

GAHC010006252011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2959/2011

DULU DUTTA
S/O LT. HC/DRIVER MIHIR KUMAR DUTTA,VILL. PUB BHALUKMARI,
P.O.BHALUKMARI, DIST NAGAON,ASSAM, PIN-786442

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY, MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

2:THE DIRECTOR GENERAL

CRPF
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI-110003

3:THE INSPECTOR GENERAL OF POLICE

NORTH EAST SECTOR
CRPF
STONEY HEAVEN
BISHOP COTTON ROAD
SHILLONG
MEGHALAYA
PIN-793001

4:THE DY.INSPECTOR GENERAL OF POLICE

CRPF
GROUP CENTRE
MUZAFFARPUR
BIHAR
PIN-

5:THE DY. INSPECTOR GENERAL OF POLICE

CRPF
GROUP CENTRE
AMERIGOG
GUWAHATI
ASSAM-78102

Advocate for the Petitioner : Mr. R. Mazumdar Advocate
Advocate for the Respondents : Mr. S. Sarma, Senior Panel
Counsel, Central government.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 17.07.2023

Date of Judgment : 17.07.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Mazumdar, the learned counsel for the petitioner and Mr. S. Sarma, the learned counsel appearing on behalf of the Union of India.

2. The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to offer appointment to the petitioner either in the rank of Constable Water Carrier or Constable Chaprasi or in any other post for which he would be entitled to as per the Standing Order No.05/2001 and upon his performance during the assessment conducted by the respondents.

3. The case of the petitioner in brief is that the petitioner's father one Mihir Kumar Dutta died on 16.12.2005 while he was serving as the Head Constable Driver in CRPF. Since the father of the petitioner was the sole earning member

of the family, the petitioner applied for appointment in the post of Peon on the ground of compassion. Pursuant thereto on 17.04.2008, the Additional Deputy Inspector General of Police, Group Center, CRPF, Muzaffarpur, Bihar informed the petitioner that his claim for compassionate appointment to the post of Peon was forwarded to the higher up for consideration but was received back with the remark that vacancy of the Peon post was not available in the Department. Under such circumstances, the petitioner was advised to apply in the rank of CT/GD, CT/Trade/Tech and enrolled followers (i.e. Cook, W/C, W/M, S/K, Barber). The petitioner upon receipt of the said communication applied for the other post as mentioned in the communication dated 17.08.2008. Thereupon, vide another communication dated 17.11.2008, it was informed to the petitioner that there was no vacancy in the post of Water Carrier, (Male) under the prescribed quota of 5% of compassionate appointment in the Sector. In the said communication it was mentioned that there was one vacancy in the rank of Cook and S/K. The petitioner was, therefore advised, if he was willing for appointment in the rank of Cook or S/K to submit his consent application to the Office for further needful. The petitioner thereupon again submitted his representation for Cook and S/K. However, on 15.05.2009, vide another communication it was informed that the matter regarding up-gradation of Group 'D' employees and grant of its revised pay band is under consideration, and therefore, no recruitment for the post of enrolled followers be conducted by the Sector till finalization of the matter. It was further mentioned that the suitability for the post of Cook could not be assessed. However, suitability could be assessed for the post of CT/GD if he is found eligible in all respect. The petitioner was, therefore, again advised that if he was willing in the rank of CT/GD, he may submit his written consent/willingness application to the Office

for doing the needful. The petitioner again submitted his application for CT/GD. Vide another communication dated 12.10.2009, the petitioner was informed that he did not meet eligibility criteria as his height is 162.6 cms tall. The petitioner was again advised that if he was willing, he may apply for various other posts such as Safai Karmachari, Barber, Water Carrier, Washer man and Cook. It further reveals that on 31.10.2009, a communication was issued to the Inspector General of Police, Bihar by the Deputy Inspector General of Police, Group Center, CRPF, Guwahati stating inter-alia that the petitioner was asked to report for assessment for the post of Constable General Duty by a letter asking him to report to the Office on 12.10.2009. The petitioner thereupon reported to the Office and during the assessment made by the Board, he could not be recommended since his height was found to be 162.6 cms. It was further mentioned that the petitioner applied for Water Carrier, a Group 'D' post. Under such circumstances, the suitability of the petitioner to the post of Water Carrier was assessed from 12.10.2009 to 16.10.2009. During assessment, the petitioner was declared fit for appointment to the post of Water Carrier on compassionate basis. It further reveals that thereupon a communication was issued by the Deputy Inspector General of Police on 03.08.2010 to the petitioner wherein it was informed that a special recruitment drive was being conducted from 20.08.2010 to 25.08.2010 at Group Center, CRPF, Guwahati for recruitment on compassionate grounds. The petitioner was requested that in case he was interested in being recruited on compassionate grounds to participate and be present at the nearby Group Center, CRPF, Guwahati between 20.08.2010 to 25.08.2010 with all relevant certificates. Further it was also mentioned that the post available for Head Constable/Ministerial Constable/Chaprasai and Constable Peon are very few, therefore, the petitioner was requested to participate for

