

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

+ **WP(C) No.3356/2010 & CM No.6746/2010**

% **Date of Decision: 17.05.2010**

Smt.Bimla Devi Petitioner
Through Mr.B.S.Choudhary, Advocate.

Versus

Under Secretary (Admn.), Rashtrapati Bhawan, ... Respondent
New Delhi
Through Mr.A.K.Bhardwaj, Mr.Anuj Aggarwal &
Mr.Gaurav Khanna, Advocates.

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.

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The petitioner has sought compassionate appointment for her younger son after the demise of her husband, late Sh.Sunder Singh, which was declined by the respondent, which was challenged by her in petition being T.A.No.1347 of 2009, titled as 'Smt.Bimla Devi v. Under Secretary (Admn), Rashtrapati Bhawan, New Delhi', which has been dismissed by the Central Administrative Tribunal, Principal Bench, New

Delhi by order dated 27th November, 2009 which is challenged by the petitioner in the present writ petition.

The petitioner had contended before the Tribunal that her husband Late Sh. Sunder Singh expired on 6th August, 2002, while serving as an Assistant in the President's Secretariat. He was survived by his widow, the petitioner, two sons and a married daughter. The petitioner is a Scheduled Caste and her elder son Sh. Jitendra Kumar submitted an application for appointment as a LDC on compassionate ground, but was rejected on 10th September, 2002. The application of the elder son of the petitioner was declined on the ground because his wife was working and was getting emoluments of Rs.10,000/- per month, and the petitioner had been sanctioned an amount of Rs.7.41 lacs and family pension of Rs.3538/- per month plus usual Dearness relief. The application of the elder son of the petitioner was also declined as there was no vacancy under 5% quota for compassionate appointment.

After the application for compassionate appointment of the elder son was declined, the petitioner filed another application dated 11th September, 2002 requesting for compassionate appointment of her second son Sh. Rajeev Kumar on the ground that her elder son is

married and is not living with them and the petitioner has no connection with the family of her elder son.

The request of the petitioner for compassionate appointment of her younger son Sh. Rajeev Kumar was not considered, therefore, the writ petition being W.P. (C) No.4161 of 2006 was filed in Delhi High Court, which was disposed of with the direction to the respondent to consider all the material facts for the decision of petitioner's application within 10 weeks.

Pursuant to the direction given by the High Court in Writ Petition (C) No.4161 of 2006, order dated 27th May, 2006 was passed by the respondent, which was again challenged by the petitioner in another Writ Petition (C) No.5682 of 2007, which was withdrawn by the petitioner on 4th December, 2008 with liberty to file a fresh petition. Thereafter, the petitioner filed a writ petition being W.P.(C) 6954 of 2009 in the High Court, which was later on transferred to the Central Administrative Tribunal, Principal Bench, New Delhi.

The petitioner in her petition claimed compassionate appointment on the ground that her family is in indigent circumstances and the respondent has erred in assessing her financial position, as her second son Sh.Rajeev Kumar has no source of income. The petitioner

also alleged discrimination inasmuch as the son of late Sh.A.H.Qureshi was granted compassionate appointment though his widow got her higher terminal benefits and the family pension.

The plea of the petitioner for compassionate appointment was challenged by the respondent contending that the elder son of the petitioner had sought compassionate appointment, which was declined on the ground that the petitioner had received Rs.7,41,673/-by way of DCRG, GPF Leave Encashment and CGEIS and that her son was working in a private company and her daughter-in-law is working in a Government sector as a Stenographer with Power Financial Corporation Ltd.

The respondent also highlighted that just after rejection of the request of the elder son dated 10th September, 2002, the petitioner filed another application dated 11th September, 2002 for compassionate appointment of her younger son Sh. Rajeev Kumar. The Tribunal, while declining the request of the petitioner by order dated 27th November, 2009 noted the object of the Scheme of compassionate appointment as laid down in DoPT's OM dated 9th October, 1998 contemplating that the object of the Scheme is to grant appointment on compassionate grounds to a dependant family member of the Government servant dying in harness or who is retired on medical grounds, thereby leaving

his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help them to get over the emergency. The Tribunal also considered that the factors that are relevant for grant of compassionate appointment to the petitioner were considered after which her application was rejected.

Regarding the discrimination, the Tribunal noted difference between the two cases and held that the cases of discrimination contending by the petitioner were distinguishable. The Tribunal also referred to and relied on 'Smt. Savitri Devi & another v. Union of India & others', [W.P. (C) No.4733-34/2004] decided on 5th October, 2005.

The learned counsel for the petitioner has very emphatically contended that she has been discriminated inasmuch as the legal representatives of Late Sh. A.H. Qureshi were granted compassionate appointment but in her case it had been declined. The learned counsel for the petitioner, however, has not been able to deny that the widow of Late Sh. A.H. Qureshi had one damaged lung and the expenditure of medical treatment was likely to go up in her case and both the sons of Late Sh. A.H. Qureshi were not in employment and at that time, a vacancy was available in contradistinction to the case of the petitioner, who does not have any debilitating disease and one of her son and her

daughter-in-law are gainfully employed. Even the application for appointment of her second son Sh.Rajeev Kumar was filed just after the application for compassionate appointment of elder son of the petitioner was rejected. The distinctions which have been elaborated and carved out by the Tribunal cannot be faulted and the petitioner cannot claim compassionate appointment for her younger son on the alleged ground of discrimination. In Smt.Savitri Devi & another (Supra), it had been held in para 13 which is as under:-

“13. Compassionate appointment, it is well settled, is not a source of recruitment nor can it be claimed as a matter of right. Courts and Tribunals while deciding cases of compassionate appointments should not confer any benediction impelled by sympathetic consideration as such claims cannot be strictly upheld on touchstone of Articles 14 and 16 of the Constitution of India. Appointment on compassionate grounds, therefore, should be ----- strictly in accordance with the scheme/rules and regulations framed for that purpose, such claims whenever made should be reasonable and justified on the basis of sudden economic crises occurring in a family, whose bread earner has died in harness.”

In the circumstances, the compassionate appointment is not to be given when there is no financial hardship. Compassionate appointment, it is well settled, not a source of a recruitment, nor it can be claimed as a matter of right.

In the circumstances, the younger son of the petitioner is also not entitled for compassionate appointment and the findings of the

Tribunal do not suffer from any such illegality, irregularity or perversity, which is required to be corrected 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, therefore, dismissed.

All the pending applications are also dismissed.

ANIL KUMAR, J.

MAY 17, 2010
'VK'

MOOL CHAND GARG, J.