

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

SWP No.1401/2011
IA No. 2041/2011

Reserved on: 17.08.2023

Pronounced on:05.09.2023.

Ramesh Kumar age 35 years S/O Late Sh. Roop Chand R/O Village
Gadigarh Tehsil and District Jammu

...Petitioner(s)

Through:-Mr. K. S. Puri, Advocate.

Versus

1. Union of India through Secretary Ministry of Defense, Government of India, New Delhi.
2. Chief Engineer, MES Hq. Pathankot Zone, Pathankot, and
3. Garrison Engineer, 574 Engineering Part C/O 56 APO.

...Respondent(s)

Through:-Mr. Raghubir Singh, CGSC.
Mr. Atul Sharma, Advocate.

**Coram:- HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGEMENT

Tashi Rabstan, J:-

01. A Judgment dated 17.09.2010, came to be passed by the learned Central Administrative Tribunal (CAT), Chandigarh Bench in TA 109/JK/2010 (SWP No.2784/2002) thereby dismissing the petition filed by the petitioner for seeking appointment on compassionate ground, is impugned in the present writ petition.

02. The petitioner assails the impugned judgment dated 17.09.2010, *inter alia*, on the following grounds:

1. *That the respondents had not assessed the merit of petitioner correctly.*
2. *That a bare perusal of the compassionate appointment scheme would show that no provision has been made for allotting some marks on account of permanent disablement of the members of the deceased family. In these circumstances it cannot be said that the criteria for assessing the merit of the candidate was exhaustive.*
3. *That the Hon'ble Supreme Court has held that whenever the claim of the petitioner regarding compassionate appointment is delayed the claimant cannot be allowed to suffer and his case cannot be rejected on the ground of delay or laches which is not attributable to the claimant. This aspect of the case has not been considered by the Tribunal, as such the order passed by it is liable to be quashed.*
4. *That the respondents have erred factually while rejecting the case of the petitioner wherein they have stated as under:*
“Government servants daughter(s) is/are married off. The family does not have the liabilities of marriageable daughters and minor school going children etc.”

The correct position is that the petitioner has a sister who was of 10 years old at the time of death of her father and is polio affected. She is still unmarried. At the time of death of their father two of the petitioner's younger brothers were minor and school going. They had to give up their education due to poverty. This aspect of the matter has not been considered properly by the respondents.

5. *That the respondents were under a legal obligation to consider the claim of the petitioner immediately after the death of his father or in any case immediately after the submission of the application by the petitioner. The respondents themselves have delayed the consideration for 8 years and they cannot be allowed to plead erroneously that the emergency for appointment on compassionate grounds for mitigating the basic expenses is not there.*
6. *That the judgment has been passed by the learned Tribunal in a mechanical manner.*

03. Shorn of subsidiary details, the actual manifestation of the controversy involved in the writ petition is that the father of the petitioner was working as a Storekeeper Gr.1 in the office of the Garrison Engineer. He was invalidated out of the Army on medical grounds on 1st of April 1994 by a Medical Board held at the SMGS Hospital Jammu and came to be placed on pension. On 28.06.1994, the petitioner's father was directed to report to the office of the Garrison Engineer for completion of pension papers.

04. Being incapacitated and bed-ridden, father of the petitioner sent his brother to collect the complete documents for signature and after signature its return thereof. The father of the petitioner Sh. Roop Chand departed to heavenly abode on 20.08.1994, and is survived by his wife and five siblings, including a handicapped son and a 10 years polio affected daughter. Since the elder brother of the petitioner was handicapped, so the petitioner, being under matriculate of course major, at that point of time studying in ninth class, had come forward to submit his application for compassionate

appointment as Mazdoor on 17.09.1994. Same was, however, acknowledged by the respondents on 20.01.1995 when the petitioner was advised to attend the office on any working day for filling up the forms for intimation to higher authorities. The petitioner thereafter filled up the necessary information and signed requisite documents. The documents were submitted to the Commander Works Engineer at Pathankot vide communication no.306613 / DES / RG/ 09/E-1 dated 29.05.1995.

05. On 15.05.1998 vide a communication No.12555/ DES / PKT / 244/ EIC(I), the respondents allegedly informed the mother of the petitioner that the said application stood registered and would be considered at appropriate level strictly on its turn. It was again informed to the mother of the petitioner on 25.05.1998 vide communication No.1011/DES/3692/EIP that the case for compassionate appointment was sent to the competent authority for decision.

06. Vide communication No.12542/DES/94/EIC(1) dated 01.06.2002, petitioner was informed that his application for employment assistance on compassionate grounds has been rejected. Vide a communication dated 02.09.2002, it again to be conveyed to the petitioner that his application for employment assistance on compassionate grounds has been rejected by the competent authority.

07. The above two communications were challenged by the petitioner by way of filing SWP No. 2784/2002. Again during the pendency of the writ petition, the respondents rejected the application of the petitioner for compassionate appointment for the third time and conveyed said rejection to

the petitioner vide communication No.12542/DES/SO/42/EIC(I) dated 31.05.2003. This court, vide an order dated 21.02.2004, permitted the petitioner to amend his writ petition. An amended writ petition came to be filed by the petitioner. Subsequently, in the year 2009, the writ petition was got transferred to the Central Administrative Tribunal on 14.10.2009.

