

9
\$~12.

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

+ **W.P.(C) 11000/2015**

% **Judgment dated 15th September, 2016**

**GOVERNMENT OF THE NATIONAL
CAPITAL TERRITORY OF DELHI & ORS. Petitioners**

**Through : Mr.Gautam Narayan, ASC and Mr.R.I.
Iyer, Adv.**

versus

RAJWINDER KAUR & ANR. Respondents

**Through : Mr.S.K. Gupta and Mr.Vikram Singh,
Advs. along with respondents.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

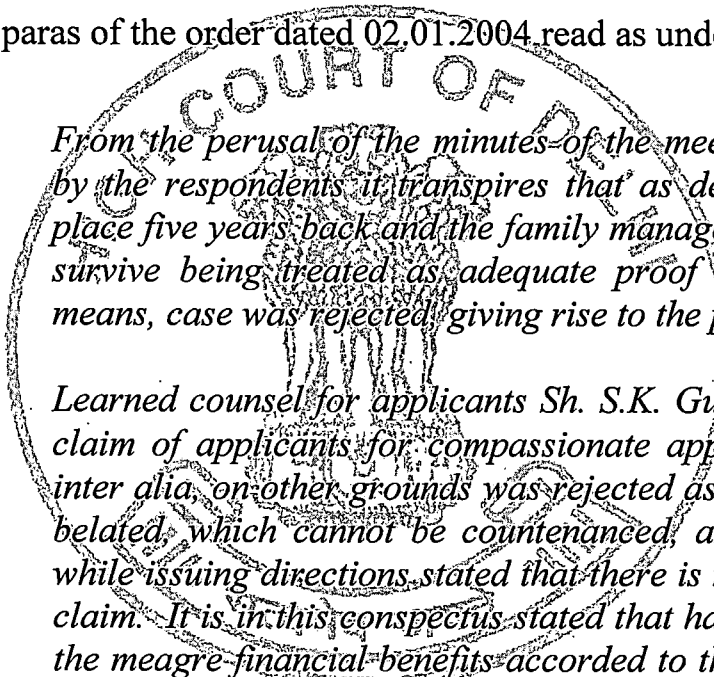
1. With the consent of the counsel for the parties, we set down the present writ petition for final hearing and disposal.
2. Present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking a direction to set aside the order dated 6.2.2015 passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.1960/2013 filed by the respondents herein was allowed by the Tribunal and the petitioners herein were directed to grant a suitable appointment to respondent no.1 on compassionate grounds and if petitioner no.4, Director, Delhi Fire Service did not have any suitable vacancy available with it, it would

Signature Not Verified
Digitally Signed
By:AMULYA
appoint respondent no.1 in any other office under the Government of
NCT of Delhi/petitioner no.1.

3. Some necessary facts, which are required to be noticed for disposal of the present writ petition and as noticed by the Tribunal, are that Sh.Daljit Singh Dhillon, husband of respondent no.2 and father of respondent no.1, was working as a Driver with Delhi Fire Service. He expired in harness as far back as on 30.7.1991 after rendering twenty seven years of service. Thereafter his son sought appointment on compassionate grounds. Admittedly, the petitioners considered his request favourably but he was not found eligible for such appointment as he was short of height by one centimetre and relaxation was not considered permissible by the concerned authorities. The son of the deceased then made a representation to the Lieutenant Governor of Delhi. His case was reopened and physical test was conducted, however, the Chief Secretary rejected his request on the ground that his family had received Rs.58,000/- as terminal benefits and further that respondent no.2 was receiving pension at the rate of Rs.1,798/-, per month. Thereafter, respondent no.1, being the daughter of the deceased, made a representation for appointment on compassionate grounds, which was rejected by the respondents, which led to the filing of the first OA bearing No.929/1999. The said OA was disposed of by the Tribunal on 18.7.2000 with a direction that the petitioners would communicate to the respondents the decision on her representation. It was also directed that the petitioners would make payment of dues to the respondents, subject to the conditions laid down in the relevant rules and regulations which would be complied with by the respondents. Pursuant to the directions passed by the Tribunal in OA 929/1999, the request of respondent no.1 herein was considered and rejected by the petitioners, which led to the filing of a second OA No.1147/2002. The said OA was also disposed of by the Tribunal on

