
(2004) 08 DEL CK 0052
In the Delhi High Court
Case No : CW 10919 of 2004

Suman Lata Yadav

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 113 DLT 152 : (2004) 76 DRJ 139 : (2004) 138 PLR 28

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Reetesh Singh, for the Appellant; Rajeev Mehra and Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioner assails the policy/circulars, by which compassionate appointment can be denied to the Legal Heir because the deceased employee was punished in Disciplinary Inquiry during his employment. The Policy/ circular are assailed as arbitrary and based on extraneous factors. On the moral plain, it is urged that "Sins of parents should not re-visit the descendant" to deny the benefit of compassionate appointment. It is urged that the parent having gone through the ordeal in his/ her life time it amounts to punishment twice over.

2. The facts, giving rise to the petition are:-

Petitioner a widow of D.S. Yadav, former employee of respondent No. 2 Punjab National Bank, applied on 16.3.2001, for being employed on compassionate grounds, following the death of her husband. Late D.S. Yadav had expired on 28.2.2001. Respondent No. 2 vide its letter dated 7.10.2003 simply declined the request without recording any reasons.

3. Petitioner filed a writ petition CW NO. 8967/2003. Notice was issued in the writ petition and counter affidavit was filed. Respondent No. 2 in the counter

affidavit disclosed that on account of disciplinary proceedings and the punishment meted out to the deceased, the petitioner's request for compassionate appointment did not meet the approval of the bank.

4. Petitioner withdrew the said petition seeking leave of the Court to challenge the said policy circular or scheme, which denies the benefit of compassionate employment to the LRs on account of the deceased having faced disciplinary proceedings culminating in punishment.

5. Learned counsel for the petitioner Mr. Reetesh Kumar has assailed the decision of denying compassionate employment on the following grounds:-

(i) Denial of compassionate appointment to the widow on account of proceedings against deceased virtually amounts to double jeopardy. He submits that the petitioner's late husband had already undergone the ordeal of disciplinary proceedings and received the punishment by means of stoppage of increments and warning etc. The consequences should not re-visit the LRs since it would amount to punishment twice over.

(ii) Rationale of the Central Government Scheme as well as the Bank's own scheme envisages appointment on compassionate ground as means of providing succour and immediate relief to the bereaved family, having no ostensible means of livelihood. This is the main object of the scheme. Respondent's action in denying compassionate appointment to LRs of those who have undergone disciplinary proceedings amounts to creation of another artificial class without any nexus to the object sought to be achieved.

(iii) Respondent have not produced on record any policy. Only certain letters stipulating that cases of compassionate appointment involving minor penalty are to be decided by the Bank and cases of major penalty seeking compassionate appointment, were required to be forwarded to the Central Government. There were no proper guidelines and the circulars merely specified the authority which was to exercise discretion. Further circular/policy does not lay down criteria based on which discretion was to be exercised by the Bank/ Central Government. It confers unfettered discretion. Hence these were arbitrary and liable to be struck down under Article 14 of the Constitution of India.

(iv) Respondent themselves having found petitioner to be indigent. The petitioner ought to be granted relief and not denied on the basis of the past conduct of the deceased husband, for which he had suffered during his life. This sins of father should not be permitted to revisit. He further submitted that the Central Government Guidelines do not contain a provision debarring the LRs. of those employees, who have been held guilty in departmental proceedings, from compassionate appointment.

(v) This is a curious situation, since the Central Government itself has prescribed for public sector Banks, the class of cases depending upon the nature, penalty or punishments, which could be approved by the Board of Directors of Public Sector

Undertakings and those which required the approval of Central Government for grant of compassionate appointment.

6. Mr. Rajeev Mehra sought time to produce on record the policy/guidelines/circulars covering cases for grant of compassionate appointment of L.Rs. of employees having undergone disciplinary proceedings and having been punished pursuant thereto. Mr. Mehra despite being given time was unable to produce any such policy/circular/ guidelines of Central Government.

