



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.172 of 2022

Shri Debajit Gogoi,
Son of Late Dimbeswar Gogoi,
Resident of Jamirah Kapow Gaon, PO:
Dhamal Gaon, PS: Barbarua, District:
Dibrugarh, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary, Home and Political Department, Dispur, Guwahati – 781006.
2. The Chief Secretary to the Government of Assam, Dispur, Guwahati – 781006.
3. The State Level Committee for compassionate appointment, represented by its Chairman, the Chief Secretary to the Government of Assam.
4. The Director General of Police, Assam, Ulubari, Guwahati.
5. The Additional Director General of Police, Assam, Ulubari, Guwahati.
6. The Commandant, 3rd Assam Police Task Force, Khajuabeel, Darang.

.....Respondents

– B E F O R E –
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellant : Mr. B.P. Borah, Advocate.

For the Respondents : Ms. M. Bhattacharjee,
Additional Senior Government
Advocate, Assam.

Date of Judgment & Order : **25th January, 2023.**

JUDGMENT & ORDER (ORAL)

[[N. Kotiswar Singh, CJ (Acting)]]

Heard Mr. B.P. Borah, learned counsel for the appellant. Also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam, appearing for the respondents.

2. The present appeal has been preferred against the judgment & order dated 13.05.2022 passed by the learned Single Judge in WP(C) No.5053/2020, by which the writ petition of the petitioner for directing the respondent authorities to consider his case for appointment under the die in harness scheme was dismissed on the ground that the petitioner did not fulfill the criteria mandatory for appointment on compassionate ground as stipulated in the Office Memorandum dated 01.06.2015

3. The pleaded case of the petitioner is that his father was working as a Constable in the 3rd Assam Police Task Force at Khajuabeel under Udalguri District, BTAD. When the petitioner's father reached the age of 48 years,

he applied for voluntary retirement on the ground of medical incapacitation which was allowed by the authority in the year 2015. Unfortunately after about 6(six) months from the date of retirement, the petitioner's father expired.

4. Thereafter, the petitioner applied for appointment on compassionate ground as his father voluntarily retired from service on medical ground which is permissible as per the policy for compassionate appointment in the State.

5. According to the petitioner, the District Level Committee (DLC) recommended the case of the petitioner as there were adequate numbers of vacancies to accommodate the petitioner. However, the State Level Committee (SLC) rejected the case of the petitioner on the ground that the voluntary retirement of the petitioner's father does not come within the scheme of compassionate appointment inasmuch as his voluntary retirement was not on medical ground.

Being aggrieved by the said rejection by the SLC, the petitioner approached this Court by filing the aforesaid writ petition.

6. The learned Single Judge, however, dismissed the writ petition on the ground that the petitioner did not fulfill the criteria mentioned in the relevant Office Memorandum dated 01.06.2015. Being aggrieved, the petitioner has filed the present writ appeal.

7. As we proceed to consider the appeal, two issues of importance have to be considered, viz.,

- (i) whether the petitioner's father had really retired voluntarily on medical ground, and
- (ii) whether the decision of the SLC in rejecting the plea of the petitioner was valid.

For this, we may look into the nature of voluntary retirement of the petitioner's father.

8. However, before doing so, we must first ascertain the scheme of compassionate appointment, criteria for which were laid down in the Office Memorandum dated 01.06.2015. Relevant portion of the said Office Memorandum are as follows:-

“(1) Only one dependent family member of a Government servant appointed on regular basis excluding one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis who die in harness or become incapacitated due to accidents suffered while on duty and is eligible to opt for invalid pension under relevant provision of Service Rule/Pension Code and/or who is missing is eligible for making application for compassionate appointment provided in each case the Government servant has balance of minimum of 3 years of service.

(2) ‘Dependent Family Member’ means a person who was wholly dependent on the Government servant at the time of his death in harness or retirement on medical grounds, or missing, as the case may be and includes (a) spouse; or (b) son (including adopted son); or (c) daughter (including adopted daughter); or (d) brother or sister in the case of unmarried Government servant.”

9. From the above, it is clearly evident that a dependent family member of a Government servant, who retired from service on medical ground, is eligible for being considered for appointment under the said scheme.

Therefore, if the petitioner's father had voluntarily retired from service on medical ground, certainly the petitioner will be eligible to be considered for appointment under the die in harness scheme.

