

(2020) 08 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Petition No. 4959 Of 2020

Shubham Kumar Tyagi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 08 DEL CK 0034

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Ankita Patnaik, Satya Ranjan Swain

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

CM APPL. 17904/2020 (exemption from filing attested affidavit and typed and fair copies of the annexures and undertaking to file requisite court fees).

1. Allowed, subject to just exceptions and as per the extant rules.

2. The application is disposed of.

W.P.(C) 4959/2020.

3. The petition impugns the order dated 24th January, 2020 of rejection of the case of the petitioner for compassionate appointment and seeks mandamus to the respondents Central Industrial Security Force (CISF) to grant compassionate appointment to the petitioner, to the highest post available, in accordance with his eligibility.

4. The father of the petitioner, a Constable in the respondents CISF, having died nearly 15 years back, on 14th November, 2005, in lieu of which death

compassionate appointment is being claimed, and this petition having come up today for the first time, and being prima facie of the view that after such

long time, no case for issuing mandamus for compassionate appointment is made out, we have heard the counsel for the petitioner as well as the

counsel for the respondents CISF appearing on advance notice, at length.

5. It is the case of the petitioner, (i) that at the time of demise of his father on 14th November, 2005 he was a minor i.e. 10 years old; (ii) that the

mother of the petitioner, on 1st September, 2006 applied for compassionate appointment as a Tailor in the respondents CISF but was informed that

there were then no vacancies in the quota available for compassionate appointment as a Tailor and as and when the vacancies occurred, she will be

considered; (iii) that the mother of the petitioner kept on following up with the respondents CISF; (iv) that on 22nd April, 2008 and 10th December,

2008, the mother of the petitioner was informed that though there were no vacancies as a Tailor but vacancy existed for compassionate appointment

of Dhobis and Safai Karamchari and asking her to participate; but the mother of the petitioner did not participate; (v) subsequently the mother of the

petitioner was informed that vacancies were available for the post of Cook but the mother of the petitioner being not eligible, did not participate; (vi)

that on 1st October, 2009, the mother of the petitioner was informed that all the said posts had been abolished pursuant to recommendations of the 6th

Central Pay Commission; (vii) the mother of the petitioner, vide letter dated 24th December, 2009 nominated the petitioner in her stead for

compassionate appointment; the petitioner at that time was in Class IX; (viii) that the respondents CISF vide communication dated 22nd February,

2010 informed the mother of the petitioner that the minimum age for appointment was 18 years, which the petitioner had not attained and hence the

petitioner could not be considered; (ix) that as soon as the petitioner attained majority, the mother of the petitioner informed the respondents CISF that

the petitioner had become 18 years of age and should be appointed as a Constable (GD) on compassionate ground; the mother of the petitioner was

informed that the application was forwarded by the Deputy Commandant to the Inspector General of the respondents CISF on 17th April, 2013; (x)

that vide communication dated 16th August, 2013, the mother of the petitioner was informed that compassionate appointment could only be for Group

posts; (xi) that on continuous follow up by the mother of the petitioner, an Assistant Commandant of the respondents CISF visited the village of the petitioner in January, 2017, to verify the status of the family and was informed that the elder sister of the petitioner had been married in the year 2016 with the funds contributed by the relatives; (xii) on 13th September, 2018, the petitioner was informed that his case had been forwarded but was also informed that in accordance with the applicable Rules, the petitioner should have applied for appointment on compassionate grounds within two years of attaining majority; and, (xiii) that vide impugned order dated 24th January, 2020, the request of the petitioner for compassionate appointment has been rejected, only on the ground of delay and not on merits.

6. The counsel for the petitioner has contended that the rejection of the request of the petitioner for compassionate appointment on the ground of delay, is bad because the petitioner/his mother informed the respondents CISF immediately on attaining the age of majority and it is the respondents CISF who kept the case of the petitioner pending and the delay, if any is on the part of the respondents CISF and not attributable to the petitioner. It is informed that the petitioner is now 25 years of age.

