

(2013) 06 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 8581 (W) of 2011

Sonali Biswas

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Citation : (2013) 06 CAL CK 0035

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Mujibar Rahman and Sk. Musior Rahman, for the Appellant; Dipak Kr. Mukherjee and Mr. Rajsekhar Basu, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commanding the respondents to give appointment on compassionate ground to the petitioner in any post in the Central Reserve Police Force (CRPF, for short) without holding her unfit for and for other reliefs. The case of the petitioner inter alia is this that her husband was an employee of the CRPF and he died while still in service on June 26, 2007. She is to look after her unmarried sister-in-law who is aged about 51 years and has two minor children. She has a very paltry income and the amount derived from the family pension is not sufficient to meet the expenses of the family.

2. Therefore, the petitioner applied to the respondents for providing her with a suitable employment which would be commensurate with her qualification on compassionate ground. On August 28, 2008 the respondent no. 5 herein had called her for an interview. The petitioner appeared at the interview and was thereafter sent for a medical test.

3. By a letter dated October 10, 2008 the petitioner was informed by the respondent no. 5 that she had been found unfit due to a squint in her left eye and she was not fit for appointment as a Follower in the CRPF on compassionate ground.

4. The petitioner though admitted that she has a slight squint in her left eye simultaneously claimed that it has not affected her reading or writing in any way. She went to a medical college and got her eyes examined and the doctor gave her a certificate of fitness.

5. Her grievance is that for the post of a Follower (Peon/Farash) she could never be disqualified on such a trifle ground. After getting the certificate of fitness she made a representation before the respondent no. 4 and she was in return advised to make an appeal for medical re-examination. She also went to the Regional Institute of Ophthalmology at Calcutta Medical College and Hospital where also the doctors had declared her fit for the job. She also filed an appeal against the decision of the medical board of the CRPF declaring her unfit for the job.

6. The petitioner has alleged that the authorities had returned her case on the ground that she should have made a request to be re-examined by a medical board within a month supported by prima facie evidence. But the petitioner made a delayed request and that too without any prima facie evidence and without any Indian Postal Order of Rs. 25/-. It was also mentioned that although she had by then furnished the postal order of Rs. 25/- she did not produce any evidence containing a note by the medical officer concerned to the effect that it had been given in full knowledge of the fact that she had already been rejected as unfit for service. It was also mentioned in the said communication that the medical certificate was required to be produced by a medical practitioner in a specific manner as per the proforma in Appendix B and a copy of the said proforma was sent to her.

7. The petitioner filed a writ petition before this court being WP No. 7916(W) of 2009. The said writ petition was disposed of by a learned single Judge of this court by giving liberty to the petitioner to meet the Head of the Department of Regional Institute of Ophthalmology Kolkata, who was requested to conduct the necessary medical examination and to certify whether the petitioner suffered from any difficulty in her eyes. If the petitioner did not suffer from any difficulty necessary action might be taken by the Head of the department to give his opinion on Appendix B. The court further gave liberty to the petitioner to resubmit the medical certificate to the appropriate office of the CRPF within a month from the date of the medical examination and the respondents on receipt of the certificate should thereafter reconsider the petitioner's claim as early as possible, but positively within a further period of one month from the date of the receipt thereof. It was specifically directed by the learned single Judge that if the petitioner was found suitable for employment the follow-up action should be taken without any further delay.

8. The petitioner went to the Regional Institute of Ophthalmology, Kolkata. The Director of the said institute had issued a certificate on the prescribed format and the same was forwarded to the CRPF authorities. The petitioner was thereafter advised to report to the Review Eye Medical Board, Base Hospital, New Delhi on

any date between August 17, 2009 and August 19, 2009 which the petitioner did.

9. Again the petitioner was informed that according to the opinion of the Review Eye Medical Board she was unfit due to left divergent squint.

10. The petitioner moved her second writ petition being WP No. 1906(W) of 2010 and the same was disposed of by a learned single Judge of this court directing the authorities to take a fresh decision after taking into consideration the observations made in the order within a period of four weeks from the date of the communication of the order. The learned single Judge while disposing of the writ petition had observed that the embargo of squint eye related to combatised force coming through employment exchange and could not have any application to the case of a Peon who was not required for any active combat duty.

11. By an office order dated February 25, 2011 the petitioner was communicated that the authorities could not take any decision regarding employment on compassionate ground as the same had already been abolished. She alleges that she had approached the authorities for appointment on compassionate ground for the post of Peon/Farash irrespective of the specific group she might fall in. In fact, she had made an application for appointment commensurate with her qualification. In course of hearing of the two earlier writ petitions this was never brought to the notice of this court by the respondents and now the respondents had decided to bring a new factor into consideration.

