

(2024) 12 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : WP(C) No.2749/2024

?Union Territory of J&K through its Commissioner/Secretary & Ors. APPELLANT

Vs

Rajan Vikrant RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:

Constitution of India 1950 — Article 226

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 &mdash Rule 2, 3 (1)

Citation : (2024) 12 J&K CK 0012

Hon'ble Judges : Sanjeev Kumar, J, Puneet Gupta, J

Bench : Division Bench

Advocate : Monika Kohli, Ankur Sharma

Final Decision : Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

Sanjeev Kumar, J

1. An order and judgment dated 22nd March, 2024 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [“the Tribunal”] in TA No.61/978/2020 titled Rajan Vikrant v. State of J&K and others is subject matter of challenge in this petition filed by the Union Territory of Jammu and Kashmir and two others invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

2. Before we advert to the grounds of challenge urged by Ms. Monika Kohli, learned Senior Additional Advocate General, appearing for the petitioners, we deem it appropriate to take note of few material facts.

3. The father of the respondent, namely Late Sh. Davinder Kumar Sharma was serving as Dy.S.P in Jammu & Kashmir Police and attained martyrdom on 27th October, 2001 in an IED blast while he was posted as SDPO, Basohli. He left behind his wife, daughter and a son i.e. respondent herein. The respondent

applied for compassionate appointment in the J&K Police as Inspector under SRO 43 of 1994. Initially, the respondent was considered for appointment as Inspector in the J&K Police by the then Director General of Police. The matter was taken up with the Financial Commissioner, Home Department, J&K Govt. and thereafter with the General Administration Department. It seems that the General Administration Department did not agree with the proposal of the Director General of Police for appointment of the respondent as Inspector in the J&K Police and instead vide Government Order No.127-GAD of 2008 dated 31.01.2008 accorded sanction to the temporary appointment of the respondent as Sub-Inspector in the pay scale of Rs.4000-6000 in the Excise Department in Jammu Division in relaxation of proviso to Sub Rule (1) of Rule (3) of SRO 43 of 1994.

4. The respondent accepted his appointment as Sub-Inspector in the Excise Department, though he claims that the acceptance of appointment as Sub-Inspector was under protest. The respondent, however, filed a detailed representation before the Chief Secretary of the Government of Jammu & Kashmir on 17th March, 2008 itself seeking his appointment as Inspector in the Excise Department on the analogy of Nasir Ahmed, Tanveer Geelani and Rishi Singh. This representation was made by the respondent through his mother Sudesh Kumari. The respondent also seems to have approached the then Governor of Jammu & Kashmir State.

5. When nothing was done by the petitioners towards redressal of his grievance, the respondent filed SWP No.2035/2010 before this Court seeking, inter alia, quashment of the order of his appointment as Sub-Inspector dated 31.01.2008 to the extent of appointing him as Sub Inspector in the Excise Department on compassionate grounds. The respondent also sought a mandamus to the petitioners herein to consider and appoint him as Inspector in the Excise Department. This petition was disposed of by a Bench of this Court vide order dated 30th March, 2017 directing the petitioners herein to consider the claim of the respondent for appointment to the post of Inspector in light of the relaxation in educational qualification given to the similarly situated persons mentioned in paragraph No.11 of the said writ petition. This direction was issued by the learned Single Judge on being satisfied that the respondent was entitled to seek parity in the matter of consideration for appointment on compassionate basis with the persons enumerated in para 11 of the writ petition.

6. Be that as it may, in compliance with the judgment passed by the learned Single Judge dated 30th March, 2017 (supra), the petitioners passed Government Order No.1133-GAD of 2017 dated 07.09.2017 and rejected the claim of the respondent on merits. The petitioners considered all aspects of appointment on compassionate grounds including legal position but did not consider as to how and why the respondent was not entitled to consideration on a par with the persons named in paragraph No.11 of the writ petition.