7. On enquiry, the counsel for the petitioner informs that the father of the petitioner died in an accident, while on duty; however no documents in that regard have been filed and there is no pleading also to that effect. On further enquiry as to the age of the father of the petitioner at the time of his demise and the number of years of his service left, the counsel for the petitioner states that she has not verified the same. The counsel for the respondents CISF also states that he has no instructions in this regard.

8. The contention of the counsel for the petitioner is that the need of the petitioner and his family for compassionate appointment has not been adjudged because the claim of the petitioner for compassionate appointment has been rejected only on the ground of delay and which is wrong. It is argued that a direction for consideration on merits of the claim for compassionate appointment, should be issued. It is further argued that as per the Scheme For Compassionate Appointment circulated under cover of Office Memorandum dated 16th January, 2013 of the Department of Personnel and Training (DoPT) filed as Annexure P-17 to the petition and application for compassionate appointment is to be considered without any time limit

and decision taken on merit in each case.

9. We may at the outset record that the impugned communication dated 24 th January, 2020, english translation whereof filed by the petitioner is as

under:

â??To

Smt. Nisha Devi

W/o Late Shri Narendra Kumar Tyagi,

Vill - Kharkhoda

Post Khas Kharkhoda

Distt - Meerut

State Uttar Pradesh

Sub.: Regarding recruitment in CISF on

Compensate Ground

Please take reference letter vide no. 32015/NCR(Zone)/Rect./Comp.Appt(44)/2019-897 dated 16.01.2020 sent by the office of the Inspector

General/NCR.

Referenced under the above subject matter, it is conveyed to you that after scrutiny of the related case of Shri Shubham Tyagi S/o

Constable/GD Late Narendra Tyagi for service in CISF on compassionate grounds recommended by the force headquarters were received

on compassionate grounds by CISF is waitlisted, not recommended for recruitment.

Sd/-

Deputy Commandant/Admn

For Senior Commandantâ??

A reading of the aforesaid belies the contention of the counsel for the petitioner that the rejection of the case of the petitioner for compassionate

appointment, is only on the ground of delay of the petitioner in applying therefor. The case of the petitioner for compassionate appointment, after

consideration, has not been recommended for recruitment.

10. Thus the entire basis of the argument of the counsel for the petitioner is erroneous. The ground argued for impugning the order dated 24th January,

2020 has no relationship to the impugned order.

11. The counsel for the petitioner agrees that compassionate appointment cannot be claimed as a matter of right and the right of the petitioner is

restricted to being considered for compassionate appointment. Such consideration, as has been noted in the impugned order dated 24th January, 2020,

has been done and it has been ordered that the case of the petitioner has not been found fit for being recommended for compassionate appointment.

12. As far as the contention of the counsel for the petitioner, of the respondents CISF throughout in the last 15 years having responded to each and

every communication of the mother of the petitioner and having kept the hopes of compassionate appointment alive, is concerned, the counsel for the

petitioner also agrees that there is no promissory estoppel in the matter of compassionate appointment.

13. The Division Bench of this Court in *Mona Thakur Vs. Union of India* MANU/DE/0215/201, 2on a conspectus of earlier case law held that the

concept of compassionate appointment, though a matter of policy, is by now well entrenched in our jurisprudence; the purport thereof is to provide

relief to the family/dependants in immediate need of assistance, in the face of crisis/tragedy; to enable the family/dependants to tide over the sudden

stress; the same has been carved out as an exception to constitutional scheme of equality as adumbrated under Articles 14 and 16 of Constitution of

India. It was further held that though the need may exist even after two years of widowhood, the Rule in which regard was under challenge in that

case, but even in the matter of compassionate appointment, the consistent view of the Courts has been that such appointment is given only for meeting

immediate hardship faced due to death and should be kept confined only to the purpose it seeks to achieve. It was yet further held that compassionate

appointment is not a vested right which can be exercised at any time in future and cannot be claimed and offered after a lapse of time and after the

crisis is over. One of us (Justice R.S. Endlaw) in *Satya Pal Singh Vs. The Management of MCD* MANU/DE/1425/20,1 0*Kiran Bala Vs. Union of*

