

Court No. - 39

Case :- WRIT - A No. - 18834 of 2011

Petitioner :- Union Of India Thru Sec Ministry Of Defence
And Others

Respondent :- Phool Chand Pal And Another

Counsel for Petitioner :- Vani Singh, Himanshu Singh,
Manoj Kumar Singh, R.B. Singhal, Sanjay Kumar Om,
Saurabh Srivastava

Counsel for Respondent :- L.M. Singh, Chandan Sharma,
S.C., Satish Chaturvedi

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Sanjay Kumar Om, learned counsel for the Union of India and Sri L.M. Singh, learned counsel for the private respondent.

2. Present writ petition has been filed against the order of the Central Administrative Tribunal, Allahabad Bench Allahabad dated 10.12.2010 passed in Original Application No. 1468 of 2007 (Phool Chand Pal vs Union of India and others). By that order, the Tribunal has granted following relief:

"10. In view of the above observations the respondents are directed to place the applicant in his original earlier stated position, consider him at no.1 position amongst the waitlisted candidates. If there is no other applicant senior to him with respect to the date of application and then consider him in the next meeting to be held for this purpose. Needless to mention that the justice and fair play demands that the result of the selection process on objective parameters to be adopted for this purpose, if not already in existence. The applicant's case will not be rejected on the reasons of delay and age of entry, if he was within the age limit or without age relaxation at the time of death of his father. With these observations the authorities are also directed to inform the applicant his position amongst the waitlisted candidates and the

expected time frame of his case coming up for consideration in the next meeting of competent committee for this purpose."

3. Facts giving rise to the present writ petition are, the father of private respondent Phool Chand Pal namely Moti Lal Pal had been engaged on the post of Chowkidar by MES. He abstained from work without leave from 1981. He died on 03.03.1989, in that status. That fact was reported to the petitioners on 19.06.1989 by Sumitra Gowala claiming to be the wife of deceased. Acting on that information, the petitioners informed the wife of Phool Chand Pal (as per his service records)/mother of the present private respondent about the occurrence of the death of Moti Lal Pal, vide communication dated 24.02.1995. At the outset, it may be noted that there is no dispute to the fact that Moti Lal Pal died on 03.03.1989 and that no application (to claim compassionate appointment), came to be made by the respondent till 24.02.1995. However, after intimation of death of Moti Lal Pal was received by the mother of the private respondent, on 13.03.1995, she made an application to claim compassionate appointment to the private respondent. On 10.06.1996, the private respondent made a separate application to claim compassionate appointment. After that application remained pending for three years, the private respondent first approached the Tribunal by means of Original Application No. 1039 of 1999 seeking a direction upon the petitioners to decide his application for grant of compassionate appointment. On that motion made, the Tribunal vide its order dated 15.09.1999 issued a direction to the petitioner to decide the application (for grant of compassionate appointment), dated 13.03.1995.

4. The claim made by the private respondent was first dealt with by the petitioner vide communication dated 08.12.1999. Perusal of the same reveals, considering the pendency of other similar applications, the application, made by the private respondent, was placed at inter se seniority position 52. Relevant to our discussion, the communication issued to the private respondent is extracted hereinbelow:

"3. Your application submitted to this Works Section for compassionate appointment application dated 29 Dec 95 has already been progressed upto B-in-C's Br, Army Headquarters, New Delhi and you have been placed in the seniority list of Chief Engineer Eastern Command Calcutta letter No.131302/12/A116/Engrs/E1C (I) dated 22 Jun 99, wherein they have indicated that your position in the seniority list is at Srl No.52. Presently compassionate appointment applications of the year 1992 are being considered as per seniority. You will be intimated once your turn comes up as per seniority."

5. At that stage, the private respondent again approached the Tribunal by means of Original Application No. 596 of 2000. It was decided by order dated 7th November, 2000 with the following observation:

"6. From the facts and circumstances of the case I do not find a fit matter to direct the respondents to deviate from the practice and rules and departmental direction in this regard. However, it is provided that the applicant be given due consideration, which may be available to him as per departmental direction and he be not discriminated any way, against other claimant under this head."

