
(2007) 12 GAU CK 0028
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 641 of 2006

Sinam Inao Singh

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Citation : (2008) 2 GLR 39

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : S.Rupachandra, N.Ibotombi Singh, Advocates appearing for Parties

Judgement

1. By making the instant writ petition, the petitioner, brother of a deceased Government employee, namely, Sinam Premkumar Singh who died on 22.6.2002 while in service as Constable GD in the Central Reserve Police Force ("CRPF") prays for a direction to the respondents to provide the petitioner job in the CRPF on compassionate ground under the Dieinharness scheme.

2. The factual matrix of the petitioner's case, in short is that the elder brother of the petitioner namely, Sinam Premkumar Singh expired in a militant ambush on 22.6.2002 while he was on duty under the 23rd Bn. CRPF at Jammu & Kashmir, who was the only earning member/bread earner of the family and the present petitioner is one of the dependent of the said deceased government employee. After the death of the deceased government employee, the brother of the petitioner, who was unmarried and looking after the family, the mother of the petitioner approached the authority by submitting a representation with a request for appointment of the petitioner on compassionate ground. The petitioner also subsequently made representation on 6.12.2005 requesting the respondents/authority to appoint him under the Dieinharness scheme as in force for the CRPF on compassionate ground as there is a standing order dated 6.6.2001 (AnnexureA/4) of the Ministry of Home Affairs containing provisions for compassionate appointment. Though the petitioner was eligible for getting himself appointment on compassionate ground in view of the aforesaid standing

order, the authority did not dispose the representation filed by him in time. But the respondents issued various orders favour of family members of other deceased CRPF personnel vide orders dated 26.4.2004, 28.6.2004 and 27.6.2006, hence, the present writ petition on the ground of discrimination between the family member's of CRPF personnel.

3. The respondents by way of filing detailed counter affidavit resist the claim of the petitioner contending, inter alia, that Smt. S. Ibemcha Devi the mother of the petitioner has already been paid pensionary benefits to the tune of Rs. 12.5 lakhs besides pension in the form of a LPA, as such her request for compassionate appointment of her second son S. Inao Singh (petitioner) brother or late CT/GD S. Premkumar did not qualify for merit consideration. For better appreciation paragraph 5 of the counter affidavit is reproduced hereunder :

"5. That, with reference to para Nos. 6 and 7, the contention made by the petitioner that the authority has discriminately left out the case of the petitioner is not correct and denied as false. It is clearly mentioned in CRPF Standing Order No. 5/2001 that the authority concerned has to examine the financial condition of the family of the deceased. If the condition of the family is penurious and is in crisis, then job is to be considered to the eligible member. It is also mentioned in this order that while considering the compassionate appointment, amount for grant of LPA and ex gratia payment and pecuniary conditions of the applicant should be taken into account. In this instant case of Smt. S. Ibemcha Devi the mother of the petitioner has already been paid pensionary benefits to the tune of Rs. 12.5 lakhs besides pension in the form of LPA. As such her request for compassionate appointment of her second son S. Inao Singh (petitioner) brother of late CT/GD S. Premkumar did not qualify for merit consideration.

The following financial benefits were given to the NOKs of the deceased in other cases :

(i) No. 800681368 Late L.Nk (GD) Moll Chand of 23 Bn. Financial benefits i.e. Rs. 63,779 paid to the NOK.

(ii) No. 791240502 Late CT Ram Pratap Singh of 44 Bn. Financial benefits, i.e., Rs. 3,018 paid to the NOK.

(iii) No. 720030223 Late HC/Armr. Amir Singh of AWSVII, Financial benefits, i.e., Rs. 3,86,604 only on account of DCRG, DLI and Leave encashment paid to the NOK.

There was no financial benefits like as LPA, ex gratia given to the NOKs of the above deceased as all the above personnel died natural death ? whereas Rs. 12.5 lakhs was paid to Smt. S. Ibemcha Devi mother of the petitioner and in addition LPA in the form of family pension at the rate of Rs. 2,010 p.m. is being paid to the petitioner's mother. Under the circumstances, compassionate appointment to the petitioner does not fall in the line of other cases."

4. Heard Mr. S. Rupachandra, learned counsel for the petitioner and Mr. N.

Ibotombi, learned CGSC for the respondents.

5. Mr. Rupachandra, learned counsel for the petitioner submits that the dieinharness scheme being a beneficial scheme for providing job to a family member of the deceased government employee who died while in service, mere providing pension and pensionary benefits to the family cannot deprive the petitioner from getting benefit on dieinharness, particularly the standing order No. 5/2001 whereby and a where under the authority laid down the scheme for compassionate appointment. In other case, the respondents even after providing financial benefits like the deathcumgratuity and other benefits as entitled in accordance with the relevant service law applicable to the deceased CRPF personnel, respondents also provided compassionate, appointment to one of the members of those families of the deceased CRPF personnel. But in the instant case respondents are refusing the petitioner from getting the same benefit which itself is discrimination between the families of the CRPF personnel similarly situated and attracts article 14 of the Constitution.

6. Per contra, Mr. N. Ibotombi, learned CGSC submits that family members of deceased CRPF personnel who were given job even after providing some meager financial benefits, are not at par with the present petitioner and not only that the petitioner also does not come within the financial parameter as laid down by the authority for such, compassionate appointment. He also submits that it is specially mentioned in the standing order No. 5/2001, inter alia, that the applications for compassionate appointment should be appointed only if they are eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules. Each case will be considered on definite merit as compassionate appointment is not a vested right. The authority concerned has to examine the financial condition of the family of the deceased and if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. As the respondents had already allowed mother of the petitioner pensionary benefits to the tune of Rs. 12.5 lakhs besides pension in the form of LPA@ Rs. 2,010 per month, it cannot be said that the family of the deceased employee would not be in a position to meet the crisis for the death of elder brother of the petitioner, the deceased CRPF personal.

7. In response to the contention of Mr. Rupachandra, learned counsel for the petitioner, Mr. N. Ibotombi, learned CGSC further submits that Shri Vijay Nagwal, S/o late HC/Armr Amir Singh, Shri Sudhir Kumar, S/o late L/Nk. (GD) Moll Chand and Shri Naresh Kumar, S/o late CT/GD Ram Pratap Singh were allowed job by way of discrimination is not correct. Rather the authority considered their cases and found that the amount which was provided to their families as DCRG and other financial benefits are not sufficient to meet the crisis, which will be evident from paragraph 5 of the counter affidavit. He also submits that article 14 is a positive concept and it cannot be enforced by a citizen or a court in a negative manner when the appointment on compassionate ground is not vested right of a

citizen like the petitioner, rather the same is a special discretion of the employer and as admittedly, in the present case family of the petitioner, through his mother got the financial benefits sanctioned by the authority on the death of deceased employee, i.e., brother of the petitioner, he is not entitled the compassionate appointment as sought for as the same was rejected, after due consideration of the financial merit position of the family. In support of his aforesaid contention Mr. N. Ibotombi, relied the case of the Union of Bank of India and Ors. v. M.T. Latheesh, (2006) 7 SCO 350, particularly paragraph Nos. 16,17,26 and 36, which are extracted hereunder :

