

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO.7685/2008**

% **Reserved on : 07.1.2009**
Date of Decision : 20.03.2009

SHRI SATPAL Petitioner

Through Ms.Neelam Tiwari for Mr.Rajiv Agarwal,
Advocate

Versus

DELHI JAL BOARD Respondent

Through Mr. Sandeep Aggarwal with
Mr.K.A.Singh, Advocates.

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J.

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1. This is a writ petition filed by the petitioner challenging the order dated 20th June, 2006 passed by Sh.Prakash Chander, Asstt. Commissioner (General) Delhi Jal Board by virtue of which his application was rejected by the respondent, for being appointed on compassionate ground because of the fact that the widow of the deceased Dalip Singh, an employee of the respondent had received a

payment of Rs.3,78,000/- on account of pensionary benefits. It was observed that the said sum was sufficient in the view of the department, for meeting the requirement of the family. This view was formed by the Screening Committee which considered the application for compassionate appointment. In addition to this, it was also observed in the impugned order that there are more deserving cases to be appointed in the 5% quota of posts which are allocated/earmarked for being appointed on compassionate ground.

2. Briefly stated the facts of the present case are that the petitioner had actually got a reference made to the Industrial Tribunal-III from the Government of Delhi on 20th October, 2005 in the following terms:-

“Whether the demand of Sh. Satpal S/o Late Shri Dalip Singh for appointment on compassionate ground on a suitable Class-IV post on regular basis in proper pay scale is legal and justified and if so, to what relief he is entitled and what directions are necessary in this respect?”

3. This reference was decided by the learned Industrial Tribunal on 24th March, 2006 with the observation that the respondent /Management had agreed to consider the case of the petitioner/workman in terms of their policy and accordingly directions were given to the Management that they may consider the application of the petitioner for appointment on compassionate ground.

4. The petitioner thereafter, is purported to have made an application stating his claim for appointment on compassionate ground, on the ground that his father Sh.Dalip Singh, an employee of the respondent/Delhi Jal Board had died on 23rd June, 1997 while as in

normal course, he would have superannuated on 31st December, 2001. His last drawn salary was Rs.750/- per month ** and the amount which was released to the widow of the deceased employee was to the tune of Rs.3,78,000/-. The request of the petitioner was considered by the Screening Committee in the light of the policy for appointment on compassionate ground but the Screening Committee did not find the case of the petitioner fit to be recommended to the Competent Authority to grant him appointment on humanitarian ground. This decision was arrived at by the Screening Committee primarily on account of two reasons:-

- 1) That a sum of Rs.3,78,000/- was given to the family of the deceased employee and if as a rule pension is payable to the family of the deceased employee then the Screening Committee did not consider it fit to grant compassionate appointment.
- 2) The total number of posts which are earmarked with the respondent/workman for being appointed on compassionate ground are only 5% of the posts and there are more than one case, which was considered by the Screening Committee and keeping in view the age of the employee, the number of children, the ages of the family members, and payment received by them and the family condition etc. at the time of death of the deceased employee, are various aspects which are considered by the Screening Committee and on the said parameters, the Screening Committee was of the opinion that there are more deserving cases for being considered favourably for appointment on compassionate ground as compared to that of the petitioner.

Accordingly, the impugned order rejecting the claim of the petitioner for compassionate appointment was passed, which is being assailed.

5. The respondent filed its counter affidavit and contested the claim of the petitioner on merits. It was stated in the counter affidavit that Sh.Dalip Singh, deceased father of the petitioner was working as a 'Belder' and he was removed from services on 17th March, 1994 and after termination of his service, he expired on 23rd June, 1997. The son of the deceased employee filed an application claiming the employment on compassionate ground after expiry of more than seven years while as there were no major liabilities. The petitioner did not file any rejoinder to this.

6. I have heard the learned counsel for the parties and considered the record.

7. The learned counsel for the petitioner has contended that the two grounds on which the case of the petitioner has been rejected by the Screening Committee are not germane to the policy for appointment on compassionate ground. The learned counsel has drawn my attention to the policy, which has been placed on record. It was also urged by the learned counsel that so far as the receipt of payment of Rs.3,78,000/- by the family members of the deceased employee are concerned that could not be a ground for rejection of the claim of the petitioner. Reliance in this regard was placed in case titled as **Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors.** (2005) 10 SCC 289, wherein it was observed that the receipt of the amount by the family members of the deceased employee as a onetime amount or by

way of family pension on account of terminal benefits are irrelevant considerations for rejecting the claim for appointment on compassionate ground.

