

(2005) 06 GAU CK 0012
In the Gauhati High Court

Vishnu Prasad Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-06-2005

Acts Referred:

Citation : (2005) 106 FLR 976 : (2006) 2 GLT 727

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The grievance raised in this writ petition is in respect of denial of compassionate appointment to the petitioner who is physically handicapped (deaf and dumb).

2. Shortly stated, the facts leading to the filing of the instant writ petition are as follows:

3. The father of the petitioner, namely Rabilal Sarmah while was serving as Valveman under the respondents died on 13.2.1995 leaving behind his wife two daughters and two sons one of which is the petitioner who is physically handicapped. It will be pertinent to mention here that at the time of death of the father of the petitioner, the second son, the younger brother of the petitioner was aged about 9 years and his two sisters were aged about 14 and 11 years, while the petitioner himself was aged about 18 years and 6 months.

4. After the death of the father of the petitioner, the petitioner made an application on 15.7.1995 for his appointment on compassionate ground. Alongwith the said application, the petitioner enclosed the necessary certificates and testimonials.

5. The case of the petitioner was recommended by the Garrison Engineer, Omrai. He was recommended for appointment as Mazdoor. In the recommendation it was indicated that vacancies in the post of Mazdoor were available in the

department. The relevant part of the recommendations is reproduced below:

3. Due to death of MES/228954 (Late) Rabilal Sharma, Valveman the family has been placed in a critical position with no source of income except the family pension and terminal benefits which is not adequate to meet the expenses of the family. As such, the family deserves employment assistance by way of employment, in any post of Class IV employee for Shri Vishnu Prasad Sharma son of the deceased employee.

4. Shri Vishnu Prasad Sharma, son of the deceased employee has requested for employment in MES vide his application dated 15 July, 1995. He is considered suitable for the post of Mazdoor/Peon though he is handicapped as far as hearing and speech is concerned and his case is strongly recommended for appointment in this division as requested vice his application. His age as per school certificate is above 19 years.

5. After careful examination of the case, Ministry of Defence may be approached to agree to the employment of Shri Vishnu Prasad Sharma, son of the late Government Servant in relaxation of normal recruitment procedure and giving special consideration being a handicapped candidate.

6. As vacancies in the post of Mazdoor exist in the Department, the case of the individual is strongly recommended for appointment on compassionate ground.

6. Alongwith the aforesaid recommendations, necessary documents pertaining to the case for appointment of the petitioner on compassionate ground were also forwarded. A Board was constituted to assess the suitability of the petitioner for appointment on compassionate ground and the Board also recommended the case of the petitioner for appointment on compassionate ground. The recommendation of the Board is quoted below:

Recommendation of The Board

(a) Shri Vishnu Prasad Sharma, son of the late employee is found suitable for recruitment in the department in the post of Mazdoor.

(b) He is eligible for the post of Mazdoor subject to fulfilment of terms and conditions as pre-test and recruitment rules.

(c) Though the candidate is handicapped as far as hearing and speech is concerned, he is physically strong and is capable of performing duties of Mazdoor.

(d) The candidate is suitable for appointment in the department of MES as Mazdoor in relaxation of Normal Recruitment Procedure of coming through Employment Exchange in terms of E-in-C's Branch letter No. 65926/ETC dated 4 March, 1983 giving special consideration being a Handicapped candidate.

(e) The case has been examined and it is verified that Shri Vishnu Prasad Sharma, son of the deceased employee is the only member who is capable of looking after the family and his case is strongly recommended for appointment in

the post of Mazdoor so that he will be able to support his family as the pensionary benefits are not adequate to meet the expenses of the family.

(f) As the applicant and his family have no movable/immovable property or any other source of income it is recommended that his case may be considered on humanitarian grounds.

(g) The appointment of the candidate is subject to Police Verification, production of Medical Fitness certificate for general field service.

7. In spite of the aforesaid recommendations, the appointment of the petitioner was not approved and after prolonged correspondences the respondents by their impugned communication dated 21.1.2002 intimated the petitioner that his case for compassionate appointment could not be approved. The grounds for such rejection as indicated in the communication are that the family of the petitioner is in receipt of Rs. 1849/- as monthly family pension and that emergency and crisis are lacking in the case as the father of the petitioner died six years back.

8. Being aggrieved, the petitioner made a further representation to the respondents and in reply thereto, the second impugned communication dated 31.5.2002 was sent to the petitioner intimating that his case for compassionate appointment was considered by the competent authority and the earlier decision as indicated vide live aforesaid letter dated 21.1.2002 would stand. It was further intimated that the earlier waiting/seniority list had to be dispensed, with and all such cases were reviewed on merit basis based on the yardstick formulated by the department of Personnel and Training. It was further intimated that the case of the petitioner did not fulfil the requirements for compassionate appointment.

9. It is in the aforesaid backdrop, the present writ petition was filed. The respondents have filed their counter affidavit stating inter alia that the family of the petitioner has sufficient means to maintain in view of the monthly family pension of Rs. 1849/-. Further stand in the affidavit is that the case of the petitioner could not be considered in terms of the Government orders holding the field. They reiterated their stand in the impugned communications.