Constable/General Duty as soon as possible. Subsequent thereto, vide a communication dated 20.04.2011 it was informed to the petitioner that it is not possible to appoint him as Constable/Chapraasi because his educational qualification is lower than Matric.

4. The petitioner thereupon being aggrieved has approached this Court by filing the instant writ petition on 31.05.2011. It appears on record that this Court vide an order dated 10.06.2011 had issued notice. The record reveals that an affidavit-in-opposition was filed on 17.12.2011. In the said affidavit-in-opposition so filed by the respondents, it was mentioned that the petitioner applied for the post of 'Peon' (Group D post - minimum qualification 8th pass at that time) on compassionate ground. But the petitioner was not considered due to non-availability of vacancies and accordingly, the petitioner was informed vide the communication dated 17.04.2008. Thereafter, petitioner was advised to apply for the post of Constable (Technical Tradesmen) or enrolled followers. After that the petitioner applied for the post of Water Carrier, in response to which, his case was forwarded to the DIGP Range, CRPF, Muzaffarpur vide the letter dated 29.07.2008. However, there was no availability of vacancy and the petitioner was informed vide the communication dated 17.11.2008 to apply for the post of Cook and S/K. The IGP, Bihar Sector, CRPF Patna vide the communication dated 23.04.2009 intimated that as clarified by the DIG (Rectt) vide selo message, the matter regarding up gradation of Group -D employees and grant of its revised pay band was under consideration, for which no recruitment for the post of enrolled followers be conducted by the Sector till finalization of the matter. It was on the aforesaid ground, the suitability for the post of Cook could not be assessed. It was further mentioned that the petitioner could be assessed for the post of CT/GD, if found suitable in all respect. The

petitioner thereupon expressed his willingness for the post of CT/GD. Accordingly, the case of the petitioner was again forwarded to the DIGP Range, CRPF, Muzaffarpur. It was further mentioned that a special drive for compassionate appointment was organized at GC, CRPF, Khatkhathi w.e.f. 20.08.2010 to 25.08.2010. The petitioner was also directed to appear at GC, CRPF, Guwahati vide the communication dated 03.08.2010. The petitioner applied for appointment to the post of 'CT/Peon' (Group 'C' post minimum qualification of 10th pass). The assessment of the petitioner was carried out by Group Centre, CRPF, Khatkhathi. But the petitioner was not considered due to lacking in his education qualification and accordingly this aspect of the matter was duly informed to the petitioner on 20.04.2011. It further reveals that to the said affidavit-in-opposition, there was an affidavit-in-reply so filed by the petitioner. Subsequent thereto, there was an additional affidavit filed by the respondents pursuant to the order passed by this Court on 21.01.2013. In the said additional affidavit, it was mentioned that the DIGP, GC, CRPF, Muzaffarpur vide signal No. J-II-39/2011-EC-II/pair VI dated 07.03.2013 has intimated that offer conducting the suitability test, the Board proceeding along with connected documents were examined by the IGP, Bihar Sector. In the meanwhile as per the 6th pay Commission Report, the post of Enrolled Followers were upgraded to Grade 'C' Grade (called as Constable, followed by name of the post) and the recruitment qualifications were enhanced to Matriculation. It was further mentioned that the matter was examined in the Office of IGP Bihar sector and appointment could not be made due to deficient educational qualifications and also for want of vacancy in the tested post (i.e Water Carrier). It further reveals that there was another additional affidavit filed on 24.05.2017 which was filed in compliance with the order passed by this Court on 15.12.2016. In the said

additional affidavit, the vacancy position in the posts of Cook and Water Carrier from the year 2005 to the year 2008 along with the relevant information was stated. In terms with the said affidavit therein, various enclosures were enclosed as Annexure Nos.A, B & C. It reveals that the year-wise vacancy in the rank of Cook and Water Carrier from 2005 to 2008 were not available and it was mentioned that the relevant records for the said period has already been completed their lives and already weeded out as per the provisions.