8. This was a case in which the employee had died untimely in harness and the facts of the said case are distinguishable from the facts of the present case. In the present case, the deceased according to the petitioner himself was left with only 3/4 years of service, while as in the case cited, the employee had died in harness.

9. No doubt, the Apex Court in Govind Prakash Verma's case (supra) has been held that the receipt of pensionary benefits or the legal dues/terminal benefits of the family of the deceased could not be the ground for rejection of the claim of party for being considered on compassionate appointment but certainly it has not been observed that merely because the payments have been received by the legal heirs of the deceased employee, the other factors need not be taken into consideration for grant of compassionate appointment. There are catena of authorities by the Apex Court wherein it has been observed that compassionate appointment cannot be claimed as a matter of right. Reliance in this regard is place on **General Manager, State Bank of India & Ors. Vs. Anju Jain** 2008 (8) SCC 475. It is observed by the Apex Court that it is a humanitarian help which is granted by the Court to the family in a given state of circumstances so as to enable the family to tide over the initial set back which it might have suffered on account of the untimely demise of the earning member of the family. In **State of Bihar Vs. Dr.Braj Kumar Mishra & Ors.**, AIR 2000 SC 106, the Apex

Court held that compassionate appointment and is only a concession and not a right. While doing so, the age of the deceased employee, the number of family members, their respective ages, their financial dependency on the deceased employee, the factum of the liabilities of the family of the deceased employee like the number of unmarried children especially the daughters, non-availability of the earning in alternative earning member in the family are the grounds which have to be taken into account. In ***State of Haryana Vs. Rani Devi & Anr.*** 1996 (5) SCC 308, the Apex Court set aside the order of compassionate appointment passed by the High Court after about 15 years of death on the ground that in case initial period of death has been overcome compassionate appointment can ought not be granted.

10. Coming back to the facts of the present case, the factum of the deceased employee having died in 1997 and the number of his family members is not in dispute. The elder son of the petitioner is an earning member of the family. There are no liabilities of the family and so far as the petitioner is concerned, he is a able bodied person who can work and find his own way of making both ends meet and also support his mother. It is in this background that the factum of the receipt of the amount of Rs.3,78,000/- by the widow of the deceased employee was taken into consideration by the Screening Committee while considering the case of the petitioner for compassionate appointment. I do not consider that there was anything improper, irrational or unjustified in arriving at such a decision by the Screening Committee in taking the factum of payment of the terminal benefits having been received as one of the factors and not a sole ground for rejecting the application of the petitioner for appointment on compassionate ground.

11. So far as the question of total number of 5% of the vacancies being reserved for being filled up on compassionate appointment are concerned,

the challenge is not to the percentage of vacancies which have been reserved and the only observation of the Screening Committee is to the effect that there are more deserving case where such a relief needs to be given rather than in case of the petitioner. As has been stated by the Apex Court that appointment on compassionate ground is not a matter of right and it is also not a normal procedure of recruitment, therefore, at a given point of time when the Screening Committee examines the applications for appointment on compassionate appointment, the comparative merit/need of the family is bound to be seen. This is what preciously has been done by the Screening Committee.

12. The contention of the learned counsel for the petitioner is that the stand which has been taken by the respondent that there was a delay of seven years in approaching the respondent for the purpose of grant of assistance by way of compassionate appointment cannot be held against the petitioner on account of the fact that the policy of compassionate appointment formulated by the respondent themselves lays down that belated request for compassionate appointment can be considered with a time gap of five years or so and they were not aware as to whether there was any such policy from the respondents as they were not very well educated.

13. Be that as it may, even though the petitioner might have approached the respondents for appointment on compassionate ground after a lapse of seven years, the case of the petitioner was not rejected only on that score but the fact remains that as on date nearly 12 years have gone by and if the family of the deceased employee including the petitioner have been able to survive during these 11 years, there is absolutely no justification for granting the benefit on compassionate appointment to the petitioner after setting aside

the impugned order passed by the respondents after due consideration by the Screening Committee, which has been so formed for this purpose.

14. For the reasons mentioned above, I find no merit in the case of the petitioner for appointment on compassionate ground much less any infirmity in the impugned order dated 20.6.2006 passed by the respondents by virtue of which the case of the petitioner for compassionate appointment was rejected.

15. Accordingly, the writ petition is without merit and the same is dismissed. No order as to costs.

MARCH 20, 2009
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V.K. SHALI, J.