12. In reply to a notice sent by the learned advocate for the petitioner the respondents authorities had informed the petitioner that the case was at a belated stage and the prayer of the petitioner had been rejected. Along with that letter they had also inserted copies of certain orders which, the petitioner claims, are not applicable to her case. She says that her case is covered by the Standing Order no. 5 of 2001 and was related to employment on compassionate ground.

13. The respondents have contested this petition by filing an affidavit-in-opposition. The case of the respondents is that in accordance with the various instructions all Group D (Ministerial) posts of the CRPF had been abolished and all Group D employees had been converted into Group C (Ministerial) and renamed as Constable (Peon), Constable (Farash) etc. A candidate for appointment on compassionate ground will be tested by a Board of Officers and he will have to qualify all the tests/examinations for the post for which he or she was to be considered. In compliance with the order passed by this court the claim of the petitioner had been considered. According to them as the post for Group D (Peon) had already been abolished under the order of the 6th Pay Commission they had been debarred from issuing any appointment for any Group D post. The petitioner had applied for the Group D post but she never made any application for compassionate appointment in Group C post which is a combatant post. According to the Establishment Manual of the CRPF squint eye is a disqualification for recruitment to the post of a Follower/Peon, Follower/Farash etc. The respondents have denied the allegations in the petition and have

asserted that there is no relaxation in the medical standard for compassionate appointment from the general recruitments and the petitioner did not fulfill the medical examination standard which is mandatory for enlistment in the CRPF. The respondents have prayed for dismissal of the writ petition.

14. In the affidavit-in-reply the petitioner has largely reiterated the stand taken in the writ petition. She has claimed that she sought for a job on compassionate ground and she did not make any claim to any specific post. The respondents authorities ought to have intimated the petitioner that the post to which she was supposed to be employed, i.e., the Group D (Ministerial) post had already been abolished. Her further stand is that conversion of Group D to Group C employees is meant for those who are already in employment. She has reiterated her grievance that at no point of time in course of hearing of the two earlier writ petitions or even thereafter the petitioner was informed that due to non-exercise of her option to choose the group she was not fit for the post she applied for. She further asserts that the recommendations of the 6th Pay Commission are not applicable to her as she approached the authorities for an employment on a purely humanitarian ground. But the respondents by resorting to different pleas at different stages have tried to ruin the family of the petitioner and in the process virtually tried to overrule the very intention of the Government who has framed a scheme as mentioned before.

15. At the hearing of this petition Sk. Mujibar Rahman, the learned advocate for the petitioner, had submitted that the petitioner had applied for an appointment on compassionate ground in conformity with the CRPF Standing Order no. 5 of 2001 and the authorities in turn conducted the recruitment process in any of the Group D posts. According to Mr. Rahman due to mild squint the petitioner had not suffered any deficiency of visibility and as per the order passed by this court the petitioner had appeared before the Director, Regional Institute of Ophthalmology, Kolkata and the doctors certified that the deformity would not be a hindrance for her in performing the duties in the CRPF.

16. Mr. Rahman has stressed on all the mutually inconsistent pleas taken by the respondents from time to time. At the hearing Mr. Rahman has submitted the stand of the petitioner that she needs only a compassionate appointment and has no choice for a Group C or a Group D post. He submitted that whereas the respondents ought to have in the true spirit of the relevant standing order made a sincere effort to offer the petitioner an employment, has in fact taken one plea or the other to defeat her rightful claim. According to Mr. Rahman the petitioner is willing to accept any post of Constable (Mohila) either for general duty or Musician or Peon etc. and the petitioner is also ready to change the requisite proforma needed for compassionate appointment.

17. Mr. Dipak Kumar Mukherjee, learned advocate for the respondents, had mainly argued that as per the relevant government instructions and the report of the 6th Pay Commission all Group D (Ministerial) posts have been abolished and the Group D workers have been converted into Group C and now a candidate for

appointment on compassionate ground will be tested by the Board of Officers and a candidate will have to qualify all the tests or examinations for the post for which he or she is to be considered. The decision pursuant to the order passed by this court in the second writ petition was taken by the respondents taking into consideration that the Group D posts had already been abolished and those who were posted as Group D had been re-designated as group C posts in terms of the order of conversion of the 6th Pay Commission. Mr. Mukherjee submits that the petitioner had applied for the group D post earlier but she never made any application for a Group C post. Her case was taken into consideration but in view of the subsequent orders the authority is not empowered to issue any appointment letter under the provision of law. Mr. Mukherjee has drawn the attention of the court that as per the relevant rule of the Establishment Manual of the CRPF squint in an eye is a disqualification for recruitment to the post of a Follower/Peon/Farash. Mr. Mukherjee has ultimately relied on the recommendation of the 6th Pay Commission as a factor disentitling the petitioner to get an employment on compassionate ground. Undoubtedly the petitioner applied under Standing Order no. 5 of CRPF of 2001. The policy laid down therein had been to streamline the procedure for a compassionate appointment. It was very specifically mentioned therein that a compassionate appointment would be made against direct recruit quota of Group C and Group D posts only.