08. Much to the chagrin of the petitioner, the petitioner received a communication on 12.01.2010 that his petition which was transferred to the Central Administrative Tribunal by this court has been dismissed and that too without affording an opportunity of being heard to the petitioner. He came to know that the Tribunal has dismissed his petition on 19.12.2009. Aggrieved by the said judgment dated 19.12.2009, the petitioner approached this court by way of filing writ petition SWP No. 896/2010.

09. The said writ petition was allowed vide an order dated 19.04.2010 and case was remitted to the Tribunal for hearing the petition afresh after affording reasonable opportunity of hearing to the parties. And finally, the Tribunal again on 17.09.2010 after hearing the parties and perusing the record dismissed the petition of the petitioner. It is this Judgment of the Central Administrative Tribunal which is made the subject matter of challenge before this court by the petitioner.

10. Learned counsel for the petitioner submitted that the petitioner, being major and eligible to be appointed, was denied appointment on compassionate grounds for the reasons oblivious to him. The learned counsel for the Petitioner further submitted that the learned Tribunal has committed a

clear error of law in dismissing the petition filed by the petitioner as the learned Tribunal has not appreciated the fact that the Board of Directors have incorrectly assessed the merit of the petitioner as he was entitled to 84 marks instead of 69 marks given by the Board in respect of terminal benefits received by the family, monthly income, income from property, number of dependants, number of unmarried daughters, and the number of minor children and left over service of the deceased. Learned counsel for the petitioner submitted that 15 more marks ought to have been awarded to him in view of three minor children of the father of the petitioner at that point of time, which is conspicuous by their absence. Further submission of the learned counsel for the petitioner is that delay of 08 years caused in considering the case of the petitioner is wholly attributable to the respondents and he is made to suffer on the part of the respondents. Lastly, it is submitted that the impugned order be set aside and the respondents be directed to give compassionate appointment to the petitioner. In support of his submissions, he has relied upon judgments of the Supreme Court in the case of *Smt. Sushma Gosain and ors. v. Union of India and others*, reported at 1989(4) SCC 468 and *Smt. Phoolwati v. Union of India and ors.* reported at 1991 AIR (SC) 469 in which direction was given to create a supernumerary post.

11. Learned counsel for the respondents, on the other hand, has supported the judgment passed by the Central Administrative Tribunal and has relied upon the judgments passed by the Supreme Court in the cases of **Jagdish**

Prasad v. State of Bihar, (1996) 1 SCC 301; Sanjay Kumar v. State of Bihar, (2000) 7 SCC 192. State of J&K and ors. V. Sajad Ahmed Mir, (2006) 5 SCC 766 and judgment of this high court in the case of **Mudasir Ahmad Kumar v. State of J&K and others**, reported at **2018 (2) JKJ[HC] 485**.

12. Heard learned counsel for the parties, perused the record and the judgment impugned.

13. A perusal of the record would show that the authorities has considered the case of the petitioner, firstly on 01.06.2002 and rejected the same. The said fact was communicated to the petitioner and he was aware of such decision. He, however, kept silent and did nothing to challenge the said decision at any time. After about six months, on 02.09.2002, when again there was a departmental communication regarding rejection case of the petitioner, the petitioner woke up and approached the Court and challenged the said decision by filing the writ petition. Again on 31.05.2003, when the claim of the petitioner was rejected the third time, he sought permission of the court to amend the writ petition which was given to him and so the amended writ petition was filed, which was finally got transferred to Central Administrative Tribunal in the year 2009. The learned Tribunal has dismissed the petition of the petitioner.

14. We are of the opinion that the learned Tribunal has rightly put the issue to quietus.

15. As regards the submission of learned counsel for the petitioner that delay caused in considering the case of the petitioner is attributable to the respondents, it is relevant to mention here that the father of the petitioner died in the year 1994 and the petitioner approached the Court in 2002, when more than eight years had passed. Moreover, when the learned Tribunal decided the petition, more than sixteen years were over. The said fact was indeed a relevant and material fact which went conclusively to show that the family survived in spite of sad demise of the petitioner's father.

16. So far as the contention of the learned counsel for the petitioner that the petitioner ought to have been awarded 15 more marks along with 69 given by the Board of Directors in view of there being three minor children of the father of the petitioner at that point of time is concerned, we find that even with the 84 marks (if given, including the above 15 marks), still then he could not come close to the marks awarded to the other more deserving candidates. So this contention of the learned counsel for the petitioner pales into insignificance.

17. We are of the view that since the family has managed to survive for the long 29 years, under the circumstance it would not be proper to ask the respondents for considering the petitioner on compassionate grounds. This court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to the death of the bread earner who leaves the family in penury and without any immediate means of livelihood.

18. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with [Article 14](#) of the Constitution of India. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to bid 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of [Article 14](#) of the Constitution.

19. [In State of Haryana and Ors. v. Rani Devi and Anr.](#) [(1996) 5 SCC 308 : AIR 1996 SC 2445], it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of [Article 14](#) or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the Government and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

20. [In Umesh Kumar Nagpal v. State of Haryana & Ors.](#) [(1994) 4 SCC 138], it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned. [In Smt. Sushma Gosain & Ors. v. Union of India & Ors.](#) [(1989) 4 SCC 468], it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to

death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

21. In view of the preceding analysis and the reasons, the writ petition lacks merit much less that dissuade this court to take the view contrary to the view taken by the learned Tribunal. As such, the impugned judgment of the learned Tribunal warrants no interference and is upheld accordingly.

22. With the above, the writ petition is dismissed.

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

Jammu
05.09.2023
Raj Kumar

Whether the order is reportable? Yes
Whether the order is speaking? Yes

