of the petitioner has coped with the financial stringency or the package received on the death of the deceased was suitable enough to tide over the crisis. In fact, we have seen earlier that it was the mere conjecture and surmise and if it be said so-practically, the guess work of the deponent with regard to the petitioner's family. In this context we would refer to the decision of the Supreme Court in Syed Khadim Hussain vs. State of Bihar & Ors. reported in (2006)9 SCC 195.

49. The Supreme Court in paragraph 5 of the said decision held: "We are unable to accept the contention of the Counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected...."

50. In the said decision the Supreme Court, considering the "peculiar facts and circumstances of this case" directed the Respondent authorities to consider the application of the appellant and give him appropriate appointment.

51. In the light of the discussions held hereinabove, and upon consideration of the various decisions placed before us, we are of the view that the decision making process adopted by the respondent No. 2 is quite arbitrary and does not speak of a transparent approach.

52. The decisions cited on behalf of the petitioner in Nazrul Islam & Anr, vs. Stale of West Bengal & Ors.(supra), Tapan Kumar Barman vs. State of West Bengal & Ors. (supra), Govind Prakash Verma vs. Life Insurance Corporation of India & Ors. (supra) and Balbir Kaur and Anr. vs. Steel Authority of India Ltd. & Ors. (supra) would be of much application.

53. We are also emboldened by the decision of Syed Khadim Hussain vs. State of

Bihar & Ors. (supra).

54. In exercise of our power of Judicial Review, we feel that unless we interfere in the matter, it would not be substantial Justice.

55. Accordingly, we set aside the Order passed by the learned Central Administrative Tribunal in O.A. No. 1339 of 2001, which in our view also suffered from the vice of absolute non-application of mind and direct the respondents to absorb the petitioner in any suitable vacancy in the scheme for compassionate appointment.

56. Application allowed.

57. No Order as to costs.

Tapas Kumar Giri, J.

58. I agree.