7. The consideration order dated 07.09.2017 was challenged by the respondents

initially before this Court by way of a petition filed under Article 226 of the Constitution of India, which, on transfer to the Tribunal, came to be registered as TA No.61/978/2020. The Tribunal considered the petition of the respondent in light of the objections filed by the petitioners herein and came to the conclusion that the petitioners had been adopting a pick and choose policy in the matter of appointment on compassionate grounds under SRO 43 of 1994 and that the order of consideration dated 07.09.2017 passed by the petitioners was not in tune with the order of the learned Single Judge of this Court dated 30.03.2017. The TA was allowed by the Tribunal and a direction was issued to the petitioners to offer appointment to the respondent as Inspector in the Excise Department with effect from his initial appointment i.e. 31.01.2008 with seniority and all the consequential benefits. It was also noticed by the Tribunal that since the respondent had already been promoted to the post of Inspector in the Excise Department and, therefore, the petitioners shall do well to fix only seniority of the respondent in the cadre of Inspectors in the Excise Department reckoning his date of appointment as 31.01.2008. It is this judgment of the Tribunal which is assailed before us by the petitioners.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal, in the given facts and circumstances of the case, is legally perfect and may not call for interference by us in the exercise of jurisdiction under Article 226 of the Constitution of India.

9. It is true and as is argued by Ms. Kohli, learned counsel for the petitioners, that appointment on compassionate grounds envisaged under SRO 43 of 1994 cannot be claimed as a matter of right and is provided by way of an exception to the normal method of recruitment. The compassionate appointments are necessitated to ensure that bereaved family, which has lost its breadwinner, is able to tide over the financial crises which it is plunged into.

10. In many Departments of the Government of India, the compassionate appointments are governed and regulated by executive instructions. However, in the State of Jammu & Kashmir (now Union Territory of J&K), the compassionate appointments are governed and regulated by the Jammu and Kashmir (Compassionate Appointment) Rules, 1994 ["the Rules of 1994"] issued by the Government vide SRO 43 of 1994. In terms of Rule 2, the benefit of compassionate appointment is available to a person who is a family member of :-

- i) A Government employee who dies in harness other than due to militancy related action;
- ii) A Government employee who dies as a result of militancy related action and is not involved in militancy related activities;
- iii) a civilian who dies as a result of militancy related action not involved in militancy related activities and total income of the family from any sources does not exceed Rs.3,500/- per month as assessed by the Revenue Officer not below

the rank of an Assistant Commissioner;

iv) A permanent resident Junior commissioner Officer or non-commissioned officer of the armed force or an officer of equivalent rank of the para military force who is killed in action connected with law and order duties within the State of Jammu and Kashmir or as a result of enemy action on the line of actual control.

11. Obviously, the respondent is covered by Clause (ii) of Rule 2 of the Rules of 1994 reproduced herein above. The respondent, at the time he applied for compassionate appointment, was admittedly not a graduate but was having qualification above matric. In terms of Rule 3 of the Rules of 1994, the respondent was entitled to be appointed on compassionate grounds against a vacancy in the lowest rank of a non-gazetted service.

12. Clause (2) of Rule 3 of the Rules of 1994 carves out an exception and enables the General Administration Department to appointment a candidate to a higher post in the non-gazetted service, if the applicant is a family member of a deceased Government employee or a civilian killed in militancy related actions. This, however, has been left to the discretion of the Government in the General Administration Department. We hasten to notice that there are no guidelines provided for exercise of this discretion and as a result whereof, the Government in General Administration Department has been acting purely on pick and choose method. The pick and choose method adopted by the Government was highlighted by the respondent in paragraph No.11 of the SWP No.2035 /2010 and also in the Transfer Application, which was disposed of by the Tribunal vide order and judgment impugned in this petition.

13. The some of the examples cited by the respondent are pertaining to the period 1992-93 but some are as latest as of the year 2007. Way back in the year 1993, one Nasir Ahmed resident of Rajouri was appointed as Inspector in the J&K Police on compassionate basis due to untimely demise of his father Late Sh. Nazir Ahmed, who was S.P. Security. This appointment was in relaxation of qualification bar.

Similarly, one Sh. Shelly Singh S/o Late Inspector Udheybir Singh was appointed as Inspector of Police in relaxation of qualification/age bar. In the year 1992, one Tanveer Jeelani S/o Late Ghulam Jeelani was similarly appointed as Inspector in the J&K Police in relaxation of Rules. Similarly, one Sushma Bhau (Chib) W/o Late Shri Gulbadan Singh Bhau, Ex, Dy. S.P was appointed as Lecturer in Government Degree College, Udhampur. Her appointment as Lecturer in the Education Department, too, was in relaxation of Rules.

