

REPORTABLE

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

WP(C) No.7284/2008

**Judgment reserved on: December 07, 2009
Pronounced on: January 20, 2010**

RAJPAL KUMAR & ORS Petitioners
Through Dr. Manmohan Sharma, Advocate

versus

FOOD CORPORATION OF INDIA & ORS Respondents
Through Ms. Neelam Singh, Advocate

**CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA**

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

REKHA SHARMA, J.

The petitioners before me are the sons of ex-employees of the Food Corporation of India (hereinafter called the 'FCI'). Their fathers, namely, Birbal Mehto, Lakshmi Dass and Gopal were working as H/Lab in the CTO (Naraina). They sought voluntary retirement inspired by a voluntary scheme of the FCI contained in a circular dated July 03, 1996 which, the petitioners contend, gave their fathers the option to take voluntary retirement on medical grounds and also held out a promise to them that consequent to their such retirement, their dependants will be given compassionate appointments in their place. In their letters/applications seeking retirement which were

dated January 28, 2002, January 21, 2002 and April 22, 2002, they expressed their inability to work on account of their medical unfitness and accordingly, they requested that they be sent for medical check-up and also requested that their sons be provided jobs in their place. The FCI acceded to their request but only partially. They were allowed to take voluntary retirement on medical grounds and consequently were relieved from their posts on July 03, 2003, March 12, 2003 and June 05, 2003 respectively. However, their further request to provide employment to their sons in their place has not been acceded to. It is this denial of appointments which has led to the filing of the present writ-petition.

The FCI does not dispute that a scheme allowing departmental workers to seek retirement on medical grounds is in existence. It also does not dispute that the scheme provides for compassionate employment to their male dependants. What it disputes is the claim of the petitioners that the scheme casts an obligation on the FCI to give employment to the male dependants of the workers who have opted for voluntary retirement. It is stated that the benefit of compassionate employment becomes available to a person on the fulfillment of certain conditions and most importantly on the availability of a vacancy. It is further stated that after the fathers of the petitioners sent their letters seeking voluntary retirement and before the same were accepted, another circular bearing No.5/2003 dated March 04, 2003 had come into existence which laid down that only 5% of the vacancies at the entry level shall be filled by direct recruitment on compassionate ground. In view of these two

circulars, it is the case of the FCI that consequent to the retirements of the fathers of the petitioners, no vacancy within 5% quota set apart for appointment on compassionate basis was available.

It needs to be noticed at this stage that the circular which the petitioners have annexed with the writ-petition is not the circular dated July 03, 1996 referred to hereinabove but the circular dated December 17, 1997. However, during the course of arguments, it was conceded by the learned counsel for the petitioners that the basic circular which provides for compassionate appointment is the circular dated July 03, 1996 and that the circular dated December 17, 1997 is only an extension of the circular dated July 03, 1996. The latter circular dated December 17, 1997 was issued as a one-time exception to extend the benefit of the scheme dated July 03, 1996 to even those employees who had crossed the age limit of 55 years, provided their applications had been received up to October 01, 1997 as against the maximum age limit of 55 years fixed by the circular of July 03, 1996. All other conditions for availing the benefit of the scheme remained the same as provided in the circular dated July 03, 1996.

Having given the background, it is time now to reproduce some of the salient features of the circular dated July 03, 1996:-

“FOOD CORPORATION OF INDIA
HEADQUARTERS : : NEW DELHI.

No.IR(L)/31(27)/87

Dated: 3rd July, 1996

CIRCULAR

Subject: Recruitment procedure for appointment of next kin of Departmental workers who seek retirement on Medical grounds at their own request in relaxation of the procedure of getting sponsored from Employment Exchange.

According to the existing instructions as contained in Hqrs. circular letter No.24(8)/15-IR(P) dated 2.2.77, 27.11.80, 14.4.81 the dependants of the deceased departmental workers who dies while in service and the dependent of departmental workers retired on medical grounds by FCI can be appointed on compassionate grounds without sponsoring their names through the employment exchange.

x x x x x x

It has been decided with the approval of the Board of Directors in its 248th meeting held on 10.6.96 that the benefit of compassionate ground appointment shall be extended to the dependent of the departmental worker who seek voluntary retirement on medical grounds at their own request subject to the following conditions:-

- (i) The worker who seek voluntary retirement on medical ground should apply within the age limit of 55 years for the purpose of availing the benefits of compassionate ground appointment.
- (ii) x x x x x x
- (iii) The benefit of compassionate ground appointment shall be given only in Handling labour category that too for male dependent only.
- (iv) The maximum age limit for such compassionate ground appointment should not exceed 30 years. The minimum age of 18 years should not in any case be relaxed.
- (v) The compassionate appointment shall be made only in deserving cases where there is no earning member in the family of the retired worker.
- (vi) While considering the compassionate ground appointment, the financial benefits which may be available on retirement should also be taken into account and the competent authority should satisfy that the retirement benefit shall not meet for running the family.

x x x x x x

General:

Notwithstanding anything contained in the above, the compassionate ground appointment is not as a matter of right but purely at the discretion of the competent authority taking into the account the circumstances and conditions of the family of the medically retired workers and also subject to availability of the vacancy.”