India MANU/DE/1470/2010 and in *Jai Kishan Vs. Canara Bank* MANU/DE/2642/2011 also has held that compassionate appointment cannot be

claimed after lapse of time and after element of crisis or tiding over does not exist. Mention may also be made of (i) *Umesh Kumar Nagpal Vs. State*

of Haryana (1994) 4 SCC 138 holding that mere death of an employee in harness does not entitle his family to such source of livelihood and

compassionate employment cannot be claimed and offered after a lapse of time; (ii) Jagdish Prasad Vs. State of Bihar (1996) 1 SCC 30 1 holding that

to allow the son employment after attaining majority, long after demise of father, would amount to another mode of recruitment of dependent of

deceased government servant and which cannot be encouraged de hors the Recruitment Rules; (iii) State of Manipur Vs. Md. Rajaodin (2003) 7 SCC

511 holding that there could not be any delay in compassionate appointment and the fact that ward was a minor at the time of death of his father, is no

ground; (iv) Local Administration Department Vs. M. Selvanayagam (2011) 13 SCC 42 holding that an appointment made many years after the death

of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the

dependants as a result of death and simply because the claimant happened to be one of the dependants of the deceased employee, would be directly in

conflict with Articles 14 and 16 of Constitution of India and would be bad and illegal; and, (v) State of Himachal Pradesh Vs. Shashi Kumar (2019) 3

SCC 653 holding that the sense of immediacy is evidently lost by the delay in seeking compassionate appointment; with reference to the Clause of the

Scheme relied on by the counsel for the petitioner herein also providing that delay should not be taken into account, it was held that it contemplated a

situation where all the dependant children of the deceased employee have yet to attain the age of majority and in which case the time limit for

submission of application is extended until the first of children attains the age of 21 years.

14. After 15 years of the demise of his father, the petitioner has to compete with others for public appointment and cannot claim any preference.

Moreover, the petitioner herein has not given any particulars whatsoever as to what are the assets left by his father, how the mother of the petitioner,

since the demise of the father of the petitioner, has supported the family in the last 15 years, from where were the expenses on the education of the

petitioner were met, or of the siblings of the petitioner and the educational qualifications of the siblings of the petitioner. During the hearing it is

informed that the petitioner has two sisters, of which one is elder to the petitioner and the other younger to the petitioner. As per the dicta in State of

Himachal Pradesh Vs. Shashi Kumar supra, the elder sister of the petitioner, under the Scheme aforesaid could have applied and which she admittedly did not, again belying a need for compassionate appointment.

15. We have thus nothing available before us to judge, whether as on 24th January, 2020 when the case of the petitioner for compassionate appointment was rejected or for that matter even today, any compassion was or is required to be shown. We also do not find any of the plethora of documents annexed to the petition also containing any particulars in this regard with respect to financial status of the father of the petitioner at the time of death or of the family.

16. The counsel for the respondents CISF appearing on advance notice states that in fact the mother of the petitioner had sent a communication dated 13th July, 2013 to the respondents CISF stating that the petitioner should be allowed to complete his graduation before being considered for compassionate appointment. It is argued that the said communication of the mother of the petitioner itself shows that there was no urgency for financial assistance in the family of the petitioner.

17. The counsel for the petitioner states that she is not aware of any such communication dated 13th July, 2013 and the counsel for the respondents CISF should be directed to furnish the same to her and the matter be taken up thereafter.

18. However even otherwise on the facts being satisfied that no case for compassionate appointment is made out after 15 years of the demise of the father of the petitioner and particularly when the mother of the petitioner was only wanting appointment to a specific post as a Tailor in CISF and not any other post, we do not deem it necessary to keep the present petition pending.

19. No ground for ordering compassionate appointment of the petitioner in the respondents CISF is made out.

20. Dismissed.