7. Mr. Jagat Arora, learned counsel for respondent No. 2 justified the denial of compassionate appointment by the Bank in its discretion to the heirs of those who had indulged in misconduct or were found guilty in disciplinary proceedings. Mr. Arora submits that compassionate appointment is not a vested enforceable right. It was a benefit being provided by the bank as a model employer, to provide relief to the family who has no means of livelihood and are unable to sustain themselves due to the bereavement. In the present case, the petitioner has received Rs. 57,000/- even though the widow herself, apart from this has no known means of livelihood. Mr. Arora further submits that there was no question of there being double jeopardy as it cannot be equated with denial of a benefit, especially when it is a question of receiving financial benefits. He supported the policy as a rationale one of denying the benefit of compassionate appointment to LR's of those who either have misconducted, embezzled money or otherwise were found guilty and punished in disciplinary proceedings.

8. In the instant case, disciplinary proceedings were instituted against the deceased. The deceased was found guilty firstly on account of unauthorised absence from duty and of misbehavior. Penalty of stoppage of one increment was imposed. In the second case relating to fabrication of TA bills/per diem allowances, the punishment of dismissal from services was awarded. The appellate authority, however, reduced it to stoppage of three increments. Lastly disciplinary proceedings were initiated for misutilisation of leave encashment, for which a warning was administered. Counsel submitted that with this record, the respondent bank was fully justified in denying compassionate appointment to the petitioner.

Mr. Rajeev\\ Mehra supported the arguments advanced by counsel for respondent No. 2 and submitted that there was a rational basis for denial of appointment. The bank was fully justified in denying this benefit to the heirs of employees who have been found guilty of misconduct.

9. Let us first consider the challenge by the petitioner that consideration of disciplinary proceedings or misconduct during deceased's career is an irrelevant factor, which cannot be taken into account, while considering the claim of L.Rs., of deceased for compassionate appointment. The precise submission is that the object of the compassionate appointment is to provide succour and immediate relief to the bereaved family and for that service record or past record of the deceased is not a relevant factor.

I am unable to accept this submission. While it is true that the prime object is to provide succour and immediate relief, yet the deceased's service record or the factum of disciplinary proceedings and punishment meted out to him, cannot be said to be an irrelevant factor. The possibility of denial of compassionate appointment to the L.Rs of deceased on account of deceased employee having a tainted service record, would serve as a deterrent to employees from indulging in misconduct. It can act as an incentive for those maintaining discipline and probity. Besides, when the availability of appointment and opportunities is limited, there is nothing wrong in preferring L.Rs., of those employees with clean record over the L.Rs., of those, who have had a tainted record. Moreover, as is seen, there is no complete debarment or embargo. It is a factor, which is taken into consideration by the employer, while evaluating the cases of compassionate appointment. There may be cases, where there is such a grave hardship and if the misconduct of the deceased employee was of a minor nature the Authority still has the discretion to make a compassionate appointment.

10. Coming to the plea sought to be advanced on ethical or moral ground that the sins of the parents should not revisit the L.Rs., it cannot be lost sight of that it is not a punitive act, which is sought to be imposed. Compassionate appointment is in the nature of a benefit, which is made available by an employer. Hence, the L.Rs., of those employees, who have had a good track record can be preferred over those of employees with tainted records.

11. In view of the foregoing discussion, the challenge by the petitioner to the policy of taking into consideration disciplinary proceedings and the punishment meted out, while evaluating the case for compassionate appointment, fails and is rejected. Coming to the present case, the deceased employee is survived by a widow and two minor children and the condition was found to be indigent. The widow has received terminal benefits of Rs. 57,477/- and they have a family house to live. Considering the track record of the petitioner, as noted in para 7 above, while one may have sympathy with the petitioner being a widow facing difficulties, the decision to deny compassionate employment cannot be said to be arbitrary and based on irrelevant criteria. Accordingly, the challenge in the writ petition fails and petition is dismissed but with no order as to costs.