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

% *Judgment delivered on: 05th July, 2012*

+ **W.P.(C) No.5515/2011**

ASHOK KUMAR Petitioner
Through: Mr.Ravi Shanker Sharma, Adv.

versus

UNION OF INDIA AND ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Notice in the instant matter was issued on 03.08.2011 and Mr.Mukesh Anand, learned Advocate accepted the same on behalf of respondents. Despite the repeated opportunities, no response has been filed to the instant petition. Having no option, the right of respondents to file counter-affidavit was closed vide order dated 07.03.2012.

2. Today also, none appeared on behalf of respondents, therefore, under compelling circumstances, this Court has decided to proceed with the matter.

3. Vide instant petition, the petitioner has prayed as under:-

“a) That the respondents be directed/ ordered to appoint the petitioner in Group ‘C’ or ‘D’ under the provision of appointment on compassionate ground.

b) That the respondents be directed/ ordered to

grand arrears of salary of Group 'D' since the date of application for the appointment i.e. 13.11.2000 with interest of 12% per annum."

4. The brief facts of the case are that the father of the petitioner Sh.Ran Singh was a Group-D employee in the department of respondent No.2. He had to take retirement on medical grounds based on the report dated 15.04.2000 and same was accepted, thus retired on 29.01.2001. In the month of October, 2000, the father of the petitioner applied for the appointment of petitioner and petition also applied for the same on prescribed proforma / application on 13.11.2000. Accordingly, the petitioner was considered for Group 'C' i.e. LDC on the basis of his education qualification – graduate.

5. The respondent No.2 / Department wrote many letters to respondent No.1 for approval of appointment of petitioner vide letters Annexures E, F, G & H dated 05.02.2002, 18.06.2002, 10.07.2002, & 29.07.2002 respectively. However, on 02.09.2002, respondent No.1 replied to respondent No.2 and submitted that a LDC cannot be directly recruited under the provision of compassionate grounds.

6. Thereafter, the petitioner filed an application again on 19.09.2002 for his appointment in Group 'D' post, despite the fact the petitioner is a Graduate. The matter remained under consideration for a long time by reasons best known to respondents. Suddenly, on 04.01.2011, the respondent No.2/department informed the petitioner that the application for his appointment has been rejected on the ground of time barred. As time period of three years have elapsed according to the respondents, the period

of three years is the limitation for consideration for such appointment.

7. Thereafter, petitioner served a legal notice upon respondents dated 03.03.2011, who replied thereto that the rejection was on the basis of time barred and non-availability of vacancy.

8. It is stated in the petition that regarding the appointment on compassionate grounds is that the posts in class C and D are the lowest class posts and hence, they alone can be offered on compassionate grounds. Accordingly, the orders have been issued in GOMS No.61, Labour and Employment Department dated 19.07.2006 that the compassionate appointments shall be made to the posts in Groups 'C' & 'D'.

9. On perusal of the petition and after considering the submission of learned counsel for petitioner, it is emerged that the GOMS No.61 dated 19.07.2006 issued by Labour and Employment Department that the posts under 'C' and 'D' groups, can be offered for compassionate grounds.

10. The purpose of the appointment on compassionate grounds is to help the family of the employee who has taken the retirement on medical grounds or died in harness. Though, 5% posts are reserved, out of the total vacancies in Group 'C' and 'D' for compassionate grounds appointment; however every year, the applications if received by the Government that has to be considered keeping in view the family background; their financial status and liability of the petitioner/applicant etc.

11. In the case of the petitioner, the respondents have not gone through on all these issues and kept pending the application pending and finally taken

the stand that it is time barred. No other grounds have been considered by the respondents.

12. The unfortunate fact of the instant case is that only on two dates, the department has been represented; thereafter, neither the reply to the instant petition has been filed; nor represented by anyone.

13. In such eventuality, the Courts cannot leave the litigants in lurch, if the respondents are not interested to pursue the matter and to assist the Court.

14. As per the proforma regarding dependants of Govt. Servants, dying / retired on invalid pension, the father of the petitioner rendered 22 years service having no assets in his name, or in the name of any dependant member with no movable or immovable property in their name and the total retirement emoluments received were only Rs.92,326/-. Additionally, he was having house making wife, two sons and one daughter, all unmarried and unemployed. The petitioner is a Graduate.

15. Vide communication dated 05.02.2002, Additional Director (Administration) has mentioned that one post of LDC was lying vacant in his Office for less than one year. Since there is no other earning member in the family of the father of the petitioner, he sought the approval of the Ministry for appointment of the Petitioner as LDC on compassionate ground.

16. In reply thereto, Under Secretary to the Govt. of India vide communication dated 10.07.2002, specifically asked from the Director General of the Respondent no. 2 whether vacancy in the Direct Recruitment

quota in the grade of LDC is still in existence after the cadre restructuring of Customs and Central Excise Department.

17. In reply thereto, Deputy Director (Administration) of respondent no. 2 responded that the cadre restructuring has not been implemented till date. However, four posts of LDC have been allocated to this Directorate General.

18. Meanwhile, restructuring of the Customs & Central Excise Department took place and it is conveyed by the Under Secretary of the respondent no. 1 that Post of LDC was to be filled up by promotion only. Therefore, the said post cannot be availed in direct recruitment quota for appointment on compassionate grounds.

19. Finally, vide communication dated 04.01.2011, Deputy Director (Administration) of the respondent no. 2 has conveyed the petitioner that after careful consideration and going by the rules governing such appointments, which have given time limit of 3 years for consideration of such cases, it has been decided by the Committee that the case beyond time limit of 3 years are liable to be rejected.

20. But, in reply to legal notice, the aforesaid Deputy Director (Administration) of the respondent no. 2 has submitted that due to non-availability of the compassionate quota vacancy in their office, request could not be considered.

21. I am of the considered opinion that initially respondent no. 2 had pursued the case of the petitioner and even specifically mentioned that the vacancy was available with them, but immediately thereafter taken u-turn

and came to the conclusion that the quota vacancy were not available. The process was going on from October, 2000 onward and reached to 2011. Though the purpose of compassionate appointment is totally defeated because the scheme was meant to help the dependant family of the person died in harness or retired on medical grounds.

22. However, the financial condition and the circumstances of the family discussed above were not taken into consideration. The petitioner is accordingly entitled for Group 'D' post as he is a Graduate, fulfil all the eligibility criteria.

23. Therefore, in view of the above discussion I direct the respondent No.2 to appoint the petitioner on a group 'C' or 'D' post with effect from 19.09.2002 when he made application second time. However, petitioner shall not be entitled for any back-wages as he has not worked with the respondents.

24. Respondent No.2 to comply with above order within four weeks from the receipt of copy of instant order.

25. Registry of this Court is directed to send the copy of this order to respondent No.2 for compliance.

26. Instant petition stands disposed of, in above terms.

27. No order as to costs.

SURESH KAIT, J

JULY 05, 2012/MK/jg