11

20.9.2002 with the direction to the petitioners herein to consider the request of respondent no.1 for appointment on compassionate grounds afresh. The request of respondent no.1 was again rejected by the petitioners vide order dated 5.12.2002, which led to the filing of the third OA bearing No.15/2003 by respondent no.1. The Tribunal, vide order dated 02.01.2004, again set aside the order passed by the petitioners with a direction to the petitioners to examine the case of respondent no.1 in the light of terminal benefits without adhering the time limit in terms of DoPT Office Memorandum dated 5.9.2003. Relevant paras of the order dated 02.01.2004 read as under:

- 
- "7. *From the perusal of the minutes of the meeting produced by the respondents it transpires that as death has taken place five years back and the family managed somehow to survive being treated as adequate proof of dependable means, case was rejected giving rise to the present OA.*
8. *Learned counsel for applicants Sh. S.K. Gupta states that claim of applicants for compassionate appointment was, inter alia, on other grounds was rejected as the claim was belated, which cannot be countenanced, as the Tribunal while issuing directions stated that there is no delay in the claim. It is in this context stated that having regard to the meagre financial benefits accorded to the family there cannot be a presumption that family has adequate means if survived for such long years. It is also stated by Sh. Gupta that retiral benefits cannot be the sole criteria for adjudging the family as indigent.*
9. *As regard other assets as applicants had no ancestral property or any house owned by them the case is most deserving and the consideration has not been done in accordance with rules and instructions.*
10. *On the other hand, respondents counsel Sh. Vijay Pandita vehemently opposed the contentions and relying upon the decision of the Apex Court in Haryana State Electricity*

Board and Anr. v. Hakim Singh, JT 1997 (8) SC 332 contends that the purpose of compassionate appointment is to tide over the family from the sudden financial crises and the delay in according compassionate appointment cannot be countenanced. This has raised a presumption as to survival of the family and a presumption that the family is not deserving.

11. *On merits as well it is stated that the claim of applicants has been meticulously considered in the light of the decision of the Tribunal and as vacancies as per notification or DOPT OM of 1999 are restricted to 5% quota claim of applicants duly considered was not acceded to.*
12. *I have carefully considered the rival contentions of the parties and perused the material on record. At the outset, though the compassionate appointment cannot be claimed as a matter of right but the right to consider in accordance with the principles laid down and policy cannot be denied. The Tribunal while disposing of the claim of applicants in OA-1147/2002 brushed aside and rejected the contentions of respondents as to the belated claim and accordingly re-examination was ordered.*
13. *The object of compassionate appointment is to tide over financial crises and in case of a most deserving family left in penury. Keeping in view the meagre amount of Rs.58,000/- accorded as retiral benefits and pension of Rs.2000/- the family is to be treated as indigent and most deserving. As per DOPT OM dated 5.5.2003 in such a case on review the name can be further considered for three years in most deserving cases.*
14. *From the order passed I find that not only other factors but the delay in accord of compassionate appointment had weighed in the mind of the respondents to reject the claim, which is not consistent with the directions issued by the Tribunal.*
15. *On perusal of the Screening Committee's Minutes I find that the delay in accord of compassionate appointment*

13

weighed heavily in the mind of the competent authority on the presumption that the family had managed for so many years is adequate proof of dependable means of subsistence is based on presumption, as apart from the meagre amount nothing has been shown or established that the family has dependable means. The case of applicants was under consideration till 2002 and having been arbitrarily rejected was sent for re-examination. Merely because there has been time lapse would not be a natural presumption as to adequacy of subsistence.