"16. The Division Bench, in our opinion, has failed to notice the fact that the fresh employment with the Bank has reduced considerably and the grant of employment on compassionate grounds to all the cases shall shut the door for employment to the evergrowing population of unemployed youth, more particularly when the industry is being asked to reduce the employees by offering retirement schemes. The Division Bench has failed to appreciate the fact that the scheme for compassionate, employment is very elaborate and it provides for determination of the financial conditions of the family on various factors and takes into consideration the income of the family from all sources. The High Court also has not noticed that the impugned judgment shall open a Pandora's box of litigation and all the persons who have been denied any such employment, shall take recourse to the similar litigation. This apart, the Division Bench has also arrived at a wrong finding that the amount of terminal benefits of the respondent is paltry and calculated family pension of Rs. 100 per day thereby holding that the family of the respondent is in penury whereas in fact the family is receiving a monthly pension of Rs. 5,179 in addition to the terminal benefits already received. The Bench has also wrongly considered the basic pension amount of Rs. 3,232 as the full pension amount; and has ignored the clearness allowance payable on the same. In the instant case, the Division Bench came to a wrong finding that the terminal benefits were calculated at Rs. 5,60,910.35 but the family was paid Rs. 74,910. After adjusting the loan amount, the terminal benefits paid to the dependents of the deceased employee are Rs. 7,48,751 which after adjusting the pending housing loan and personal loan amount are Rs. 5,47,495 which are actually paid to the family. This lump sum amount would also generate the reasonable monthly interest amount which was also considered by the competent authority in computing the recurrent income to the family. The Division Bench, in our opinion, came to a wrong finding that the persons given employment were kith and kin of four high ranking officials and erroneously held that the appellant acted arbitrarily and capriciously and was indifferent to the needs of his employees and caring only for the highsalariied officers of the same bank. It is a matter of record that the amount of pension alone was about 60% of the lastdrawn salary of the deceased employee and besides that the employee's dependents had received a lump sum monetary benefit of Rs. 5,47,495 after offsetting the outstanding housing loan and personal loan which could also generate a substantial monthly income, if invested wisely. The High

Court also committed an error in directing the appointment of the respondent under the new Scheme for Compassionate Appointment, 2003 although he was not eligible to be appointed.

17. When an employee dies, any one of the dependents mentioned in clause 2(c) of the appointment on compassionate ground scheme formulated by the Bank can forward an application as per the said Scheme. Consequently, the dependent does not automatically become entitled to get employment. The right that accrues to the applicant is a right to get preferential treatment against the general principle of appointment, subject to the discretion of the Bank. Further, the possession of relevant qualification does not create any vested right in the applicant to get appointment to a post specified by the Scheme....

26. Out of the above amount a sum of Rs. 1,03,754 was adjusted toward the balance housing loan taken by the deceased employee and a sum of Rs. 67,502, was adjusted towards other pending loans leaving in net sum of Rs. 5,47,495 in the hands of the widow the deceased. In fact an additional sum of Rs. 17,699 was further paid by the staff members of the Bank which was sent by a Demand Draft No. 093408 dated 4.10.2002 though the same was not pleaded. The said widow placed a sum of Rs. 5,25,000 in the fixed deposit in the same branch. The allegation that only a sum of Rs. 74,910 was left with the bereaved family is totally wrong. The widow of the deceased employee was sanctioned a pension of Rs. 4,468 at the time of the death and the said pension amount at the time of filing of this petition was Rs. 5,176 per month, it is pertinent to mention that the family gets a recurring income on the net terminal benefits of Rs. 5,47,495 when the same are invested in any of the investment schemes. The monthly interest income on the said lump sum benefit at the rate of 9% was calculated to be Rs. 4,106. This coupled with the pension of Rs. 4,468 at the time of consideration of his application (Rs. 5,176 at the time of filing of the petition) can yield total recurring monthly income of Rs. 8,574 which was much more than the last drawn net monthly salary of the deceased employee. The last drawn salary of the deceased employee after deductions was Rs. 7,477.50 only. Moreover, the deceased employee had constructed a house after taking loan and ft the said loan, as aforesaid, also stood repaid. Therefore, the respondent was not found eligible for compassionate employment on the financial parameter. The competent authority of the Bank had to consider the case of the petitioner as per the laid down parameters, more particularly mentioned in the petition and the recurrent income derivable by the family. All these factors weighed in the minds of the competent authority while deciding the case of compassionate employment....

36. In the present case, by declining the application, submitted by the respondent after the proper consideration of the same in the light of the relevant parameters, the appellant Bank cannot be said to have acted in an arbitrary manner regardless of the constitutional principles."

8. This court has given anxious consideration to the submission of learned

counsel for the parties as well as contentions made in the writ petition and the counter affidavit and law report cited. Regarding the factual matrix of the case there is no dispute. But the only question that remains for decisions before this court are :

(1) whether after the death of an unmarried brother, who was working in the CRPF, dependent brother like the petitioner would be entitled to get compassionate appointment even after sanction and payment of total amount to the tune of Rs. 12.5 lakhs in addition to LPA in the form of family pension at the rate of Rs. 2,010 per month is being paid to the petitioner ; and

(2) whether rejection of compassionate appointment of the petitioner by the authority is proper or not.

9. It is not disputed by the learned counsel for the petitioner that the aforesaid amount to the tune of Rs. 12.5 lakhs was provided to the petitioner's family as financial benefits entitled in accordance with the rules and the only ground for attacking the decision of the authority is on the ground of discriminating the benefit which is provided and that cannot be a ground for disentitling the petitioner from getting the benefit under the standing order stated supra.

10. This court has gone through the standing order No. 5/2001 wherein it is specifically stated that the authority has to examine the financial condition of the family of the deceased and if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. And not only that such compassionate appointment can be made up to a maximum 5 per cent of vacancies falling under direct recruitment quota in Group "C" or "D" posts. In the instant case the authority vide its letter dated 17.7.2003 (AnnexureX/1 to the counter affidavit) issued by the Commandant (Adm.) for 1GP (Ops) M&N Sector CRPF informed the Dy. Inspector General of Police, CRPF, Imphal Manipur that the proposal for appointment of; petitioner has been examined in accordance with the guidelines given in the standing order No. 5/2001 and since Smt. Ibemcha Devi, another (NOL) of the deceased has already been compensated monetarily, the above candidate may please be directed to try for appointment as CT/GD in CRPF through open recruitment. And thereafter, on 4.5.2006 the Addl. DIGP (Adm.), M&N Sec. CRPF (AnnexureX/2 to the counter affidavit) informed the DIGP, CRPF, Imphal Manipur that the case has been examined and as per the instructions contained in Standing Order No. 5/2001, while considering compassionate appointment, amount of grant of LPA and ex gratia payment and the pecuniary conditions of the applicant should be taken into account. NOK whose pecuniary condition is worst compared to others will be given preference. In the instant case, Smt. Sinam Ibemcha Devi mother of the above late CT/GD has already been paid pensionary benefits to the tune of Rs. 12.5 lakhs besides pension in the form of LPA. As such, her request for compassionate appointment to Sh. S. Inao Singh brother of the late CT/GD does not merit consideration.

11. From the above facts and circumstances, it can easily be presumed that the case of the petitioner for compassionate appointment has been sympathetically considered by the authority and found not suitable on the ground that the family has been provided pensionary benefits to the tune of Rs. 12.5 lakhs besides pension in the form of LPA @ Rs. 2,010 per month to the petitioner's family is sufficient to maintain their livelihood in the absence of deceased government employee as well as compassionate appointment as sought for. This court is of the considered opinion that decision of the authority so far appointment of family members of deceased CRPF as stated are reasonable since their conditions in comparison to the petitioner's family member are worse, as evident from paragraph 5 of the counter affidavit,

12. In *Sanjoy Sukla Das v. Union of India & Ors.* [W.P.(C) No. 410 of 2002] (Agartala Bench) this court observed that mere death of an employee does not entitle any of the family members to claim compassionate appointment under the Dieinharness scheme as a matter of right as there is difference between "rights" and "compassion". For a right, one can ask for fulfilment of that right since it is an interest, the violation of which would be a legal wrong and the competent authority is bound to respect such interest being if is a legal duty. But for "compassion" one has to wait/for mercy, grace or sympathy of the competent authority to act in that behalf as the compassion is nothing but an exception to the normal rule. Right to appointment being a normal route of public employment which requires open invitation of applications and the applicants have to face competition, but in compassion appointment the said open invitation is not required and no competition is called for, rather being an exception to the normal route prescribed to give succor to the destitute family which is fundamental by plunged into penury due to untimely death of the sole bread winner and cast no legal duty to the authority.