The aforementioned clauses of the circular leave me in no doubt that the appointment on compassionate basis cannot be claimed as a

matter of right. It is subject to certain conditions and most importantly to the availability of a vacancy. The circular clearly and unequivocally lays down that, "*the compassionate ground is not a matter of right but purely at the discretion of the competent authority.*" The FCI, as noticed above, has taken the stand that in view of the conditions laid down by the circular dated July 03, 1996 and the subsequent circular of March 04, 2003 fixing a ceiling of 5% on compassionate appointment at the entry level, there was no vacancy in the said category against which the petitioners could be appointed. At this stage, it will be relevant to note that the question, whether the ceiling of 5% of compassionate appointment as laid down by the circular of March 04, 2003 will also apply to those applicants who had sent in their papers for voluntary retirement prior to the coming into force of the circular came up for consideration before a Division Bench of this Court in LPA No.1672 of 2005 in the case of *Food Corporation & Anr. Vs. Food Corporation of India Workers Union*. The Division Bench vide judgment dated January 30, 2006 has held as under:-

" x x x x x x x

9. In our opinion, there is an obvious reason for putting the ceiling of 5% because in this country, experience has shown that there was a great abuse of the rule regarding compassionate appointment. A compassionate appointment is really a back door appointments. Prima facie it violates Article 16 of the Constitution. However, it is permitted in exceptional cases, but such exceptional cases must be strictly construed. What has been actually happening, as experience shows from a large number of cases in various High Courts that there was gross abuse of the rule for compassionate appointment. Fake claims were being made under such rules including claim of being adopted etc., for getting back door appointments.

10. Moreover, if the submission of learned counsel for the respondent is accepted, it will mean that even 100% vacancies may have to be filled by compassionate

appointment if that the applications were made before 4.3.2003.

11. It must be understood that ordinarily an appointment is made on merit so that a suitable person can be appointed. Under the compassionate appointment scheme even persons who are not meritorious are appointed. Obviously, a limit should be set to the number of such non-meritorious candidates otherwise the department may not be able to function.

12. In view of the above, the order passed in CM 10560/2004 in WP(C) No.3362/2004 is set aside and it is made clear that the applications for compassionate appointment made whether before or after 4.3.2003 will be subject to the ceiling limit of 5%."

The aforesaid judgment of the Division Bench was taken in appeal to the Supreme Court by way of a Special Leave Petition which was dismissed on March 31, 2008. It needs to be noticed that it is not the case of the petitioners that there were vacancies available in the 5% quota of the compassionate appointment and yet they were not appointed against those vacancies. Their case is that the circular dated March 04, 2003 does not apply to them as their fathers had sought voluntary retirement prior to the coming into force of the circular which submission in view of the aforementioned judgment of the Division Bench and its approval by the Supreme Court is no longer res-integra. However, the matter does not end here. The petitioners say that their case is squarely covered by another judgment of the Supreme Court in the case of *Food Corporation of India and another Versus Ram Kesh Yadav and another* reported in 2007 (3) AWC 2857 (SC) and it is that judgment which should govern their fate.

There is no doubt that the issue involved in the case of *Ram Kesh Yadav* (supra) relied upon by the petitioners was the same as has arisen in the present case, for the petitioner therein was also claiming

compassionate appointment based on the circular dated July 03, 1996 and the respondent was none other than the FCI. However, in that case, the FCI had resisted the appointment on the ground that the employee had already crossed the age limit of 55 years when he had made the application seeking voluntary retirement and, therefore, he did not fall within the ambit of the circular. The matter was first considered by a Division Bench of the Allahabad High Court. The Court rejected the plea taken by the FCI on the ground that once it had accepted the request of an employee for retirement on medical grounds under the compassionate appointment scheme, it was obliged to give appointment to the dependant of such employee and his request could not be turned down on any technical ground. Aggrieved by the judgment of the Allahabad High Court, the FCI came in appeal to the Supreme Court, but the Supreme Court affirmed the decision of the High Court.

Before I examine, whether the case of the present petitioners falls in the same category as was the case before the Supreme Court, it is necessary to refer to the application of voluntary retirement which was under consideration before the Supreme Court and the applications which the fathers of the present petitioners had made. The application which the Supreme Court was considering was worded as under:-

“Sub: Appointment of my son Sri Ram Kesh in consideration of my retirement on medical ground.....