18. The stand taken by the respondents that in view of the revised policy that an applicant for appointment on compassionate ground would be tested by a Board of Officers is not a new innovation. Standing Order no. 5 itself contains a similar provision and as such that is no ground to keep the petitioner out of zone of consideration. The procedure laid down in the said Standing Order clearly brings out that the whole purpose of the scheme was to offer employment to a deserving case where CRPF employees had died-in-harness and it may be mentioned that the procedure laid down therein contained a clause under VI(b) that the Welfare Officer or a representative should meet the members of the family of the government servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first instance and advised in-person about the requirements and formalities to be completed by him or her. The sense of urgency with which a compassionate appointment is to be considered is also clear from the Standing Order which requires that for a delay of more than three months in final settlement of a compassionate case the Sector should give detailed explanation for perusal of the Director General. The Standing Order further has laid down that a member of the family of a deceased Group D government servant can be appointed to a Group C post for which he or she is educationally qualified. Again the Zone/Sector Headquarter had been directed to assist a candidate during recruitment in order to mitigate the suffering of the family.

19. Thus it is clear that the purpose of the compassionate appointment is basically to help a family to tide over its immediate financial need. It cannot be

lost sight that the petitioner was not a government employee and not conversant with the rules when she had made an application.

20. It also appears from the Office Order dated February 25, 2011 that in compliance with the order of the High Court the petitioner's case was considered; but as the post of Group D had been abolished the authority had been debarred from issuing any appointment to Group D posts and the other difficulty which appears from the said Office Order facing the respondents is that the petitioner never made any application for compassionate appointment in group C post which is a combatant post. The debarring factor mentioned by the respondents were contained in two memos being nos. TV 1/09-MIN, dated December 9, 2009 and TV 1/2009-MIN of the same date. They had also mentioned that as per the Establishment Manual squint eye is a disqualification for recruitment to the post of Follower/Peon, Follower/Farash.

21. I do not understand why the respondents had mentioned squint as a disqualification after the judgment and order passed by this court on January 11, 2011 holding that Rule 9.8 of the CRPF Manual applied to combatised force coming through employment exchange and would have no application to the case of a Peon who has no requirement for active combat duty. This order had not been appealed against. After the court had directed the authorities to take a fresh decision in accordance with law after taking into consideration the observation made by the court in the said order the authorities could never have relied on squint eye as a disqualification for the post.

22. One more conduct of the respondents is really not appreciated. If they wanted to rely on the relevant government order, dated December 9, 2009, then one wonders why was it not mentioned to the court which passed the earlier orders. The authorities most certainly were required to draw the attention of the court to the extent of these orders as a result of which, they considered, the petitioner could not be offered any employment. I find sufficient substance in the submission of the petitioner that the respondents authorities had taken inconsistent pleas at different stages of the proceedings. It cannot be lost sight of that after all the authorities were dealing with the application for a compassionate appointment of the widow of their own former employee where the family, because of the untimely death of the sole bread earner, has fallen in the great distress. If the abolition of the post of Group D was the real reason for their not being able to issue a letter of appointment they should have laid it bare at the hearing of the earlier writ petition and not kept it under sleeves to spring a surprise on the petitioner.

23. It appears from this Office Order dated February 25, 2011 that one of the reasons for not offering the petitioner the employment on compassionate ground is that she applied for a Group D Peon but never made any application for compassionate appointment for Group C post which is a combatant post. Thus it is clear that Group C post was not the one for which she could make any application; otherwise this observation would have been totally meaningless.

24. Keeping in mind the whole purpose for offering the compassionate appointment after the death of the sole bread earner of a family I give liberty to the petitioner to make a fresh application to the post for which she is eligible for which the Welfare Officer of the concerned unit or his representative should advise and assist the petitioner in terms of the Standing Order no. 5 and the authorities shall thereafter process the same with all expedition and particularly taking into consideration the judgment and order passed by this court on December 11, 2011 in WP No. 2936(W) of 2010 and the certificate given by the Regional Institute of Ophthalmology as per the direction of this court vide order dated May 14, 2009 in WP No. 7916(W) of 2009. The entire process is to be completed within eight weeks from the date of communication of the order. It is made clear that while disposing of this application the respondents shall not be bound or influenced by their earlier stands.

25. If after taking into consideration all the factors the petitioner is found eligible the respondents shall issue an appointment letter without any further delay.

26. It is, however, made clear that this order is not to be considered as an expression of any opinion of the court about the eligibility of the petitioner for any post which will be decided by the respondents in accordance with the orders passed by this court in the earlier two writ petitions and the relevant rules governing the field.

27. The writ petition is thus disposed of with the above directions.

28. There shall, however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.