14. We are aware that this Court cannot issue mandamus to enforce negative equality. Prima facie we are satisfied that many people have been appointed by the Government in various departments on compassionate basis by adopting a pick and choose method. May be in some cases the Government was moved by the supreme sacrifice made by some police officer(s) and compensated their

families by adequately accommodating them. While the object may be laudable but if we look to the statutory provisions of SRO 43 of 1994, it does not make any such distinction except that it gives a discretion to the Government in General Administration Department to appoint a person against a higher post in the non-gazetted cadre of any service. In the absence of any proper guidelines, provision contained in Clause (2) of Rule 3 of the Rules of 1994 is bound to be misused.

15. In the instant case, learned counsel for the petitioners could not demonstrate as to how the case of the respondent was different from those, who were appointed against higher posts in relaxation of the Rules. That apart, another important aspect, which cannot be lost sight of, is whether the respondent was entitled to be considered on the parity of similarly situated persons appointed against higher post of Inspector/Lecturer. This issue has already been set at rest by this Court in its order dated 30th March, 2017 passed in SWP No.2035/2010. The petitioners were, thus, under an obligation to consider the case of the respondent for appointment/adjustment on the post of Inspector in relaxation of the educational qualification on the analogy of similarly situated persons named in paragraph No.11 of SWP No.2035/2010. The petitioners did not comply with the aforesaid judgment in letter and spirit while passing the consideration order and rejecting the claim of the respondent. The petitioners conveniently ignored to take note of the directions of the learned Single Judge of this Court that the respondent was similarly situated with the persons named in paragraph No.11 of the writ petition and was, thus, required to be considered on the same analogy. The consideration order, on the face of it, was not in tune with the directions passed by this Court, therefore, it has rightly been quashed by the Tribunal.

16. The plea of Ms. Kohli, learned counsel for the petitioners, that the respondent had accepted his appointment as Sub Inspector in terms of order dated 31.01.2008 without any protest and was, thus, not entitled to file any petition challenging Government Order No.127-GAD of 2008, is not sustainable for the reason that immediately upon his appointment as Sub Inspector, the respondent through his mother filed a detailed representation projecting his grievance on 17th March, 2008. He even approached the then Governor of the Jammu and Kashmir State for intervention.

17. The respondent lost his father on 27th October, 2001 and was offered compassionate appointment after more than six years. The way the respondent was tossed from one office to another for more than six years had left the respondent with no option but to accept whatever was offered to him. It was only after the respondent secured his job of Sub Inspector, he resisted to the injustice done to him vis-à-vis similarly situated persons, who were instead offered the post of Inspector in the J&K Police that, too, in relaxation of Rules. That apart, when the respondent approached this Court for the first time by way of SWP No.2035/2010, this plea was not taken by the petitioners and even if we were to assume that such plea was taken, the same shall be deemed to have been

rejected by the learned Single Judge, which disposed of SWP No.2035/2010.

18. For all these reasons and also for the reasons given by the Tribunal in the judgment impugned, we find nothing wrong or incorrect in the judgment impugned passed by the Tribunal. We, therefore, disposed of this petition by providing as under:-

i) Government Order No.1133-GAD of 2017 dated 07.09.2017, whereby the case of the respondent for his appointment as Inspector in the Excise Department was rejected is quashed.

ii) Government Order No.127-GAD of 2008 dated 31.08.2008 to the extent it refers to the appointment of the respondent as Sub Inspector is also quashed.

iii) The respondent shall be deemed to have been appointed as Inspector in the Excise Department in relaxation of Rules with effect from 31.01.2008 and the appointment of the respondent w.e.f. 31.01.2008 till he was appointed as Inspector in the Excise Department on promotion shall be purely on notional basis, though his seniority in the cadre of Inspectors shall be reckoned w.e.f. 31.01.2008.

iv) The petitioners shall pass appropriate orders to give effect to his judgment within a period of three months.

19. The order of the Tribunal impugned in this petition would stand modified to the aforesaid extent only.