

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) No.1222/2010**

% **Date of Decision: 02.03.2010**

Bhagwati Rana & Anr. Petitioner
Through Mr. E.J. Verghese, Advocate

Versus

UOI & Ors. Respondent
Through Mr. A.K. Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

ANIL KUMAR, J.

The petitioners, the widow and the son of the deceased Sh. S.H. Rana, who was working in the office of PAO (Ors) RRRC, Delhi Cantt. and who expired on 6th August, 2000 has sought compassionate appointment of the son. They filed an original application bearing OA No. 2663/2009 titled Smt. Bhagvati Rana, and Another. Vs. Union of India & Ors., which has been dismissed by Central Administrative Tribunal, Principal Bench by order dated 22nd September, 2009 which is impugned by the petitioners before this Court in this writ petition under Article 226 of the Constitution of India.

The admitted facts are that the petitioner No. 1 Smt. Bhagwati Rana had applied for compassionate appointment, however her application was rejected as there was no vacancy under 5% quota. Rejection of the request of the petitioner No. 1/widow of late Sh. H.S. Rana was challenged by her by filing OA No. 2285/2002 which was dismissed vide order dated 26th May, 2003 on the ground of non-availability of the vacancy in the department. Petitioner No. 1 had sought review of the order of dismissal, however the application for review being RA 22/2003 was also dismissed by order dated 25th August, 2003.

Four years after rejection of request of the petitioner no.1 for compassionate appointment, another original application being OA No. 2663/2009 has been filed by the petitioner no. 1/widow for his son, petitioner no.2. The request of the petitioners for appointment of petitioner No. 2 was not entertained on the ground that the application for compassionate appointment of mother was rejected earlier and under the scheme of 'Compassionate appointments', there is no provision for compassionate appointment of another legal representative of the deceased, after rejection of the request for compassionate appointment of the widow.

The Tribunal has noted that compassionate appointments are granted to provide immediate redressal to the family of the deceased

employee on account of loss of income and the compassionate appointment cannot be made de hors the Scheme. The observation of the Tribunal in para 2 of the order dated 22th September, 2009 impugned before us is as under:-

“2. Compassionate appointments are granted to provide immediate redressal to the family of the deceased employee on account of loss of income. Certainly, the appointment could not be obtained de hors the Scheme. There is no provision in the Scheme provided for compassionate appointment that after the claim of one of the members of the family (wife of the deceased employee in the present case) having once been processed and finally rejected, any other member can apply for the same regarding i.e compassionate appointment after having attained majority.”

The learned counsel for the petitioner has very emphatically contended that the plea of the petitioner No. 1 for compassionate appointment could not be rejected as the appointments were made even after 2002. This is not disputed that the petitioner No. 1 had filed an OA bearing No. 2285/2002 which was dismissed and an application for review was also dismissed. In case subsequent facts had come to the knowledge of the petitioner No. 1, which would have entitled her for compassionate appointment, the said order should have been challenged by the petitioner No. 1 which has not been done. Rather a fresh application on behalf of petitioner No. 2, the son has been filed, where the petitioner No. 1/ widow is also impleaded. The reasoning of the Tribunal that compassionate appointment is granted to provide

immediate redressal to the family of the deceased employee on account of loss of income and as in the case of petitioners, Sh. H.S. Rana had expired on 6th August, 2000, therefore, in 2009 almost after 9 years there are no grounds to grant for compassionate appointment, cannot be faulted.

The Supreme Court in JT 1994 (3) SC 525, Umesh Kumar Nagpal Vs. State of Haryana & Ors. had held that mere death of an employee in harness does not entitle his dependants to a job. It was further held that financial condition of the family must be taken into account and a job on compassionate ground cannot be offered as a matter of course irrespective of financial condition for the posts above Class III and IV. The Supreme Court further elaborated that the provisions for compassionate employment has necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary or on ad-hoc basis.

The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole

breadwinner, compassionate employment cannot be claimed and offered after a long lapse of time and after the crisis is over. This view has been taken by the Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana MANU/SC/0701/1994 and has been consistently followed and reiterated time and again by the Apex Court as also by various High Courts. The widow of the deceased had applied for compassionate appointment which was declined as no vacancy was available within 5% vacancies available for compassionate appointment. This was challenged by the widow by filing an original application before Central Administrative Tribunal, Principle Bench which was declined. A review application was also filed which was also dismissed and four years after that compassionate appointment of the son is claimed. Apparently the penury on account of the sudden demise of an employee would have dissipated and there would be no warrant or justification for violating the equalities guaranteed under Articles 14 and 16 of the Constitution. In Jagdish Prasad versus State of Bihar and Anr. reported as MANU/SC/0996/1996, compassionate appointment was sought by the son of a deceased employee who had died in harness and at the time of the death of the employee, the applicant was a minor of only about four years. It was held by the Apex Court that the applicant was not entitled to be appointed after he attained majority long thereafter and that if such a contention was to be accepted, it would amount to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the

recruitment rules. In *Sushma Gosain v. Union of India* reported as MANU/SC/0519/1989 it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major, he can be appointed without any time consciousness or limit.

The view taken in *Sushma Gosain* (supra) was reiterated in *Sanjay Kumar versus State of Bihar* reported as MANU/SC/0541/2000, wherein the petitioner's mother died in harness when the petitioner was a minor, and it was held that the application of the petitioner for compassionate appointment eight years after the death of his mother, i.e., on attaining majority, was barred for being time barred. This position of law was again reiterated in the case of *Md. Rajaodin* (supra). On the ratio of these precedents, the son of the deceased *Shri H.S.Rana* who died in 2000 cannot be allowed to claim compassionate appointment in 2009. In any case the scheme does not contemplate appointment of son on compassionate grounds after the rejection of the application of his mother.

For the foregoing reasons, we do not find any illegality or irregularity in the order of the Tribunal rejecting the claim of the son of the deceased for compassionate appointment which would entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

MARCH 02, 2010
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MOOL CHAND GARG, J.