

(2012) 04 DEL CK 0429
In the Delhi High Court
Case No : Writ Petition (C) 2060 of 2012

Somvati and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2012) 04 DEL CK 0429

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : E.J. Varghese, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order passed by the Tribunal in OA No.2775/11 on 08.08.2011. Before the Tribunal, the petitioner had challenged the order dated 18.08.2006 passed by the respondents whereby the petitioners' case for compassionate appointment on the death of Om Prakash, who died on 12.12.2001 had been rejected. The petitioner No.1 is the widow of the late Om Prakash. Petitioner No.2 is the daughter of the late Om Prakash. As mentioned above, Om Prakash died on 12.12.2001. Shortly thereafter, the petitioners had applied for appointment on compassionate grounds. However, that appointment was not being given to either of the petitioners inasmuch as according to the respondents there was no vacancy in the department within the compassionate quota of 5 per cent. The petitioners approached this Court by filing a writ petition bearing No. WP(C) 2515/2004. That writ petition was disposed of by an order dated 17.12.2004, wherein the following direction was given:-

We have heard the learned counsel appearing for the parties and have also gone through the records. Since 5% quota is available for giving appointment on compassionate ground, therefore, the case of the petitioner could be considered at a later stage, as and when vacancy arises with the respondents against the

aforesaid quota and against a post of group C or in group D. Therefore as and when such vacancy arises where the petitioner could be absorbed his case shall be considered in accordance with law and in terms of the existing policy of the respondents. In terms of the aforesaid observation the petition stands disposed of.

(underlining added)

2. Consequent to the said direction, although the period of 03 years since the death of Om Prakash had elapsed, the respondents considered the case of appointment of the petitioners on compassionate grounds. However, the case came to be rejected by virtue of the order dated 18.08.2006. The reasoning adopted by the respondents for rejecting the petitioners' claim to compassionate appointment has been set out in the said order dated 18.08.2006 as under:-

And whereas, the objective of granting appointment on compassionate grounds to a dependent family member of a Govt. servant dying in harness leaving his family in penury and without any means of livelihood, is to relieve the family of the Govt. servant concerned from financial destitution and to help it get over the emergency. With this objective in view and in order to determine the financial destitution/penurious condition of the family, the Government has fixed the poverty line as income of Rs.1767.20 for a family of five members. In this context it is noticed that the widow is, receiving the family pension of Rs.1895/- + Rs.948/- as DP+ Rs.682/-, as DA (Total Rs.3525/-) thereon per month. She has also received a sum of Rs.184702/- as terminal benefits after the death of her husband. Considering these aspect and the fact that the family of the individual has survived and managed for more than 41/2 years after the demise of the husband of the applicant, the case has been reviewed by the competent authority and the case for appointment on compassionate grounds is not covered under the indigency criteria fixed by the Govt. Moreover, compassionate appointment is made on the availability of vacancy only in the Department within a ceiling of 5% of direct recruitment quota meant for the purpose and that too within a maximum period of three years.

And whereas the Competent Authority has carefully examined the facts of the case and recommendation of the Board of Officers with due regard to the Govt orders and also the ruling of the Supreme Court in the case of Himachal Road Transport corporation v. Dinesh Kumar on 7.5.96 and Hindustan Aeronautics Ltd. Smt. Radhika on 9.10.96 holding that appointment on compassionate grounds can be made only if vacancy is available for the purpose. Your case does not fulfill the indigency criteria/ is time-barred and moreover there is no vacancy available in the Department for appointment on compassionate grounds. Hence, the department is unable to accept to your request for appointment on compassionate grounds.

3. Being aggrieved by the said order dated 18.8.2006, the petitioners filed the said original application No.2775/11 before the Tribunal which was dismissed by

virtue of the impugned order dated 08.08.2011. Although the Tribunal felt that the OA itself was barred by limitation in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985, the Tribunal also examined the merits of the matter and came to the conclusion that there was no infirmity in the order dated 18.8.2006 passed by the respondents.

4. We are also of the view that the High Court's order dated 17.12.2004 specifically directed that the petitioners' case for compassionate appointment was to be considered in accordance with law and in terms of the existing policy of the respondents. The financial condition of the petitioners was also considered by the respondents while passing the order dated 18.08.2006. The respondents came to the conclusion that the petitioners' condition was not so penurious as to entitle them to compassionate appointment. In any event, we also note that there was no compassionate appointment after Om Prakash died on 12.12.2001 up to 04.07.2008. In other words, nobody had been appointed on compassionate grounds within the period of three years of the death of late Om Prakash. Therefore, the petitioners can have no grievance in respect of the compassionate appointment offered by the respondents to someone else on 04.07.2008, which was almost seven years after the death of late Om Prakash and almost four years after the High Court order dated 17.12.2004.

5. Consequently, we find that the petitioners have no case under the existing rules. The Tribunal's order cannot be faulted. The writ petition is dismissed. However, there shall be no orders as to costs.