

UNREPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **WP(C).No.10913/2004**

% **Date of Decision : January 18, 2008**

#SMT. NILA PRAMANIK Petitioner
! Through: Mr.A.C. Pradhan, Advocate

Versus

\$ UNION OF INDIA & OTHERS Respondent

^ Through: Mr. Siddhartha Singh,
Advocate

CORAM:-

- * **HON'BLE MR. JUSTICE T.S. THAKUR**
- * **HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

Per S.N. AGGARWAL, J.

The petitioner Smt. Nila Pramanik is the widow of late Sh. Anup Kumar Pramanik who was working as a cook in CISF and had died after serving for 12 years while still in service on 02.04.1997. The petitioner in this writ of

mandamus has prayed for directions to the respondents to provide compassionate appointment to her as per Policy of the respondents for compassionate appointment in vogue.

2 The brief facts of the case giving rise to this writ petition are as follow:-

The petitioner's late husband No. 85420026 Cook Anup Kumar Pramanik was serving in CISF for last more than 12 years and died while in service on 02.04.1997. The petitioner is VIII Class pass. After the death of her husband, she had applied for compassionate appointment on or around February, 1998. The case of the petitioner for compassionate appointment was strongly recommended by the concerned authorities of the respondents. The respondents vide their letter dated 21.11.2000 had intimated the petitioner that she was eligible for the post of follower in group 'D'. On 08.08.2003, the respondents informed the petitioner that they do not have any vacancy in group 'D' post and that since her late husband had died 5 years ago, her case for compassionate appointment could not be considered. The grievance of the petitioner is that the respondents have declined compassionate appointment to her without application of mind or without any sympathetic consideration for her, she being a young widow. The petitioner has alleged that the action of the respondents in not providing compassionate appointment to her is arbitrary

and illegal. Therefore, she has filed this writ petition for directions to the respondents to provide her compassionate appointment on account of untimely death of her husband while he was still in service.

3 In response to notice of this writ petition, the respondents have filed their counter affidavit. In their counter affidavit, the respondents have stated that the petitioner was considered by the CISF, Directorate for her compassionate appointment during the years 1998, 2000, 2001 & 2003 respectively for the post of follower (Group 'D') but could not be approved due to non-availability of the vacancy in the said category in CISF for appointment on compassionate ground. The respondents have stated that as per the instructions of the Government of India contained in its Office Memorandum dated 05.05.2003, the case for appointment on compassionate grounds can be considered within three years only from the date of death of the government employee. According to the respondents, since the case of the petitioner for her appointment on compassionate grounds has become 5 years old, she could not be offered appointment on compassionate grounds. The respondents have further stated in their counter affidavit that the CISF, Directorate had decided to consider the case of the petitioner for her appointment on compassionate grounds in group 'C' post (Constable) if she had passed 10th

class and the petitioner was informed accordingly by CISF Directorate vide letter No. 874 dated 22.06.2000 but the petitioner could not avail the said facility due to her failure in producing the proof of required educational qualification. The respondents have also stated that they have paid all the death benefits to the petitioner after the death of her husband, as per details given in para 3 of their counter affidavit. The petitioner is stated to be in receipt of monthly family pension of Rs. 1,275/- in addition to dearness allowance. The respondents have denied the allegation of the petitioner that she was declined compassionate appointment without application of mind or that her case for such appointment was not considered as per Policy of the Government in existence. The respondents have prayed for the dismissal of the present writ petition.

4 We have heard the arguments of the learned counsel for both the parties and have also perused the entire case file with utmost care.

5 Mr. Pradhan, learned counsel appearing on behalf of the petitioner had argued that the petitioner is a young widow and her case for compassionate appointment was not considered by the concerned authorities of the respondents as per Policy of the Government. He had further argued that the petitioner was wrongly denied appointment on a false premise that no vacancy was available with the respondents

in the category of followers during the years her case was allegedly taken up by the respondents for consideration. On the other hand, Mr. Singh learned counsel appearing on behalf of the respondents had vehemently argued that the case of the petitioner for her appointment on compassionate grounds was duly considered by the concerned authorities of the respondents as per Policy of the Government and her case for such appointment could not be approved because the petitioner was lower down in the waiting list and no vacancy was available for her.