5. In the backdrop of the above materials on record, this Court finds it relevant to take note of the respective contentions of the parties.

6. Mr. R. Mazumdar, the learned counsel for the petitioner submitted that the petitioner had duly applied for appointment on compassionate ground after the death of his father. He submitted that the materials on record show that for one reason or the other, the concerned respondent authorities did not give the appointment to the petitioner and asked the petitioner to apply for this post or that post. Referring to the communication dated 31.10.2009 issued to the Inspector General of Police, Bihar Sector, the learned counsel for the petitioner submitted that it was clearly mentioned therein that upon assessment being done, the candidature of the petitioner was declared fit for appointment to the post of Water Carrier on compassionate ground. The learned counsel for the petitioner, therefore, submitted that from the said communication, it would show that the petitioner was duly selected to the post of Water Carrier but the concerned respondent authorities had most arbitrarily denied appointment to the petitioner. He further submitted that on 03.08.2010, the petitioner was again asked to apply and participate in the nearby Group Center CRPF, Guwahati between 20.08.2010 to 25.08.2010 with all relevant certificates for the posts mentioned in the said communication. The petitioner duly participated but his

candidature was rejected by the impugned communication dated 20.04.2011. The learned counsel for the petitioner, therefore, submitted that when the petitioner was duly selected for the post of Water Carrier, the respondent authorities, therefore, ought not to have denied his appointment. In that regard, the learned counsel for the petitioner relied upon the judgment of the Supreme Court in the case of ***Malaya Nanda Sethi vs. State of Orissa and Others***, reported in ***2022 SCC OnLine SC 684***.

7. On the other hand, Mr. S. Sarma, the learned counsel appearing on behalf of the respondents submitted that the facts disclosed in the affidavit so filed by the respondents would clearly show that the case of the petitioner was duly considered but as the petitioner was not eligible on account of his height as well as qualification, the petitioner could not be appointed in terms with the scheme for compassionate appointment. The learned counsel for the respondents further drew the attention of this Court to the facts that apart from the eligibility there were also no vacancy during certain periods for which the petitioner could not be given the appointment.

8. This Court has duly taken note of the respective contentions as well as the materials on record. The facts as could be discerned from the pleadings would clearly show that the father of the petitioner expired on 16.12.2005 while he was serving as the Head Constable Driver in CRPF. Annexure-G to the writ petition is the Standing Order No.5/2001 which stipulates the procedure for compassionate appointment. The Eligibility Clause in the said Standing Order stipulates that the widow, son or daughter including adopted son/daughter of the Government servant who dies in harness including death by suicide, missing and medically invalidated persons will be eligible for compassionate appointment. It further stipulates that compassionate appointment will be

considered, provided no other earning members of the deceased family is already in service and that condition of the family is penurious. It was also mentioned that the competent authority (ADG/IGP) should be satisfied that the case is justified having regard to the number of dependents, the assets and liabilities left by the deceased, the income of the earning members and whether they are residing with the family of the deceased. Clause II of the said Standing Order stipulates that the candidate for appointment on compassionate grounds will be tested by a Board of Officers to be constituted by the order of the respective ADG/ IGP. It further stipulates that a candidate will have to qualify all the laid down test/examinations for the post for which he/she is to be considered. Further to that the standard of test/examination will be the same as applicable for normal recruitment. Clause III stipulates the guidelines which shall be followed for the purpose of facilitating compassionate appointment. Relevant herein to mention that the compassionate appointment can be made up to a maximum of 5% of vacancy falling under direct recruitment quota in Group 'C' and Group 'D' posts. Clause IV stipulates certain relaxation for compassionate appointment cases. It is further relevant to mention that Clause VI stipulates the procedure.

