

(2020) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1776 Of 2019

Sushil Singh Charak

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 02 J&K CK 0001

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ankur Sharma, Vishal Sharma

Final Decision : Disposed Of

Judgement

1. The present petition has been filed seeking a direction to the respondents to consider the case of the petitioner for compassionate appointment by quashing the advertisement No. 01/2016 issued by the Border Roads Organization/General Reserved Engineer Force on the ground that 05% quota meant for compassionate appointees in Group-C posts has not been earmarked.

2. Learned counsel for the petitioner submitted that father of the petitioner, who was working as Overseer with the Border Roads Organization, went missing on 26.08.1997 while he was travelling from Suraj Garh, Rajasthan to Jammu. A missing report was filed. As he could not be traced out, he was presumed dead.

3. The mother of the petitioner, namely, the widow did not file any application seeking compassionate appointment. For the first time, the application was filed by her seeking compassionate appointment for the petitioner on 29.06.2013 when the petitioner attained the age of majority.

4. As per the policy framed by the Border Roads Organization, compassionate appointment is to be offered to the eligible candidates of Group-C posts. 05% of the posts from the direct quota had to be reserved for the purpose. The name of the petitioner was added in the list prepared for the years 2016 and 2017.

However, till date the petitioner has not been offered the appointment. As the advertisement had been issued in the year 2016, without earmarking the quota meant for compassionate appointment, the same deserves to be quashed.

5. On the other hand, learned counsel for the respondents submitted that in the advertisement issued, there are specific qualifications required for filling up different posts. The petitioner is merely 10+2 and is not eligible for most of them. It was merely a matter of policy and a concession given by the authorities to offer compassionate appointment to the dependant family members of a deceased employee to enable him to come out of harness. That does not confer any right on the petitioner. It is not an additional source of recruitment.

6. In the case in hand the father of the petitioner went missing way back in the year 1997. More than two decades have passed thereafter and the family is living well. The widow is being paid family pension, besides other emoluments which is a good sum of money. The compassionate appointment is not additional source of recruitment.

7. The policy, sought to be relied upon by the petitioner, provides for evaluation of the needs of the persons seeking compassionate appointment on the basis of one's financial status and on that, a merit list is prepared. The name of the petitioner figured in that merit list prepared annually. However, he could not be offered any appointment as there were more needy persons.

8. After hearing learned counsel for the parties, I do not find any reason to interfere in the present petition.

9. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by Hon^{ble} the Supreme Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

10. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

11. In *Umesh Kumar Nagpal v State of Haryana & Ors*, (1994) 4 SCC 138, Hon^{ble} the Supreme Court considered the nature of the right which a dependant can

claim while seeking employment on compassionate ground. The Court observed as under:-

"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... The only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

(Emphasis added)

12. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

13. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments. For the purpose, reference can be made to the judgment of Hon'ble the Supreme Court in MGB Gramin Bank v. Chakrawarti Singh, AIR 2013 SC 3365.

14. Considering the fact that the policy for providing employment on compassionate basis is to take care of immediate need of the deceased employee on account of loss of the bread earner and the same is not an additional source of recruitment, the claim made for appointment more than two decades after the death of the deceased employee deserves to be rejected. In the case in hand the mother of petitioner, whose father went missing in 1997 is being paid family pension and has been paid other retiral dues.

Ordered accordingly.