6 In order to appreciate the rival argument advanced by the learned counsel for the parties, this Court vide its order passed on 01.02.2006 had directed the respondents to file a detailed break up of the vacancies in follower category (group 'D') including those vacancies arising due to retirement in the four years i.e. 1998, 2000, 2001 & 2003. In compliance with the said directions of this Court, the respondents have filed the affidavit of Mr. S.P. Selvan, Assistant Inspector General (Establishment) at CISF, Headquarters, New Delhi which is there at pages 53 to 55 of the paper book. Mr. Selvan on behalf of the respondents has stated in his affidavit that the Committee constituted for consideration of the cases of compassionate appointment had considered 268 cases including the case of the petitioner in the year 1998. He has further stated that

having regard to the limitation of vacancies available for such appointment and the large number of applications, the Committee unanimously decided that the compassionate appointment should in the first place be offered to the son/wife/daughter of those members who died in action (actual extremists/insurgent attack) and in the second place to those who have died while performing bonafide official duty which is attributable to the risk of the office. As per affidavit of Mr. Selvan, 46 persons were in category A for the appointment of group 'C' & 'D' post, 175 persons were not found eligible within the aforesaid criteria and they were, therefore, put in category B and the name of the petitioner was listed at serial No. 91 in category B list. There were only 22 vacancies available in 1998 and 22 persons were appointed against these vacancies. In the year 1999, the Committee reexamined cases of compassionate appointments including the case of the petitioner. The petitioner was listed at serial No. 39 in category B. The Committee found that the petitioner was not matriculate. Keeping in view the eligibility standard, the Committee found the petitioner eligible only for the post of followers. But this time, due to non availability of vacancies in followers, none of the candidates including the petitioner could be given appointment. The Committee recommended to keep the name of the petitioner in waiting panel.

7 In the year 2002, the Committee considered 166 cases (28 fresh and 138 old cases) including the case of the petitioner for appointment in group 'D' post. The petitioner was listed at serial No. 36. In 2002, there were only 23 vacancies and therefore 23 cases were recommended by the Committee in the follower category (i.e. 8 Cooks, 9 Water Carriers, 03 Sweepers and 3 Washer Man) for appointment. The name of the petitioner could not be recommended by the Committee due to prescribed ceiling of 5% quota. Since the petitioner was considered for her compassionate appointment three times, she was not kept in waiting panel for appointment in the category of follower any further.

8 Mr. Selvan who has filed his affidavit on behalf of the respondents has further stated in his affidavit that in the year 2003, a Committee constituted by Inspector General/ES had examined the case of the petitioner for her appointment to the post of follower (tailor) but she could not be considered for appointment in that year due to non availability of vacancy within the prescribed ceiling of 5% quota. Mr. Selvan has further stated that the Committee recommended the case of the petitioner for rejection as her case had become more than five years old in terms of Office Memorandum dated 05.05.2003. The petitioner was accordingly informed by the respondents vide their letter dated 06.01.2004 that she could not be appointed with the

respondents on compassionate ground.

9 On going through the record, particularly the affidavit of Mr. Selvan, we do not find any merit in the argument of Mr. Pradhan, learned counsel appearing on behalf of the petitioner that the petitioner was denied appointment on compassionate grounds without application of mind or arbitrarily. It is evident from the affidavit of Mr. Selvan that the petitioner was considered for her appointment on compassionate grounds as many as on four occasions in terms of the Policy of the Government contained in its Office Memorandum dated 05.05.2003. As per Policy of the Government contained in its Office Memorandum dated 05.05.2003 (Annexure R-7 at page 46 of the paper book), the case of the petitioner for compassionate appointment cannot be considered after expiry of five years from the death of her husband. 10 years have since expired when the husband of the petitioner had died in 1997. We are of the view that the appointments on compassionate grounds can be made in terms of the Policy of the Government within the prescribed ceiling of 5% quota meant for such appointments. The petitioner could not be appointed by the respondents for want of vacancies in the follower category (group 'D' post) during the years in which she was considered for her such appointment.

10 Mr. Pradhan, learned counsel appearing on behalf of

the petitioner had argued that even if there is no vacancy available for the petitioner in the follower category (group 'D' post), the Court may create a supernumerary post and direct the respondents to appoint the petitioner against the said supernumerary post. In the facts and circumstance of the case, we do not find it to be a fit case to direct the respondents to create supernumerary post for appointment of the petitioner on compassionate grounds. Hence the request of the petitioner's counsel for creating supernumerary post is declined.

11 In view of the above and having regard to the facts and circumstances of the case, we do not find any merit in this writ petition which fails and is hereby dismissed leaving the parties to bear their own costs.

**S.N. AGGARWAL
(JUDGE)**

**T.S. THAKUR
(JUDGE)**

January 18, 2008
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