9. Now coming to the pleadings it would be seen from a perusal of the entire writ petition that there is not a single statement made that the family of the petitioner is under penurious state pursuant to the death of the father which touches on the eligibility to be entitled to compassionate appointment. There is also not a statement in the pleadings filed by the petitioner as regards the state of affairs of the family pursuant to the death of the father of the petitioner. As the claim of the petitioner is on the basis of compassionate appointment, this Court at this stage, finds it relevant to take note of the law as regards

compassionate appointment. In a recent judgment of the Supreme Court in the case of ***State of West Bengal vs. Debabrata Tiwari***, reported in ***2023 SCC OnLine SC 219***, the Supreme Court after taking note of various judgments as regards the right to claim compassionate appointment had observed at paragraph No.32 the various principles which emerged therefrom. The said paragraph No.32 is quoted herein below:-

“

32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending

for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.”

10. A perusal of the above principle as laid down by the Supreme Court would show that the provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. It was observed that since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis. It was further observed that the compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over. This aspect of the matter can also be seen from a perusal of the Clause I of the Standing Order No.5/2001 wherein in order to be eligible, it is a requirement that the state of the family after the death of the sole bread earning member was penurious.

11. The Supreme Court in ***Debabrata Tiwari*** (supra) further observed in the said judgment that the object underlining the provision for grant of compassionate appointment was to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which had left the family in penury and without any means of livelihood. It was further observed that it is only out of pure humanitarian consideration and after having

regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. It was further observed that having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of the bread-winner, has been overcome. Paragraph Nos.33 to 35 of the said judgment are quoted herein under:-

".....

33. *The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to*

exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

34. *As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.*

35. *Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate*

appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee."

12. From a perusal of paragraph Nos.35 as quoted herein above, it would be seen that the Supreme Court has categorically observed that where application for compassionate appointment could not be considered after the delay of several years either on the ground that the applicant has delayed in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. It was further observed that the financial circumstances of the family of the deceased may have changed for the better, since the time of the death of the Government employee. Further to that, it was observed that the Courts or the other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. The Supreme Court further observed that granting compassionate appointment in such a case, would amount to treating a claim for compassionate appointment as though it was a matter of inheritance based on a line of succession and is contrary to the Constitution.

13. In the backdrop of the above law as laid down by the Supreme Court and applying the same in the facts of the instant case it would show that the petitioner herein have treated his claim for compassionate appointment as a right on the basis of inheritance. It cannot also be lost sight of that the father of

the petitioner had expired in the year 2005 and the instant writ petition is being taken up in the year 2023 and a period of 18 years has already elapsed. There is no material brought on record as to what was the status of the family of the petitioner after the death of the father, as to whether any other member of the family is in the service or is gainfully employed. The pleadings are completely silent on that aspect. Under such circumstances, the only presumption which can be drawn is that the family of the petitioner as well as the petitioner were able to sustain themselves most probably by availing gainful employment from some other sources.

14. Now coming to the contention so raised by the learned counsel for the petitioner that the petitioner was duly selected but not granted the appointment, this Court finds the said submission to be misconceived for the reason that a perusal of the communicating dated 31.10.2009 only stipulates that the petitioner upon assessment so made from 12.10.2009 to 16.10.2009 was only found fit for appointment to the post of Water Carrier on compassionate basis and this endorsement was made to the Inspector General of Police, Bihar Sector. Thereupon, the IGP, Bihar CRPF had vide the letter 07.04.2011 directed concerned authorities to inform the petitioner that he could not be considered for compassionate appointment as the petitioner did not have the requisite educational qualification, and accordingly, the petitioner was informed vide communication dated 20.04.2011. Under such circumstances, this Court, therefore, is of the opinion that as the petitioner was not eligible on account of deficiency in the educational qualification, the communication dated 31.10.2009 stating that the petitioner was declared fit for appointment to the post of Water Carrier on compassionate basis, cannot be said to have conferred a vested right for being appointed on compassionate ground.

15. This Court further finds it relevant to take note of another submission of Mr. R. Mazumdar, the learned counsel for the petitioner that the case of the petitioner is squarely covered by the decision of the Supreme Court in the case of ***Malaya Nanda Sethi vs. the State of Orissa and Others***, reported in ***2022 SCC OnLine SC 684***. This Court is of the opinion that the said submission is totally misconceived taking into account that in the said case before the Supreme Court the application for compassionate appointment was kept pending by the authority concerned whereas in the instant case, vide the order dated 20.04.2011, the application of the petitioner was rejected.

16. Considering the above and the fact that nearly 18 years had elapsed after the death of the father of the petitioner, this Court, therefore, is of the opinion that there is no merit in the instant writ petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant