
(2005) 10 DEL CK 0095

In the Delhi High Court

Case No : Writ Petition (C) 4733 and 4734 of 2004

Smt. Savitri Devi and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2005) 124 DLT 180 : (2005) 85 DRJ 175 : (2006) 107 FLR 1116

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Rajiv Mangla, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The present writ petition is directed against the order of the Central Administrative Tribunal dated 16.9.2003 dismissing the original application filed by the petitioner No. 2 Mr. Mukesh Kumar and his mother, Mrs. Savitri Devi. By the impugned order learned Tribunal upheld the order dated 8.2.2002 passed by the respondent rejecting the request of the petitioners for compassionate appointment of Mr. Mukesh Kumar in view of the death of his father Mr. Shiv Dutt. The petitioners thereafter filed a misc. application, which was also dismissed by the learned Tribunal by order dated 17.11.2003. This order is also impugned in the present writ petition.

2. Mr. Shiv Dutt, father of the petitioner No. 2 was appointed as a book binder in the Government of India Press, Faridabad on 19.12.1967. He expired on 18.1.2000 and at the time of death he was about 58 years old and ad about two years to go before his retirement. The petitioner No. 2 and his mother Mrs. Savitri Devi made an application dated 19.10.2000 requesting that the petitioner No. 2 may be given compassionate appointment as his father had died in harness.

3. The petitioner No. 2 was called for interview but after considering his case, vide letter dated 8.2.2002, the request for compassionate appointment was

rejected. The reason given for rejection of the request in the aforesaid letter was that the family of late Mr. Shiv Dutt had received Rs. 2,41,870/- as financial assistance and were also entitled to receive family pension of Rs. 1975/- per month plus dearness allowance. The respondents were of the opinion that the amounts paid to the petitioners including the family pension was much more than the poverty line yardstick adopted in such cases. It was held that the petitioner's case was not deserving/meriting compassionate appointment in view of the guidelines issued in that regard by DP and T.

4. The petitioner No. 2 and his mother after receiving the aforesaid letter dated 8.2.2002 made representations and thereafter filed an original application before the Tribunal.

5. The said application was contested by the respondents and by the impugned order dated 16.9.2003 learned Tribunal was pleased to dismiss the original application.

6. Learned Tribunal held that the application was barred by limitation as impugned order was passed on 18.2.2002 and the application was presented in the Tribunal on 7.4.2002.

7. However, the Tribunal also examined the matter on merits and found that as the family of the deceased government employee was getting regular family pension of Rs. 1975/- plus dearness allowance. Learned Tribunal referred to the government decision/policy fixing poverty line yardstick as a norm for appointment on compassionate grounds. Accordingly the original application filed was dismissed vide order dated 16.9.2003. A misc. application filed by the petitioners was also dismissed on 17.11.2003 after directing corrections of some errors.

8. It is submitted by the learned counsel for the petitioner that Rs. 2,41,870/- cannot be regarded as financial assistance but was payment made for legitimate dues payable to the legal heirs of the deceased employee. He relies upon a judgment of the Supreme Court in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, . He also relied upon decisions of the Supreme Court holding that matters of compassionate appointment must not be allowed to linger on for years. (Refer Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, . The counsel also submitted that the Tribunal was not right in dismissing the original application on the ground of limitation as representations had been made by the petitioners after receipt of communication dated 8.2.2002 and as there was no reply to the said representations, the original application was filed before the Tribunal on 7.4.2004

9. The learned counsel for the respondents has submitted that the case of the petitioners was examined as per the policy `guidelines and valid and cogent reasons have been given for rejecting the case of the petitioner No. 2 for compassionate appointment.

He relied upon the judgment of the Supreme Court in the case of National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, and West Bengal State Electricity Board v. Samir K. Sarkar reported in (1999) 7 SCC 62.

10. We do not think that the Tribunal was right in dismissing the original application on the ground of limitation. The petitioners after receipt of communication dated 8.2.2002 rejecting their request for compassionate appointment had made some representations to the respondents and were, Therefore, justified in waiting for some time before moving to the Tribunal. In fact the respondents in their reply to the said original application have stated as under:-

"" In reply to the contents of para 6 of the O.A. it is submitted that the remedies available to the applicants have not been fully exhausted as they did not represent to the Ministry. They may now be asked to exhaust the remedies first and then seek the intervention of the Hon''ble Tribunal.""

11. Moreover we feel that in case learned Tribunal was of the view that the original application was barred by limitation, opportunity should have been given to the petitioners to file an application for condensation of delay explaining the delay of about 2 months in moving the said original application.

12. On merits, however, we feel that the learned Tribunal was justified in dismissing the original application and holding that the petitioner No. 2 was not entitled to compassionate appointment. At the time of death, the father of the petitioner No. 2 was about 58 years old. The petitioner No. 2 at that time was also about 28 years old, his date of birth being 15.4.1972. On query raised by us, it was admitted by the learned counsel appearing for the petitioners that the petitioner No. 2 was married and had three children at the time of death of his father. It was further admitted that in normal course the father of the petitioner No. 2 would have superannuated in 2002.

13. Compassionate appointment, it is well settled, is not a source of recruitment nor can it be claimed as a matter of right. Courts and Tribunals while deciding cases of compassionate appointments should not confer any benediction impelled by sympathetic consideration as such claims cannot be strictly upheld on touchstone of Article 14 and 16 of the Constitution of India. Appointment on compassionate grounds, Therefore, should be strictly in accordance with the scheme/rules and regulations framed for that purpose. Such claims whenever made should be reasonable and justified on the basis of sudden economic crises occurring in a family, whose bread earner has died in harness.

14. In the present matter, the petitioner No. 2 was about 28 years old when his father who was in government service expired on 18.1.2000. He was married and having children. The petitioner No. 2 and his mother received Rs. 2,41,870/- after the death of the father. In addition the petitioner No. 1 is entitled to receive family pension of Rs. 1975/- plus dearness allowance. In the case of Punjab

National Bank and Others Vs. Ashwini Kumar Taneja, , the Supreme Court has held that co passionate appointment should not been given when there is no financial hardship as the purpose and object behind the said appointment is to get over sudden financial crisis. While determining and deciding this aspect, the Supreme Court has held that retiral benefits should be taken into consideration and cannot be ignored. The reference in this regard may also be made to the another judgment of the Supreme Court in the case of General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, . The judgment of the Supreme Court in the case of Balbir Kaur (Supra) relied upon by the counsel for the petitioner is distinguishable. In the said judgment, it has been held that benefits under a special scheme formulated for employees cannot be equated with benefit of compassionate appointment granted on sudden death of a bread earner in a family. The Supreme Court in the aforesaid case examined the question whether the tripartite agreement overrides an earlier circular in respect of compassionate appointment. It was held that the earlier circular continues to be effective. Judgment of the Supreme Court in the case of Punjab National Bank (supra) is directly on the issue and it has been held as under:-

""9. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, . It was categorically held that the amounts have to be taken into consideration.""

15. Keeping in view the facts as noticed above, we do not think that the family of the deceased employee has been left in ""penury"". Government appointments cannot be claimed on the basis of inheritance or as a hereditary right. Care has to be taken that every citizen in this country has equal opportunity, right and chance to be selected by an open and a transparent procedure. Merit has to be the prime consideration for appointment in government service. We may also refer here to the recent judgment of the Supreme Court in the case of National Hydroelectric Power Corporation (supra) wherein several judgments of the supreme Court have been examined. It has been held that compassionate appointments are in nature of exception, to be made on purely humanitarian considerations and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet. This is not the case here as the petitioners have received Rs. 2,41,870/- and are also receiving monthly family pension.

16. We also find that the order passed by the respondents rejecting the request for compassionate appointment cannot be categorised as an order which is parse perverse or arbitrary that can be interfered with by this Court while exercising limited power of judicial review under Article 226 of the Constitution of India. We may mention here that the father of the petitioner No. 2 was about to retire and would have retired in the year 2002, two years after his death. He had already

rendered about 33 year service and, Therefore, his legal heirs are being paid the maximum amount of family pension payable under the Rules. The petitioner No. 2 himself admittedly is an able bodied person, who is married with children and was about 28 years old at the time of death of his father.

17. Keeping in view the reasons given above, we do not find any merit in the writ petition and the same is dismissed. However, we leave the parties to bear their own costs.