.....as I am unable to do handling work of loading due to inability of carrying bags, I desire to go on retirement on medical ground, if my above-named son would be provided with an employment in my place as handling labour. Further I am the only earning member of my family and on my retirement if none of my family is

employed, the entire family would be put to suffer hardship..... Kindly allow me to go on retirement on medical ground and provide employment to my above named son in my place as handling labour.....”

In so far as the fathers of the petitioners are concerned, their applications as originally submitted were in Hindi. Those have been placed on record by the petitioners along with the English translation of the same. All the three applications are almost similarly worded. Hence, the contents of only one application are being reproduced. They are as under:-

“Sub: on the basis of Medical Unfit and replace of Service with relation.

.....I am Birbal Mehto S/o Late Sh. Kratik Mehto employed of the post at F.C.I. Maya Puri Depot in Gang No.14 on handling worker in these I am physically and medically unfit due to this region I am not capable to do work at your firm. I requesting you to provide the service Raj Pal who is my son because I am not physically fit due to this medical region provide job him because they promise me to provide help on my family support whole life and I have not any other person excepted Raj Pal. With provide the service and help whole life.....”

Coming to the judgment of the Supreme Court in *Ram Kesh Yadav's* case (supra), it has been clearly held in paragraph 8 of the same that the compassionate appointment is not a matter of right. It is a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. The paragraph in question runs as under:-

“8. As rightly contended by F.C.I., the issue of voluntary retirement of an employee on medical grounds, and the issue of compassionate appointment to a dependant of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is

retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the Scheme dated 3.7.1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no 'right' to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in *Nizamuddin* (supra) that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate appointment on the ground of non-fulfillment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous."

Having said so, the Supreme Court in view of the wordings of the application of that case held that the application was an offer by the petitioner to seek voluntary retirement if his son was provided with employment in his place and that the FCI could not have accepted part of the offer by allowing him to retire and not accepting the other part of giving appointment to his son on compassionate basis. This is what the Supreme Court has said:-

“ x x x x x x x

9. But on facts, this case is different. The second respondent's application dated 26.4.1999 was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds if his son was provided with employment in his place. The second respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. F.C.I. ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. There lies the catch.

10. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by

the offeror and then reject the condition subject to which the offer is made.

11. In the context of second respondent's conditional offer of voluntary retirement contained in the letter dated 26.4.1999, FCI had, therefore, the following options:-

- (a) Reject the request for voluntary retirement on the ground that a conditional offer was contrary to the Scheme and it was not willing to consider any conditional offer.
- (b) Reject the request for compassionate appointment on the ground that the employee was more than 55 years of age or on the ground that it was not a deserving case or because there was no vacancy, and then refer the employee to a Medical board for compulsory retirement on medical grounds.
- (c) Require the employee to make separate applications for voluntary retirement on medical grounds and for compassionate appointment strictly as per rules and the scheme.
- (d) Accept the request of the employee for voluntary retirement on medical grounds subject to the condition stipulated by the employee and provide appointment to his son on compassionate grounds.

When FCI accepted the offer unconditionally and retired the second respondent from service by office order dated 29.7.2000, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it clear that he desired to retire voluntarily on medical grounds only if his son (first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the Scheme or not warranted, it ought to have rejected the application. Alternatively, it ought have informed the employee that the compassionate appointment could not be given to his son because he (the employee) had already completed 55 years of age and that it will consider his request for retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the condition subject to which the offer was made."

The question is, whether the case of the petitioners herein falls in the same bracket as that of the petitioner in the case before the

Supreme Court. I feel that there is a marked difference between the two cases. The petitioner before the Supreme Court had made his offer of voluntary retirement conditional to his son being given appointment in his place. The fathers of the present petitioners, on the other hand, prefixed no such condition in their applications seeking retirement. They simply made a request that on their retirement, their sons be provided jobs. A condition is an antithesis of a request. The two cannot be treated at par. And it is this which distinguishes the case of the petitioners from the case before the Supreme Court. In any case, in that case, the FCI tried to take refuge under a technical ground that when the petitioner therein had applied for voluntary retirement, he had crossed the age of 55 years and, therefore, was not covered by the circular, whereas in the present case, its' case is that there is no vacancy available within 5% quota reserved for compassionate appointments at the entry level. The Supreme Court in *Ram Kesh Yadav's* case (supra) has clearly held that if there is no vacancy, no appointment can be claimed on compassionate basis. The present is a case of no vacancy and hence, cannot be equated with the case before the Supreme Court.

For the fore-going reasons, I find no merit in the writ-petition. The same is dismissed.

REKHA SHARMA, J.

JANUARY 20, 2010
PC/ka/g