

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

% *Judgment Reserved on : February 15, 2013*
Judgment Pronounced on April 01, 2013

+ **WP(C) 902/2013**

VIKAS KUMAR & ANR. Petitioners
Represented by: Ms.Ritika Chawla and Mr.Arun
Bhardwaj, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. Late Mata Deen, a class-IV employee of the Government of India, died in harness on December 15, 1999. He was working as a Chowkidar. He was survived by his wife, Ved Kaur (petitioner No.2); two daughters named Kusum Lata and Rekha Rani; and two sons Dr.Uttam Kumar and Vikas Kumar.

2. Being in pensionable service, family pension was sanctioned. Vikas Kumar, the younger son of the deceased made an application on June 13, 2001 seeking compassionate appointment on the death of his father, and since then he has been in litigation with the Department. Needless to state, compassionate appointment has been denied.

3. Having applied for compassionate appointment on June 13, 2001 and obtaining no favourable order in his favour, Vikas Kumar and his mother joined in a common action when they filed OA No.3427/2009, praying for a direction to be issued that Vikas Kumar should be given compassionate appointment, which Original Application was disposed of by the Tribunal on December 02, 2009 with a direction that a reasoned decision be conveyed to Vikas Kumar.

4. Denying compassionate appointment to Vikas Kumar he was informed that at present no vacancy in the 5% posts reserved for Group-D employees is available to be filled up on compassionate basis.

5. Petitioners re-approached the Tribunal by and under OA No.2070/2010 pointing out that, if not more, one vacancy in the Office of GMSD, Kolkata was lying vacant.

6. The response of the respondents before the Tribunal was that no vacancy was available in the 5% quota for compassionate appointment. It was pleaded that no appointment on compassionate grounds have been made since March 26, 1996. It was admitted that one post of Chowkidar and one post of Mazdoor were lying vacant since August 01, 2008 and December 01, 2008. On merits, respondents took the stand that it is strange that all children of the deceased have been found gainfully employed except Vikas Kumar. Though not expressly pleaded, the underlying message conveyed is that as the other children competed and found employment for themselves, Vikas Kumar could do likewise. It was highlighted that late Mata Deen died on December 15, 1999 and as of the year 2010, 11 years had gone by. It was highlighted that appointment on compassionate grounds is not an alternative source of employment. It was intended for those families which came under sudden financial stress on account of the death of the earning member. It

was pointed out that Vikas Kumar and his mother are residing in their own house in village Masoodpur. It was highlighted that family pension was being paid to Ved Kaur. It was highlighted that the two have managed for over 11 years after Mata Deen's death.

7. Vide impugned decision dated August 08, 2011 the Central Administrative Tribunal has dismissed OA No.2070/2010 agreeing with all the contentions urged by the respondents.

8. Reiterating the pleas which were urged before the Tribunal, Vikas Kumar and his mother additionally relied upon a response received on September 03, 2012 to a query sent by Vikas Kumar under the Right to Information Act, wherein after reiterating that since 1996 no appointments have been made on compassionate grounds, it is informed that apart from an application received from Vikas Kumar, three other applicants named Bala Datt, Suresh Chand Meena and Deepak had also applied for compassionate appointments and even their applications were pending. It is informed that one post of Packer and one post of Mazdoor were vacant in GMSD, New Delhi. It is intimated that Vikas Kumar's name had been forwarded to DGHS, MSO, R.K.Puram for being considered for appointment on compassionate grounds.

9. It is apparent that the material placed before the Tribunal and before us wherefrom petitioners want this Court to infer that Group-D posts are lying vacant, do evidence, if not more, that at least two posts, one of Packer and one of Mazdoor, are lying vacant in GMSD, New Delhi. This is clear from the reply received by Vikas Kumar on September 03, 2012 to the RTI query.

10. But merely because two posts are lying vacant would not mean that appointment has to follow in favour of Vikas Kumar. The reason is that it has to be further determined that posts in the 5% quota

allotted for appointment on compassionate grounds are available, and for which we have no material before us. Further, in Delhi Circle, four applicants are waiting to be appointed on compassionate grounds; one of whom is Vikas Kumar.

11. The undisputed position is that the respondents have a transparent policy under which points are allocated on different parameters to the applicants. It has to be so for the reason the claim of a young widow with minor children whose husband dies in harness at the early stages of employment would have a much better claim than the son of an employee who dies while in harness after rendering pensionable service. Whereas the young widow would hardly receive any death-cum-terminal benefits, the family of the latter would not only receive a fair sum of money as death-cum-terminal gratuity but would also receive a family pension.

12. We have been witnessing fair amount of litigation on compassionate appointment to Group-D posts and would simply highlight that in most of the Government offices, as we find in Courts also, conservancy work, security etc. has been outsourced to private contractors. In the era of computerization with file movement being less and less and so being the position with dak because the computerized network in offices and digitization of record is making accessible the files on the net to the officers; all of which have contributed to a fall in Group-D posts.

13. Vikas Kumar would be advised to sharpen his skills and compete with the rest in the world and find a job for himself, as has his elder brother Dr. Uttam Kumar, who appears to have obtained some degree which justifies he calling himself a doctor.

14. Compassionate appointment is to rescue the whole family of the deceased employee which finds itself in a whirlpool due to the sudden demise of the employee. It would certainly assume importance that out of two sons, one is employed. It is no answer that the said son does not give finances to his mother and the younger brother. The family has to share its grief. In any case such a family would be lesser placed than the family of a deceased employee which shares together its grief i.e. a family where none is employed.

15. The Tribunal has noted four decisions of the Supreme Court reported as (1994) 4 SCC 138 Umesh Kumar Nagpal v. State of Haryana, (2004) 7 SCC 265 PNB v. Ashwani Kumar Taneja, (2006) 5 SCC 766 State of J&K v. Sajid Ahmed Mir, and (2007) 7 SCC 192 Sanjay Kumar v. State of Bihar, all of which highlight that compassionate appointment quota is not an alternative source of employment. The purpose of compassionate appointment is to provide relief to the family of a deceased Government servant which finds itself in sudden financial distress due to the untimely death of the employee. We would only add to the said well recognized legal position, that where a Government servant has rendered pensionable service and dies in harness thereafter, resulting in the family receiving a family pension as also death-cum-retirement gratuity benefits, the claim of the family would be less meritorious for the reason there would be no sudden drying up of finances; no doubt the quantum thereof would be less. But the family would be able to survive. Further, where such a family has a roof over its head, the claim for compassionate appointment would be further diminished. Further if, some family member is gainfully employed, the claim for compassionate appointment for another member of the family would be further diminished and it would be no answer for the said

claimant to say that the earning family member is not supporting the family. Those in distress must learn to share their grief.

16. Ordinarily, we would have dismissed the writ petition by passing no direction whatsoever favourable to Vikas Kumar who is 35 years of age as of today and we do not take his claim that all these years he has been sitting idle in his house. From his signatures on the writ petition, the affidavit in support of the writ petition and the vakalatnama signed by him we find a firm and well defined signatures (in English) of an educated and a literate person; and that speaks all. But at the same time we note that in response to the RTI query received by Vikas Kumar on September 03, 2012 there is a reference to his name being forwarded to DGHS, MSO, R.K.Puram for approval of appointment on compassionate grounds. Thus, while disposing of the writ petition denying mandamus claimed by Vikas Kumar as prayed for, we simply observe that if DGHS, MSO, R.K.Puram, New Delhi is able to locate a post for Vikas Kumar, he may be offered appointment to said post, but if none is found and DGHS, MSO, R.K.Puram turns down the proposal sent to him, that would be the end of the matter and Vikas Kumar would be prevented from litigating any further with respect to said decision. Decision taken by DGHS, MSO, R.K.Puram be communicated to Vikas Kumar positively within three months from today.

17. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

APRIL 01, 2013//dk//