

Court No. - 39

Case :- WRIT - A No. - 14697 of 2019

Petitioner :- Praveen Kumar Shukla

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Manoj Kumar Singh, Swatantra Singh

Counsel for Respondent :- Satish Chaturvedi

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Case has been listed in top ten cases.
2. At the outset, Sri Manoj Kumar Singh learned counsel for the petitioner prayed for adjournment. That request had been declined. Accordingly, the matter has been proceeded.
3. Perused the record and heard Sri Pankaj Srivastava learned counsel for the respondent.
4. Challenge has been raised to the order dated 26.3.2019 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 330/01288/2015 (Sri Praveen Kumar Shukla Vs. Union of India and 3 Others). By that order, the learned Tribunal has dismissed the Original Application as devoid of merits. It has thus confirmed the order dated 23.6.2015 passed by the Chief Accountant General, rejecting the application dated 29.12.2009 filed by petitioner's mother seeking compassionate appointment, in favour of present petitioner.
5. Having perused the record and after hearing the learned counsel for the respondent, it transpires that the father of the present petitioner Anil Kumar Shukla was an Accountant. He died an unnatural death on 22.9.2009. Arising therefrom, almost within three months from the date of the occurrence of death, petitioner's mother moved an application for grant of

compassionate appointment to the petitioner, on 29.12.2009.

6. It is on record that the said application was pursued by filing reminder representations. On their part, the respondents vide letters dated 03.6.2011, 17.5.2012, 10.10.2012, 19.8.2013 and 28.2.2014 repeatedly fixed dates for interview. However, on each occasion, the interview was postponed/deferred. Last, the petitioner was called for interview on 10.4.2014 which was again deferred and vide letter dated 19.5.2014 it was communicated to the petitioner that he would be called for the interview when the selection committee would next meet.

7. In such circumstance, on 23.6.2015 the petitioner was issued the impugned communication by the Deputy Accountant General. It reads as below:-

"No. -Admn-I/Gr-IV/Comp.Aptt/2015/14605

Dated: 23.06.2015

To,

*Shri Praveen Kumar Shukla,
S/o Late Anil Kumar Shukla,
House N.-363,
Residence Mohalla-Miyapur,
Post-Kutchery
Distt.-Jaunpur.
Pin-222001.*

Subject:- Appointment on compassionate ground.

With reference to the subject cited above, it is stated that keeping in view the financial position, immovable and movable assets, size of the family and liabilities of the family and marks awarded thereon on the basis of various parameters issued by DOPT and Headquarters, the case of Shri Praveen Kumar Shukla has not been found fit for compassionate appointment by the committee. As such, his case for compassionate appointment has been rejected.

Sd/- 23/6

Deputy Accountant General/Admin."

8. Upon challenge raised thereto, the learned Tribunal has reasoned as below:-

"7. This is a case where the applicant's father expired while in service in 2009. The applicant's mother had preferred her representation in 2009

itself requesting the respondents to offer appointment to the son of the deceased on compassionate ground. Thereafter, the applicant was advised by the respondents on a number of occasions and called for interview but they continued to defer the same. Finally vide the impugned order dated 23.06.2015, the respondents advised him that in view of the financial position, immovable and movable assets and the marks awarded on the basis of various parameters issued by DOPT and Headquarters, the case of the applicant has not been found fit for grant of compassionate appointment by the Departmental Screening Committee and the same has been rejected. The respondents have relied upon the Apex Court judgments and the DOPT Circulars. It has also been stated that the Departmental Screening Committee also adopts a marking system on various parameters based on the guidelines and that the case of the applicant did not merit consideration for appointment on compassionate grounds.

8. The rules on compassionate appointment and the relied upon judgments of the Apex Court clearly outline parameters and conditions for grant of compassionate appointment which vary from department to department. In this case, the Departmental Screening Committee in the office of the Accountant General considers cases of compassionate appointment against the number of vacancies available and other parameters. There has been indeed significant delay on account of the respondents in finalizing the case of the applicant.

9. Be that as it may, the Department has considered the case of the applicant and rejected the same. At this point of time, the present O.A. is devoid of merit and the same is accordingly dismissed. No order as to costs."

9. Having perused the record and having heard learned counsel for the respondent, we find that the Tribunal has failed to notice that neither the procedure set out to be followed by the respondents was followed inasmuch as despite calling the petitioner for interview on not less than six dates, he was not granted that interaction. Further, the Tribunal has failed to take note of the fact that the communication impugned before it dated 23.6.2015 did not contain any objective consideration of the claim made by the petitioner. In fact, the contents of that communication, as noted above, cannot be described to be reasons in support of the conclusion reached. Merely stating that the respondents had kept in mind the financial position, movable and immovable assets as also the size of the family and its liability and also the marks awarded on certain criteria, may never be enough to justify denial of the relief claimed. Neither the respondents chose to spell out the objective criteria

that may have existed under the directions issued by the DOPT and the Headquarters of the respondents nor the said communication contains evaluation of the petitioner's case on those considerations. Remarkably, the communication also does not disclose the total marks awarded to the petitioner upon consideration of his claim and the cut off marks for award of relief of compassionate appointment.

10. The discussion made by the Tribunal in paragraph 7 and 8 of its order is equally unsatisfactory. Merely because there may have existed some objective criteria under the direction issued by the DOPT and the Headquarters of the respondents, it may never have been presumed that those directions had been applied to the facts of the petitioner's case. Once the petitioner had challenged the communication dated 23.6.2015, it was for the respondents to bring on record the correct facts with respect to the same and it was for the Tribunal to consider the same and pass appropriate reasoned order.

11. In absence of any presumption available as to compliance of law made by the respondents, in face of specific challenge raised before it, we find that the Tribunal has failed to exercise its jurisdiction, in accordance with law.

12. Accordingly, the order of the Tribunal dated 26.3.2019 is set aside.

13. Perusal of the copy of the counter affidavit filed by respondents before the Tribunal also does not bring out any fact disclosure as may have allowed the Tribunal to offer objective consideration to the objection raised by the respondents that the petitioner may not have been granted compassionate appointment as his case does not fulfill the criteria laid down by the DOPT and/or Headquarters of the respondents.

14. In view of such facts and keeping in mind the further fact

that the case of the petitioner has remained pending for very long, we find no useful purpose may be served in remitting the matter to the Tribunal. For reasons noted above, the impugned order dated 23.6.2015 is also set aside and the matter remitted to the respondent No. 4 to pass appropriate reasoned order, keeping in mind the observations made above, as expeditiously as possible preferably within a period of three months from today.

15. Present petition is accordingly **allowed**.

Order Date :- 6.11.2023

Faraz

(Arun Kumar Singh Deshwal, J.) (S. D. Singh, J.)