

IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 21st January, 2010**

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W.P.(C) 6440/2002

NAVNEET KAUSHAL, RAJNI KAUSHAL Petitioner
Through Mr. M.M. Kalra, Adv.

versus

UOI, MINISTRY OF DEFENCE DELHI Respondent
Through Ms. Saroj Bidawat, Adv.

CORAM:**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE VIPIN SANGHI**

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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? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

GITA MITTAL, J (Oral)

1. The present writ petition has been filed by the widow and the daughter of the deceased Late Shri Jagjit Singh Kaushal making a prayer for giving appointment on a suitable post to daughter of the deceased arrayed as petitioner no.2 before us, on compassionate grounds. There is no dispute to the material facts giving rise to the present petition and to the extent necessary, they are briefly noticed hereinafter.

2. Late Shri Jagjit Singh Kaushal was employed as a Senior Chargeman (SCM), with the Army Base Workshop, Delhi Cantonment, New Delhi who unfortunately expired on 17th October, 1994 while in service. His widow

Smt. Navneet Kaushal, petitioner no.1 herein made an application for provision of employment to Kumari Rajni Kaushal, petitioner no.2 herein by an application made on 21st November, 1994 for the post of LDC/Storekeeper. This application was forwarded to the Army Headquarters on the 23rd May, 1995 through the EME records for consideration by the competent authority.

3. The application for appointment on compassionate basis was required to be assessed based on the economic distress of the family and suitability of the applicant for appointment on compassionate grounds.

4. It is the case of the respondents that the application of the petitioners was considered by the Ministry of Defence and an opinion was expressed on the 18th October, 1999 to the effect that the request made for appointment of the petitioner no.2 could not be acceded to.

5. The decision of the respondent was communicated to the petitioners by a communication dated 18th February, 2000.

6. The petitioners appear to have represented by way of representation dated 18th July, 2001 to the respondents. This representation of the petitioners was also rejected by the competent authority and the decision was communicated by a letter dated 8th August, 2001.

7. On a direction issued by this court, the respondents have placed the original records of the case before us which contain a rejection of the subsequent representations of the petitioner by an order dated 7th August, 2002.

8. It appears that in the meantime, the son of the deceased employee Shri

Vikram Singh Kaushal also made representation to the respondents. This representation of the son was rejected by a letter dated 17th September, 2002.

9. Aggrieved by the rejection of these representations, the present writ petition has been filed by the petitioners assailing the rejection inter alia on the ground of arbitrariness.

10. We have heard learned counsel for the parties and also perused the original record which has been produced pursuant to our directions. It needs no elaboration that so far as the appointment on compassionate basis is concerned, family of the deceased employee does not have any vested right to the same.

11. It has been held that the object of such appointment is to ameliorate the distress of the dependents of a deceased employee who has died in harness and the purpose is to relieve unexpected immediate hardship and financial distress caused to the family by sudden demise of the bread earning member of the family. The whole purpose of granting compassionate appointment is to ensure that the family of a deceased employee gets immediate succour and relief.

12. There is no dispute to the existence of a policy for appointment on compassionate basis which is followed by the respondents. However, it is pointed out that in terms of the DOP&T letter dated 9th October, 1998, compassionate appointment is given only upto 5% of the total vacancies falling in a year for Group 'C' & 'D' posts of employees expiring in harness.

13. So far as the assessment for eligibility to such appointment is concerned,

the record which has been produced before us and as stated in the counter affidavit, disclose that such appointments are offered to the most deserving cases whose economic conditions are assessed on the extreme need of the family based on the assets and liabilities of the family of the deceased employee as per the Government of India instructions. Amongst others, the respondents took into consideration the following factors while considering the application:-

- “(a) Size of the family including ages of children of deceased/medically retired Government servants.
- (b) Amount of terminal benefits received under various schemes.
- (c) Amount of family pension.
- (d) Liabilities in terms of unmarried daughters etc.
- (e) Earning member(s) supporting/son supporting the family.
- (f) Movable/immovable property and income thereof.”

14. So far as the family of the deceased Shri Jagjit Singh Kaushal is concerned, it is on record that the same consists of his widow-petitioner no.1; two married and employed daughters; one son and the petitioner no.2 who is the youngest child of the deceased. The record discloses that the petitioner no.1 has filed an affidavit with the respondent authorities disclosing right, title and interest in a plot of 70 sq. yards.

P. It is submitted by Ms. Saroj Bidawat, learned counsel for the respondents that only the first and second child of the deceased employee is considered for appointment on compassionate basis. However, no such reason is disclosed in the rejection of the petitioner's application in the orders which have been assailed before us. The record also does not disclose any element of financial penury being faced by the family. There is no disclosure as to the status of

employment of the son of the deceased other than a vague averment to the effect that he was not under the control of the petitioner no.1. This statement does not support lack of employment.

15. When the writ petition came up for hearing on 5th February, 2009, it was pointed out by learned counsel for the petitioners that the petitioner no.2 had been placed at serial no.8 of the list prepared by the respondents having regard to the date on which the applications for appointment on compassionate basis were made. It was submitted by the petitioners that subsequently, without any justification, the respondents have shifted her to serial no.9 and for this reason, she has been denied appointment.

16. Perusal of the records of the respondents disclose that one Kumari Kamlesh, daughter of deceased Shri Mohinder Singh along with her mother Smt. Shakuntla Devi had filed an O.A. No.53/1996 before the Central Administrative Tribunal praying for appointment on compassionate basis. She had contended that she had submitted an application dated 12th May, 1989 for appointment on compassionate basis but she was wrongfully not being considered for appointment on compassionate basis. By an order passed on 26th May, 1996, the Central Administrative Tribunal had disposed of this original application directing the respondent to register the claim of Kumari Kamlesh Kumari on the waiting list of persons seeking appointment on compassionate ground. In these circumstances, Kumari Kamlesh was placed above the petitioner who had applied on 26th June, 1995 giving her the benefit of having made the application on 20/26th June, 1995. It is further clarified that it was in these circumstances

that Kumari Kamlesh was placed above the petitioner for the purpose of consideration for appointment on compassionate basis against the 5% of the available vacancies.

17. Certainly, no fault can be found with this action of the respondents.

18. In view of the principles noticed above, it is to be borne in mind that application for appointment on compassionate basis would require to be considered expeditiously and the issue of immediacies of the family need on expiry of the deceased employee is required to be borne in mind. Almost 15 years have passed since the expiry of the employee of the respondents. Learned counsel for the petitioners is not in a position to inform their status even as on date. The respondents have justified the circumstances in which the petitioner was not entitled to appointment on compassionate basis under the applicable policy. No legally tenable ground in support of the plea of arbitrariness or illegality have been pointed out.

For all these circumstances, we find no merits in this writ petition which is hereby dismissed.

GITA MITTAL,J

VIPIN SANGHI, J

JANUARY 21, 2010

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