13. In the instant case also according to this court, learned counsel Mr. N. Ibotombi, rightly pointed out that appointment on compassionate ground as prayed for by the petitioner is not a vested right so he cannot approach this court for issuance of a writ as sought for. This court is, further of the opinion that even between the family members of deceased government employees who died while in service, the authority should consider those families first for giving appointment whom are worse financially than others and in the instant case the authority rightly given job to the persons whose names were mentioned by the petitioner in its petition. This court also observed in the aforesaid case of *Sanjoy Sukla Das* (supra) in para 13 as under :

"13. When a person applies for a job following procedure and succeeds in the interview and gets selected by the authority, then only a right is accrued for claiming a job to the said post, the same being a legal right, but in Dieinharness, prescription in the scheme rule is a condition precedent for getting a job. The scheme being prepared for compassionate appointment it is the authority who only can decide whether only will provide job to a family member of a deceased

employee or not on such compassionate ground and that too whether they would frame scheme for that purpose or not. In the instant case, keeping in mind that the family members of the deceased employee faced sudden crisis just after his death he being the lone bread earner, the respondent employers framed a scheme for providing job to one of the family members, of the deceased employee to tide over such crisis and also considers that all the vacancies should not go to the family members of the deceased employees who are otherwise compensated to tide over their crisis from the property of the deceased employee left over by him including pension and other retrial benefits and the movable and immovable properties. Only five per cent of the vacancies should go to them so that the general provisions/route of the employment should not be hampered and the unemployed youth waiting in queue for getting job after following the prescribed procedure should not be deprived of. According to this court, such restriction/ceiling limit is not unreasonable, rather a reasonable restriction which is permissible and if the entire vacancies are filled up only by the legal heirs/dependent family members of the deceased employee, then unemployed waiting for in general route would face serious problem which may disturb the society. Now the question remains to be answered whether court can direct the employer to appoint a family member after creating supernumerary post. Creation or abolition of post is within the domain of the employer. Normally court cannot direct or recommend for creating a supernumerary post to make available the vacancy in order to accommodate a given person in the Dieinharness scheme, since it is the sole province of employer and not the writ court. But that does not mean that a genuine claim of the family members of the deceased employee shall not be entertained and considered by the authority for providing a job under the scheme in force to tide over the sudden crisis. In a given case, it is the duty of the employer to provide job to one of the family members of the deceased employee for which the scheme is framed specially to the person fulfilling the conditions laid down in the scheme and the court cannot at all give a direction to create a supernumerary post for providing benefit of Dieinharness scheme, if the authority considered the case in accordance with the scheme and due observance of law (See *State Bank of India v. Somvir Singh*, (2007) 4 SCO 778). Yet the court has the power, which can only be exercised in a particular case where the employer fails to discharge its duty and the family members of the deceased employee has established violation of article 14 of Constitution. In the instant case, as it appears from the letter dated 24.9.2002 and 31.12.2002 (Annexures in and I respectively to the writ petition) that the case of the petitioner was considered not only on one occasion but also on three consecutive occasions and due to nonavailability of the vacancies his case could not be recommended by the Board of Officers (BOO) and he has also secured lesser point than the persons recommended for the job under the Dieinharness scheme, hence, it cannot be said by this court that the right for consideration of the petitioner for getting the job was denied by the authority. The aforesaid observation of this court is supported by the decision of the Apex Court in *Umesfi Kumar Nagpal v. State of Haryana*, (1994) 4 SCC138; *Managing Director, MMTC*

Ltd. v. Pramoda Delalias Nayak, (1997) 11 SCC 390 ; Union of India v. Joginder Sharma, (supra) ; State of J&K v. Sajad Ahmed Mir, (2006) 5 SCC 766.

14. The court cannot resume the power of the employer while deciding a writ petition, particularly on prayer for providing a job under the Dieinharness scheme, as that will encroach the power of the administrative authority. The court can only see whether any right of the family members of the deceased employee is affected either by action or by inaction of the respondents' employer while they consider the case of the family members of the deceased employee. It is also settled by this time that the court cannot decide the matter on sympathetic consideration contrary to law (See State of Tamilnadu v. St. Joseph Teachers Training College, (1991) 3 SCC 87. The court should endeavour to find out whether the case in hand is to be weighed within the parameter of the law and it should not be disregardful to the law. In the instant case, no case is made out by the petitioner for interference with the decision of the respondents. In the result, the writ petition stands dismissed. No order as to costs."

In the result the writ petition stands dismissed being devoid of merit.

No order as to costs. However, the authority, if so desires to help the petitioner considering the fact that the financial benefits provided for the time being will not be sufficient to lead his whole life with his mother, the authority may consider on their own.