10. Mr. C.P. Upadhaya, learned Counsel for the petitioner strenuously argued that the petitioner has been deprived of his right of compassionate appointment in an arbitrary and illegal manner. He submitted that the petitioner being physically handicapped and there being none other to look after the family, it was incumbent on the part of the respondents to consider the case of the petitioner in its true perspective instead of rejecting the claim of the petitioner on vague and indefinite grounds.

11. Countering the above arguments made by the learned Counsel for the petitioner, Mr. R. Debnath, learned Addl. C.G.S.C., justified the impugned action on the part of the respondents in rejecting the prayer of the petitioner for compassionate appointment. He made submissions in tune with the stand in the

counter affidavit.

12. I have given my anxious consideration to the submissions made by the learned Counsel for the parties. I have also perused the materials available on record. There is no manner of doubt that the petitioner was entitled to be considered for compassionate appointment and upon such consideration, the board which was constituted for the purpose recommended the case of the petitioner. The recommendations made in favour of the petitioner have been quoted above. After such recommendations, it was incumbent on the part of the respondents to give meaningful consideration to the case of the petitioner for his compassionate appointment.

13. Although the case of the petitioner was recommended way back in July, 1995, the respondents sat over the matter for long more than six years and then issued the impugned communication dated 21.1.2002 attributing fault on the part of the petitioner for delay. Out of the two grounds, the ground of delay of six years from the date of expiry of the father of the petitioner is not all attributable to the petitioner. The respondents themselves delayed the matter by not granting approval to the recommendation made in favour of the petitioner and thereafter took the plea of their being no emergency and crisis after expiry of six years from the date of death of the father of the petitioner. Really speaking, this stand is unfortunate and unbecoming of a modal employer.

14. The other ground assigned in the impugned communication dated 21.1.2002 towards rejection of the prayer of the petitioner is also equally unsustainable. It is not understood as to how the respondents could say that the family of the petitioner consisting of widow mother, two sisters and one brother could be said to have sufficient means to maintain on the meagre amount of Rs. 1849/- proved to the family by way of monthly family pension. Thus, on both counts the grounds of rejection fall through.

15. In the second impugned communication dated 31.5.2002, the respondents while reiterating their earlier stand in the first impugned communication dated 21.1.2002 assigned in additional ground of review of the waiting/seniority list based, on the yardstick formulated by the concerned department. Such a stand in the impugned communication dated 31.5.2002 is vague and indefinite to the core of it. It was never the case of the respondents that the case of the petitioner was kept in waiting/seniority list for consideration in future. After the recommendation made in favour of the petitioner way back in July, 1995, the respondents never made any communication to the petitioner over six years. After more than six years they made the first impugned communication to the petitioner assigning the aforesaid two grounds which have been held to be not sustainable.

16. The third ground assigned in the second impugned communication was never made the basis of rejection of the case of the petitioner as would be evident from the first impugned communication dated 21.1.2002.

17. Apart from the fact that at the time of death of the father of the petitioner, he was the only capable member of the family to earn livelihood although he was physically handicapped (deaf and dumb). His case was also recommended by the Board constituted for the purpose. It was clearly indicated in the recommendation that although the petitioner is deaf and dumb, he could perform the works of a Mazdoor. However, such recommendation made in favour of a physically handicapped person, i.e. the petitioner, fell in to deaf ears of the respondents. As to what could be the plight of the family of the petitioner can very well be imagined. Although the petitioner is physically handicapped, he undertook to perform the job of a Mazdoor under the respondents to mitigate the hardship which has fallen on the family after expiry of his father.

18. Unfortunately, the respondents instead of encouraging the petitioner to shoulder the responsibility and to mitigate the hardship of the family, played the negative role which is unbecoming of a modal employer and set over the recommendations made in favour of the petitioner for more than six years. Thereafter, they took the ground that there being no emergency and crisis in the family after six years of expiry of the father of the petitioner, such a stand on the part of the respondents is really unfortunate. The respondents themselves having delayed the matter could not have taken the ground of lack of emergency and crisis in the family. The respondents failed to understand that the case of the petitioner was required to be considered after the death of the father of the petitioner and/or in an around the date of such expiry.

19. As noticed above, the case of the petitioner was recommended pointing out the fact that the vacancies in the post of Mazdoor were available. Such recommendations were made way back in July, 1995. But for the apathy shown by the respondents, hi could have been appointed. The respondents sat over the matter and rejected the claim of the petitioner on the grounds assigned in the impugned communications about which discussions have been made above.

20. For the foregoing reasons and discussions, I am of the considered opinion that the action on the part of the respondents in refusing to accord approval to the recommendations made in favour of the petitioner for his appointment on compassionate ground is wholly unsustainable and illegal. Consequently, the impugned communications dated 21.1.2002 and 31.5.2002 (Annexure-6 and 9) respectively stand set aside and quashed. The matter is remanded back to the respondents to consider the case of the petitioner for appointment on compassionate ground consistently with the observations made above and strictly in terms of the recommendations made by the competent authority and the Board about which mention has been made above.

21. Entire exercise which is now required to be carried out, shall be so carried out by the respondents in terms of this judgment and order within a period of three months from today. The petitioner may obtain a certified copy of this judgment and order and furnish the same before the respondents for their necessary follow up action.

22. The writ petition stands allowed to the extent indicated above leaving the parties to bear their own costs.