16. *In the result, for the foregoing reasons, OA is partly allowed. Impugned order is quashed and set aside. Respondents are directed to examine the case of applicants in the light of the financial benefits, without adhering to the time lag and also the DOPT OM dated 5.9.2003, by passing a reasoned and detailed order within a period of two months from the date of receipt of a copy of this order. No costs.* (Emphasis supplied)

4. The case of respondent no.1 was again considered and rejected by the petitioners vide order dated 15.3.2004. Thereafter, respondents approached the Public Grievance Commission again seeking reconsideration of her case. The petitioners once again, vide order dated 17.12.2012, rejected the request of the respondents. The respondents challenged the aforesaid order by filing OA the No.1960/2013 citing their pitiable condition of respondent no.1, who is living with respondent no.2, had become 42 years of age and she could not be married on account of extreme poverty. It was also stated that the respondents have no source of livelihood; the younger brother of respondent no.1, Sh.Kulwaran Jeet Singh, suffered a brain haemorrhage and the family had to spend a considerable amount on his treatment. The younger brother has also expired. Further, they have no place to reside. The said OA was allowed by the Tribunal vide impugned order dated 6.2.2015, which led to the filing of the present petition.

- 14
5. Learned counsel for the petitioners submits that the impugned order passed by the Tribunal is illegal, arbitrary, perverse and unfair. Counsel further submits that the Tribunal has failed to appreciate that the Tribunal is not empowered to direct the Government to grant appointment on compassionate grounds and at best can direct the petitioners to consider the claim of appointment on compassionate grounds. It is further contended that the Tribunal has failed to appreciate that the intent and purpose of the scheme for grant of appointment on compassionate grounds is only to relieve the family of the deceased employee from financial destitutions. It has further been urged before us that the appointment on compassionate ground to the family members of the deceased employee is not a right and his/her request can only be considered on merits as per the extant rules. Counsel further contends that the Tribunal has failed to appreciate that once an appointment on compassionate grounds is granted to one of the family members of the deceased employee and the said member either accepts or rejects the offer, the issue of grant of appointment on compassionate grounds ends on such date of acceptance or rejection. It is further contended by the counsel that the husband/father of the respondents died as far back as in the year 1991 and over the passage of time the respondents have been able to manage themselves which shows that the respondents are financially stable. Thus, there are no ground for grant of appointment on compassionate ground.
6. Per contra, learned counsel for the respondents submits that having regard to the acute financial conditions of the respondents, without this case being treated as a precedent, the Court should not interfere in the order passed by the Tribunal.
7. On 26.8.2016, we had asked the learned counsel for the respondents as

15

to whether the respondents are being supported by their son/brother, Sh.Amrik Singh. Mr.Gupta has filed an affidavit specifically stating that Sh.Amrik Singh, elder brother of respondent no.1, has deserted the respondents; he is living at Hoshiyarpur, Punjab, and he is not supporting the respondents. The younger brother, Sh.Kulwaran Jeet Singh Dhillon, has expired on 4.7.2015 and the respondents have taken shelter in the house of one, Ravinder Singh, who is known to the respondents.

8. Learned counsel for the respondents additionally submits that the other married daughters of respondent no.2 are also not supporting the respondents. It is also contended that as far as the family pension, which is being received by respondent no.2 is concerned, the same is not sufficient to make both ends meet, as on account of the adverse circumstances, the respondents had to borrow money and out of the pension which is being received, substantial amount is being deducted towards repayment of loan.
9. Counsel for respondent no.2 also contends that respondent no.2 is now approximately 74 years of age and she is suffering from various ailments while the respondent no.1 is in her 40s. They have no source of livelihood except for the family pension being received by them. It has also been brought on record that on account of the indigent circumstances of the respondents, respondent no.2 has not been able to marry of respondent no.1 (daughter) and respondent no.1 is still residing with respondent no.2.
10. We have heard learned counsel for the parties and also examined the impugned order passed by the Tribunal. The facts of this case are not in dispute. After the death of the father/husband of the respondents, the elder son of respondent on.2 applied for appointment on compassionate