10. The next question which will arise for consideration is whether the petitioner's father had sought voluntary retirement on medical ground. In this regard, as pointed out by the learned counsel for the appellant, in the application submitted by the petitioner's father to the concerned authorities in August, 2014, it was clearly mentioned that he was a Constable of the 3rd Assam Police Tasks Force and at that relevant point of time, he was serving at Headquarter Khajuabeel, Darrang District and had completed 29 years of service and he was seeking voluntary retirement because of the circumstance that he had been suffering from various ailments since last 6(six) months, as his left hand became totally invalid for which it was becoming difficult for him to perform the duties sincerely and properly. In this regard, he had submitted a medical certificate. The application submitted by the petitioner's father reads as follows:-

"Date : /08/2014

To

*The Commandant, 3rd Assam Police Task Force
Headquarter at Khajuabeel
District - Darrang, Assam*

(Through proper channel)

Sub:- Prayer for acceptance/granting of voluntary retirement as a notice thereof.

Respected Sir,

With due respect and humble submission, I beg to inform you that I am constable of 3rd Assam Police Task Force presently at Headquarter Khajuabeel, Darrang district and has completed 29 years of my service life. Now I like to submit my letter (notice) of voluntary retirement before your Honour to consider my case sympathetically on the following circumstances and passed necessary order granting the same.

That Sir, (1) I have been suffering from various ailments since last 6 months specially my left hand becomes totally invalid for which it will become difficult for me to perform the duties sincerely and properly. A copy of medical certificate to that effect is enclosed herewith for your Honour's kind perusal.

(2) That I have a son and a daughter who have lost their mother long ago. Now my son Shriman Debajit Gogoi has passed LLB course of his study and like to practice in the court of law and for that reason he has to leave our village house and as such my daughter Smti. Bornali Gogoi become alone who is grown up girl studying Higher Secondary. On the other hand, there is none to look after my daughter in the village house. (enclosed supporting documents for your Honour's kind perusal).

Under the circumstances mentioned above, I pray before your honour to accept this letter of voluntary Retirement (notice) and granting my prayer by accepting the same as early as possible.

I shall remain ever grateful for the act of your kindness etc etc.

Yours faithfully,

(Dimbeswer Gogoi)

C/N No.211

Constable of 3rd APTF

Headquarter at Khajuabeel

District- Darrang, Assam"

11. The medical certificate annexed by the petitioner's father reads as follows:-

"To whom it may concern

This is to certify that Sri Dimbeswar Gogoi, 48 yrs has been suffering from alive hepatitis osteomalacia deformity in left wrist and mental illness and under my treatment.

Considering the nature of illness, he is being referred to Assam Medical College for hospitalization proper treatment.”

12. Pursuant to the said application submitted by the petitioner’s father, the authorities after considering the same, accepted it and allowed the petitioner’s father to go on voluntary retirement with effect from 31.12.2014 vide order issued on 02.01.2015, which reads as follows:-

“Order

Const. 211 Dimbeswar Gogoi of this unit is allowed to go on voluntary retirement w.e.f. 31.12.2014 PM under F.R. 56(C) of F.R.’s and S.R.’s and Govt. Circulars in force as there is no D/P court case, Govt. Dues etc. are pending against him. He has been paid up to 31.12.2014 P.M.

*Commandant,
3rd A.P.T.F. Battalion,
Khajuaheel*

13. Thus, from the above what is evident is that while issuing the order of voluntary retirement, though the authority did not specifically mention that it was a voluntary retirement on medical ground, yet the fact remains that the petitioner’s father had specifically mentioned his application, his medical incapacitation as one of the grounds for seeking voluntary retirement, which cannot be lost sight of. In fact as can be seen from the application, he sought voluntary retirement primarily on the ground of his deteriorating medical condition. If that is so,

in our view though the order of voluntary retirement did not specifically mention that the petitioner's father was allowed to go on voluntary retirement on medical ground, the same can be read into the order of voluntary retirement by holding that the voluntary retirement was on the ground of his medical condition. We accordingly, hold that the voluntary retirement of the petitioner's father was on medical ground. If we take this view that the petitioner's father was allowed to go on retirement on medical ground, in that event, the case of the petitioner will be covered under the aforesaid scheme of compassionate appointment.

14. Accordingly for the reasons stated above, the decision of the State Level Committee cannot be sustained and the petitioner would be entitled to be considered for appointment, being eligible under the scheme for compassionate appointment. Hence, we direct that the matter be placed before the State Level Committee afresh for reconsideration by treating that his father was allowed voluntary retirement on medical ground.

15. For the reasons discussed above, we are not able to agree with the observations and findings recorded by the learned Single Judge and accordingly, the same is set aside. The respondent authorities are directed to place the case of the petitioner before the State Level Committee for fresh consideration by treating him to be an applicant, whose father had retired voluntarily on medical

incapacitation, as mentioned in the aforesaid Office Memorandum.

16. With the aforesaid observations and directions, the writ appeal stands allowed.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant