

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

+ W.P.(C) 532/2014

Reserved on : 20.11.2014

Pronounced on : 16.12.2014

IN THE MATTER OF:

ANIL KUMAR BANA

..... Petitioner

Through: Mr. Jagat Singh, Advocate with
Ms. E.J.Ahuja, Advocate

versus

CHAIRMAN/MD, FOOD CORPORATION OF INDIA (HQ) AND ORS

..... Respondents

Through: Mr. Ajit Pudussery, Advocate with
Ms. Shruti Sarma Hazarika, Mr. Sujit Kumar
Singh and Mr. O.P. Singh, Advocates

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner has filed the present petition praying *inter alia* for quashing the order dated 15.09.2011, whereunder his request for appointment on compassionate grounds upon the demise of his father, Shri Rajpal Singh was turned down by the respondents/FCI.

2. A perusal of the impugned order dated 15.09.2011 reveals that the petitioner's candidature for a category IV post in the year 2005 was examined on merits by the Zonal Empowered Committee and was rejected on the ground that there was no vacancy within

the ceiling limit of 5% of the direct recruitment quota. It was also recorded therein that the FCI had released a sum of ₹4,70,185/-, excluding CPF as the terminal benefits payable to Late Shri Rajpal Singh, Ex-Senior Electrician and further noted that he owns a residential premises.

3. In brief, the relevant facts of the case are that Shri Rajpal Singh was a permanent employee of the respondents/FCI and was working on the post of a Senior Electrician. He had expired on 08.10.2004, while in harness. Upon the demise of Shri Rajpal Singh, the respondents/FCI had released a sum of ₹4,70,185/- in favour of both his sons, i.e., the petitioner herein and his brother, Shri Nagender Kumar Bana. The breakup of the figure of ₹4,70,185/- released by the respondents/FCI is as below:-

1. Benevolent Fund	-	₹15,000/-
2. PLI	-	₹11,600/-
3. Ex gratia	-	₹1,500/-
4. Leave Encashment (67 days)	-	₹31,585/-
5. Gratuity	-	₹3,50,000/-
6. GIS	-	₹60,500/-

Total	-	₹4,70,185/-

4. As per the averments made in the petition, at the time of his father's demise, the petitioner's elder brother was serving in the

army and both his sisters were already married. All the three siblings of the petitioner had given a no objection in his favour to enable him to apply to the respondents/FCI for grant of appointment on compassionate grounds. Thereafter, the petitioner had applied to the respondents/FCI on 20.03.2005 for grant of compassionate appointment alongwith the relevant documents. At his request, the Tehsildar, Tehsil Hapur, District Ghaziabad, State of UP had issued a certificate dated 06.10.2004, certifying *inter alia* that the petitioner is a permanent resident of village Chitoli and his financial condition is poor and he deserves to be given a compassionate appointment, being unemployed. Apart from the certificate issued by the Tehsildar, the petitioner had also approached the local District Office of the respondents/FCI with a request to prepare a report with regard to his pecuniary condition. Resultantly, a report dated 14.06.2005 was prepared by a Committee comprising of three officers, who had noted that the family members of the deceased comprised of two sons and two married daughters and they owned one small *Kacha* house in the village with no other source of income. However, one of the committee members had mentioned in his report that the deceased owned 5 *Bighas* of cultivable land.

5. The aforesaid Committee recommended the petitioner's case for appointment in the FCI on compassionate grounds. The petitioner's application for appointment on compassionate grounds was forwarded by the Regional Manager to the Zonal Manager under cover of letter dated 26.07.2005. The grievance of the petitioner is that despite the aforesaid recommendations made by the Tehsildar and the Three Member Committee constituted by the Regional Office of the FCI, his request for compassionate appointment was not considered sympathetically and rejected vide letter dated 15.09.2011.

6. Learned counsel for the petitioner contended that his client had filed an application for seeking compassionate appointment on 20.03.2005 and it took the respondents/FCI a period of six years and six months to inform him that there was no vacancy in the compassionate quota by issuing the impugned rejection order dated 15.09.2011. He pointed out that over the years, the petitioner has turned over age and has no other source of employment and he was strung along by the respondents/FCI, whose officers kept assuring him that he would receive the appointment letter any day as the Three Member Committee constituted by the FCI had recommended his name for compassionate appointment. It was further submitted that the quarterly zonal statement for the quarter

ending March, 2013, showing the category/post/cadre-wise manpower position for the Northern Zone enclosed as Annexure P-15 to the writ petition would demonstrate that there were vacancies available but the respondents/FCI did not take any step to fill up the same and instead rejected the petitioner's claim on the ground that there was no vacancy available in the years 2005, 2006 and 2007, which is not based on a correct factual position. Learned counsel also referred to the OM dated 26.07.2012 issued by the DOPT, wherein it was mentioned that the decision to fix a time limit of three years for considering cases of compassionate appointment was withdrawn by virtue of OM dated 05.05.2003 and he urged that the petitioner's entitlement to compassionate appointment cannot be defeated on account of passage of time and further, that the vacancy position had to be examined as on the date of considering the application for compassionate appointment.

7. *Per contra*, learned counsel for the respondents/FCI stated that it is not a fit case for grant of compassionate appointment to the petitioner. He submitted that while the petitioner's father had expired in the year 2004, the present petition has been filed after ten years, and the same ought to be rejected on the ground of delay and laches alone as it defeats the main objective of granting appointment on compassionate grounds which is to enable the

family members of the deceased employee to tide over the sudden financial crisis faced by them on the demise of the sole bread earner. He urged that in the present case, the said situation no longer exists because the family members of the deceased have been able to survive the financial crisis over the years and they are managing adequately.

8. It was further highlighted that in the respondents/FCI, the number of vacancies to be filled up for appointment on compassionate grounds is restricted to 5% of the direct recruitment quota and in the relevant year, i.e., in the year 2005, there was no vacancy available for appointing the petitioner on compassionate grounds. Learned counsel also pointed out that apart from owning a home and a parcel of land, the petitioner's brother is gainfully employed and in a position to extend financial help to his family members. He emphasized that such an appointment cannot be claimed as a vested or inherited right, the object of making compassionate appointment being only to help the family members of the deceased employee to overcome the sudden financial crisis being faced by them and it ought to not be treated as an alternative route of recruitment of public employment. To substantiate the aforesaid submission, learned counsel had relied on the decision of the Supreme Court in the case of Punjab National

Bank and Ors. vs. Ashwini Kumar Taneja reported as **(2004) 7 SCC 265**. In support of the decision of the respondents/FCI of limiting the posts for appointment on compassionate grounds to 5%, reference was made to the decision of the Division Bench dated 16.08.2010, in **LPA No.181/2010** entitled Rajpal Kumar and Anr. vs. FCI. Learned counsel concluded by submitting that it is not a fit case where the benefit of compassionate appointment ought to be extended to the petitioner.

9. On 06.08.2014, when arguments were being advanced in the present case, learned counsel for the petitioner had sought to meet the objection of delay and laches raised by the other side by pointing out that the petitioner had applied to the respondents/FCI on 20.03.2005 for seeking appointment on compassionate grounds and the said application had remained pending at the end of the FCI for a period of six long years and it was finally rejected by the impugned order dated 15.09.2011, that was intimated to the petitioner after almost one year from the date when it was passed, i.e., on 17.08.2012.

10. In view of the aforesaid submission made by learned counsel for the petitioner, counsel for the respondents/FCI was called upon to explain the delay in disposing of the petitioner's application and the delay in communicating the rejection order dated 15.09.2011 to

him after almost one year. Further, the respondents/FCI were directed to explain the basis on which it was being urged that there was no vacancy available in the year 2005, when the petitioner had applied for being considered for appointment on compassionate grounds, as the averments made in the counter affidavit were quite ambiguous on that aspect.

11. Pursuant to the aforesaid order, an additional affidavit was filed by the respondents No.1 and 2/FCI on 27.08.2014 but as the said affidavit was also found to be deficient, learned counsel for the respondents/FCI had sought liberty to file an additional affidavit, which was filed on 22.09.2014. It was stated in the said affidavit that when the petitioner had submitted the application for compassionate appointment, his case was covered under OM dated 05.05.2003 issued by the Ministry of Personnel, Public Grievances and Pensions, which had prescribed a ceiling of 5% quota of the total number of vacancies available under direct recruitment for recruitment under the compassionate appointment category and if there was no current vacancy for such an appointment, such applications were required to be kept pending to await the vacancies.

12. Applying the aforesaid OM to the facts of the present case, it was averred by the respondents/FCI that when the petitioner had

submitted his application, there was no vacancy available under category IV in the 5% quota for appointment on compassionate grounds and resultantly, his name was placed in the panel awaiting arising of vacancies. Though no vacancy had arisen even after the passage of three years, the petitioner's name and that of some others had continued to remain in the panel. Subsequently, the Zonal Empowered Committee was constituted by the respondents/FCI to review all cases of dependents of deceased employees rostered between the years 2001 to 2009. The said Committee had submitted its Report and expressed its views to the Competent Authority in respect of 830 candidates including the petitioner herein. Based on the said recommendations, the petitioner's case was rejected by the Competent Authority vide letter dated 15.09.2011. It is in this manner that the respondents/FCI has sought to explain the delay in processing the petitioner's application for compassionate appointment.

13. The Court has considered the arguments advanced by the counsels for the parties, perused the pleadings and examined the records, apart from the decisions cited by them.

14. Recently, in the case entitled Resham Devi vs. Vijaya Bank and Anr. [**W.P.(C) 7417/2013**] decided on 08.12.2014, this Court had the occasion to summarize some of the broad principles

applicable to cases of compassionate appointment as culled out from a catena of decisions of the Supreme Court and the High Court over the years.

15. It is well settled by now that compassionate appointment is given solely on humanitarian grounds with the object of providing immediate succor to a deceased employee's family to enable them to overcome the grave and sudden financial crisis faced by them on the death of the sole breadwinner. However, mere death of an employee in harness does not entitle his family to compassionate appointment. It is necessary for the Government/public authority to examine the financial condition of the family of the deceased and only upon being satisfied that the family will not be able to meet the crisis that a job ought to be offered to the eligible member of such a family. For compassionate appointment, posts in class III and class IV, being the lowest posts, can be offered, the aim being to enable the family to overcome financial destitution faced by them.

16. Further, compassionate appointment is permissible only to one of the dependents of the deceased/incapacitated employee, i.e., parents, spouse, son or daughter and not to all relatives. The favourable treatment given to such a dependent of the deceased employee in such posts has a rational nexus with the object sought

to be achieved, viz., relief against destitution and the Court is expected to be mindful of the fact that as against the destitute family of the deceased, there are several other families that are equally, and may be more destitute and an exception to the rule that is made in favour of the family of the deceased employee is purely in consideration of the services rendered by him and to meet the legitimate expectations of his legal heirs.

17. The provisions for compassionate appointment are required to be guided by the rules/executive instructions/scheme/policy framed by the Government or the concerned public authority that can withstand the test of Articles 14 and 16 of the Constitution of India, the object being that an employment of such a nature cannot be offered by an individual officer or on an *ad hoc* basis. Such a rule/scheme/policy/guideline, as framed, is binding on both, the employer and the employee. Compassionate appointment ought not to be granted after a lapse of a reasonable period as may be stipulated in the rules. The family member of the deceased, who approach the employer for being considered for compassionate appointment cannot claim a vested right to such an appointment and nor can such a right be exercised at any time in the future. As the sole object of such an appointment is to extend a helping hand to the family of the deceased employee for them to tide over the

immediate financial crisis faced on account of the death of the breadwinner while in service or on medical invalidation, compassionate appointment cannot be claimed or offered after the crisis blows over. Another factor that ought to be examined by the courts when approached by the family members of the deceased employee for seeking compassionate appointment, is the extent of retiral benefits received by the heirs of the deceased employee.

18. The aforesaid legal position has developed over the years through a number of judicial pronouncements made on the parameters that the Court ought to adhere to when dealing with a case of compassionate appointment, including the cases of Umesh Kumar Nagpal vs. State of Haryana and Ors. reported as **(1994) 4 SCC 138**; Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and Ors. reported as **AIR 1998 SC 2230**; Punjab National Bank and Ors. vs. Ashwini Kumar Taneja reported as **AIR 2004 SC 4155**; State of J&K and Ors. vs. Sajad Ahmed Mir reported as **(2006) 5 SCC 766**; V. Sivamurthy vs. State of Andhra Pradesh and Ors. reported as **(2008) 13 SCC 730**; Eastern Coalfields Ltd vs. Anil Badyakar and Ors. reported as **(2009) 13 SCC 112** and Bhawani Prasad Sonkar vs. UOI and Ors. reported as **(2011) 4 SCC 209**.

19. In the instant case, Shri Rajpal Singh, who was working on the post of Senior Electrician in the respondents/FCI, had expired on 08.10.2004, while in harness. By the date of his demise, his wife had predeceased him and he was survived by two sons and two daughters, i.e., Shri Nagender Kumar Bana (the elder brother of the petitioner), Shri Anil Kumar Bana (the petitioner), Smt. Ranjeeta and Smt. Sangeeta (both sisters). On the date of Shri Rajpal Singh's demise, his elder son was employed in the army and both his daughters had already got married. In the year 2005, the petitioner's brother was relieved from the army and he had got private employment. The petitioner had also got married in the year 1998, during the lifetime of his father and his own family comprises of a wife and four children. Apart from a small *Kacha* house, Shri Rajpal Singh owned 5 Bighas of agricultural land in his native village Chitoli, District Hapur. The petitioner is a farmer and has been cultivating the said agricultural land that had devolved on him and his brother in equal shares upon the demise of their father. It is also an admitted position that the petitioner's elder brother has been foregoing his share in the crop being harvested on the jointly held agricultural land. The terminal benefits released by the respondents/FCI in favour of the deceased, totaling to a sum of ₹4,70,185/-, have also been divided in equal shares between the petitioner and his brother.

20. All the aforesaid facts reveal that the condition of the family members of the deceased employee of the respondents/FCI was not so penurious that they could not have survived upon his demise. Nor was Late Shri Rajpal Singh the sole breadwinner of the family as during his lifetime, the elder son was employed with the army and the petitioner herein was cultivating the agricultural land owned by the father. Additionally, upon the demise of the petitioner's father, the respondents/FCI had released the terminal benefits to the tune of ₹4,70,185/- to his legal heirs, which amount does not include the CPF dues. Even if the petitioner has received 50% of the said amount, it would come to ₹2,35,093/-, which is a substantial amount and would have provided enough cushion to the petitioner and his family members to meet their immediate financial needs on the sudden demise of Shri Rajpal Singh.

21. Coming to the second aspect, which is with regard to the explanation for the delay on the part of the respondents/FCI in communicating the order dated 15.09.2011 to the petitioner, it has been averred in para 9 of the additional affidavit filed by the FCI that as per the records, the petitioner had received the said order on 29.09.2011, which can be verified from a perusal of the RTI application submitted by him to the FCI on 03.12.2011. Learned counsel for the respondents/FCI had clarified that the

communication dated 15.09.2011 was routed to the petitioner through the Zonal Office and served on him on 29.09.2011 and for a second time, it was served on him through the District Office on 16.08.2012. The petitioner's RTI application dated 3.12.2011 submitted to the respondents/FCI clearly mentions the fact that he had received the rejection order on 29.09.2011 and it falsifies his plea that it had taken almost one year for the respondents/FCI to communicate the rejection order to him.

22. As for the existence of vacancies at the relevant point of time, the affidavit of the respondents/FCI states that till 26.09.1995, against the sanctioned strength of 7670 employees in category IV posts, 383 aspirants had been appointed till the year 2000, which was within the ceiling limit of 5% of direct recruitment quota at the entry level. With the passage of time, the sanctioned strength of the employees in category IV was reduced to 1772 in the year 2005 and had further depleted to 1661 from the year 2006 till 2009. As such, the appointed employees had become surplus with effect from the year 2001 and resultantly, there was no vacancy available within the ceiling limit of 5%, till the year 2009, for the respondents/FCI to have accommodated the petitioner. The respondents/FCI has substantiated the aforesaid submissions by filing a copy of the OM dated 05.05.2003 issued by the DOPT, a

copy of the extract of the recommendations made by the Zonal Empowered Committee of the FCI and a chart of the current status of the vacancies in the FCI.

23. It is also relevant to refer to the office order dated 26.07.2012 issued by the DOPT and highlighted by the counsel for the petitioner to urge that the time limit of three years that had been prescribed under the earlier OM dated 05.05.2003 for considering cases of compassionate appointment, had been re-examined and withdrawn. As per the compassionate appointment policy of the FCI, only 5% of the vacancies at the entry level are reserved to be filled up by direct recruitment on compassionate grounds. Keeping in view the ceiling limit of 5% set apart for compassionate appointment and the fact that there was no vacancy available from the year 2005 onwards till the year 2009, the petitioner could not have been accommodated.

24. In the very same OM dated 26.07.2012 that the petitioner has relied upon, the opening para emphasizes the primary objective of the scheme for compassionate appointment, which is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution. Reference has also been made therein to the judgment dated 05.04.2011 in **Civil Appeal No.2206/2006** entitled Local

Administration Department vs. M. Selvanayagam @ Kumaravelu

reported as **(2011) 13 SCC 42**, wherein the Supreme Court had observed that an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependent as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be in direct conflict with Articles 14 and 16 of the Constitution of India.

25. The aforesaid OM dated 26.07.2012 also refers to an earlier OM dated 09.10.1998 that had permitted the Ministries/Departments to consider the requests for compassionate appointment even where the death/retirement on medical grounds of the Government servants had taken place 5/6 years ago but with a condition that while considering such a belated request, the Department must not lose sight of the fact that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve their economic distress and if such a family was able to manage somehow in all these years, it should be taken as adequate proof that they have dependable means of subsistence.

26. Tested on the anvil of the aforesaid circulars/guidelines that were in vogue at the time when the petitioner had submitted his application for compassionate appointment, the respondents/FCI cannot be faulted for rejecting his application on the ground that filling up of a post on compassionate basis is restricted to 5% quota set apart for compassionate appointment and there was no vacancy in the said quota at the given point in time. Moreover, though there were no vacancies available in the 5% quota for three years, the respondents/FCI retained the petitioner's name in the wait list and the Zonal Empowered Committee of the FCI had reviewed all the cases of the dependants of the deceased employees rostered between the years 2001 and 2009.

27. Further, in the letter dated 15.09.2011, the respondents/FCI had stated that a sum of ₹4,70,185/- excluding CPF had been released in favour of the family members of late Shri Rajpal Singh and it had also taken note of the fact that the petitioner and his family own a residential house. Later on it has emerged from the report submitted by one of the members of the Three Members Committee appointed by the respondents/FCI to examine the petitioner's request for compassionate appointment that the deceased was the owner of 5 Bighas of agricultural land, which was being cultivated by the petitioner. Given the above facts, the

impugned rejection order was justified in rejecting the petitioner's application on the twin grounds of absence of vacancy in the ceiling limit of 5% of the direct recruitment quota set apart for compassionate appointment in terms of the Government of India instructions contained in OM's dated 09.10.1998 and 05.05.2003 and the fact that a substantial amount had been released in favour of the family members towards the terminal dues of the deceased.

28. This Court must also be cognizant of the fact that aggrieved by the rejection order dated 15.09.2011 passed by the respondents/FCI, the petitioner has elected to approach this Court for relief in January, 2014, i.e., after the passage of almost three years. The explanation offered for the delay in seeking legal recourse is that the said order had reached the petitioner only in August, 2012. But the said assertion has turned out to be false as it has now been established from the RTI application dated 03.12.2011 submitted by the petitioner to the FCI that the rejection order was received by him on 29.09.2011. This also reinforces the submission made by the counsel for the respondents/FCI that the application for compassionate appointment made at a belated stage ought not to be entertained for the reason that over the passage of time, the very object of making such an appointment does not

survive and it has to be inferred that the petitioner and his family members have dependable means of subsistence.

29. Keeping in mind all the above factors, the inevitable conclusion is that the financial condition of the petitioner and his family members was not as penurious as claimed by him. In all these years, the family members of the deceased employee have been able to adequately overcome the sudden distress on account of stoppage of his income. Resultantly, the relief of compassionate appointment prayed for by the petitioner is turned down.

30. The present petition is dismissed and the parties are left to bear their own costs.

DECEMBER 16, 2014
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(HIMA KOHLI)
JUDGE