grounds, however, his request was accepted but he could not be granted appointment as he was short of height by one centimetre. Thereafter time and again his request was reconsidered and rejected. Later, respondent no.1 applied for appointment on compassionate grounds, however, her request has all along been rejected on different grounds. The Tribunal in the impugned order, after examining the law and also the sequence of events allowed OA No.1960/2013 primarily on the ground that at the first instance the petitioner themselves have considered the case of respondent no.1 for compassionate appointment favourably and thereafter with the passage of time, every time the matter was remanded back, it was rejected on different grounds. The Tribunal was also persuaded to allow the OA and issued a direction to grant a suitable appointment taking into consideration the pitiable condition of the respondents.

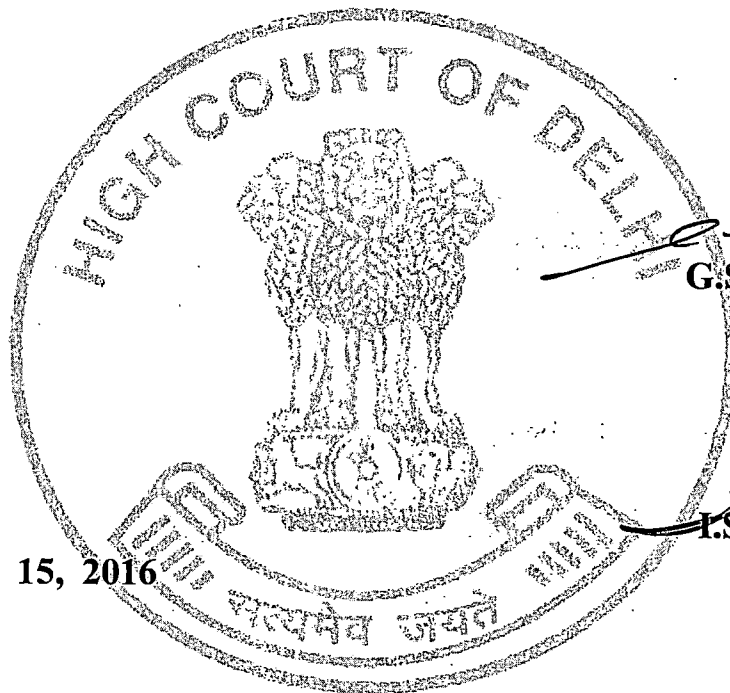
11. While, there is no quarrel with the proposition of law, which is sought to be urged by Mr.Narayan, learned counsel for the petitioner, however, the peculiar facts of this case would show that the respondents not only lost their father/husband but they also lost their younger son/brother, on account of brain haemorrhage. The only source of income of the respondents is the family pension. To make matters worse, due to their pitiable condition, the respondents have borrowed money and substantial part of the family pension is being deducted in repaying the loan. Further, respondent no.2 is approximately 74 years of age and is suffering from various ailments. Due to indigent circumstances, respondent no.2 has not been able to marry of respondent no.1 and respondent no.1 is residing with respondent no.2 and all the siblings of respondent no.1 have deserted the respondents.
12. Having regard to the peculiar facts of this case and as an exceptional

circumstance, we are not inclined to interfere in the impugned order passed by the Tribunal, however, we make it clear that this shall not be treated as a precedent and shall be deemed as an order passed in the facts and circumstances of the case.

13. Accordingly, writ petition stands dismissed. We hope that the order passed by the Tribunal will be complied with by the petitioners as expeditiously as possible.

CM APPL. 28363/2015

14. Application stands dismissed in view of the order passed in the writ petition.



G.S. Sistani
G.S.SISTANI, J

I.S. Mehta
I.S. MEHTA, J

SEPTEMBER 15, 2016

msr