6. The petitioners again considered the application for grant of compassionate appointment. Vide communication dated 9th March, 2002, the said claim was declined on the following terms on 9.3.2002:

"3. According to available information, the following is the position/status of the case:-

(a) The death of Govt. Servant occurred on 03.03.89. He was survived by his wife, one daughter and two sons.

(b) The family is receiving more than 1849/- as family pension per

month (the minimum amount). As such it is above the poverty line as per DOP&T norms.

(c) The need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in this case as the death of the Govt. servant occurred on 03.03.09 more than 12 years back.

"4. After due circumspection and consideration of the circumstances of the case in the light of the enclosed guidelines of DOP&T and also various judgements of the Hon'ble Supreme Court and after a balanced and objective assessment of the totality of the circumstances of the case, the competent authority, it is regretted to mention, has not approved your case for compassionate appointment in this Department."

7. That order was assailed by the private respondent by means of Original Application No. 1255 of 2002. Vide order dated 14th March 2006, the same was disposed of on the following terms:

"9. In view of the above, the respondents are directed to consider the case of the applicant purely on merit in the next Meeting that may be convened to consider the pending cases of compassionate appointment and in case the applicant comes within the merit, on the basis of the prescribed norms, he may be considered for compassionate appointment, if need be by relaxation of the Rules relating to age, as the applicant by now may be over aged. No opinion on merit is expressed through this order. In case the applicant does not come within the merit, by a speaking and detailed order, the same be informed to the applicant. No cost. OA is disposed off."

8. In giving effect to the above order, the petitioners passed further order dated 8th November, 2006. Thereby, it was indicated to the private respondent that he had been awarded 63 marks out of 100 and accordingly placed at merit position 13. Considering the same, claim for compassionate appointment was declined. It was also stated, further development would be intimated to the private respondent in due course.

9. Finally, vide communication dated 31st August, 2007, the

claim made by the private respondent was declined. In that regard, it was observed as below;

"4. According to the information available on records, the following is the position (status of the family of the deceased (MBO/Missing) Government servant.

(a) The death /MBO/Missing of the Government servant occurred on 03 Mar 1989 His wife 02 son 02 and 01 daughter(s) survive him. The deceased (MBO/Missing) Govt servant's family received Rs. 6338/- as terminal benefits. At present they are in receipt of monthly pension of Rs. 223/-.

5. The Board of Officers at Army Headquarters after taking into account each aspect referred to above has considered your case alongwith other candidates. However, due to more deserving case and few vacancies available, your case was not recommended by the BOO for appointment on compassionate ground. In view of this the competent authority is of the view that your case does not deserve employment assistance on compassionate grounds.

6. Therefore, after due circumspection and consideration in the light of the enclosed guidelines of DOP & various Judgement of the Hon'ble Supreme Court and that the appointment on compassionate grounds is not matter of right and after a balanced and objective assessment of the totality of the circumstances of the case including the decision of the Board of Officers at Army Headquarters, the competent authority has rejected the employment assistant to Shri Phool Chand Pal S/o Late Moti Lal of GE 859 Engr Wks Section on compassionate grounds.

10. The above order became matter of challenge before the Tribunal in Original Application No. 1468 of 2007. It had been allowed by the order dated 10.12.2010.

11. To cut the controversy short, we find it useful to note the reasoning given by the Tribunal and relief awarded. Accordingly, paragraphs 8, 9 and 10 and 11 of the above order of the Tribunal are quoted as below:

"8. Heard learned counsel for the parties and perused the material on record. There can be absolutely no dispute regarding law relating to the compassionate appointment as having been ruled by the Hon'ble Supreme Court time to time such as in the case of Umesh Kumar Nagpal Vs. State of Haryana and others: JT 1994(3) SC 525 and few others. What however, causes anguish is the manner in which the

appointment on compassionate grounds are handled in a closed and opaque manner without disclosing the number of vacancies available for each years, number and names of the candidates considered, the parameters prescribed for evaluating the overall merit of the applicant, the objective mechanism of putting grades to the parameters and finally the overall result sheet of all the candidates open to be seen and available to all so as to satisfy the applicant that their cases have been dealt with on fair, transparent, uniform and objective parameters without any discrimination and arbitrariness.

9. Unfortunately, the impugned order is deficient on all such requirements. The direction of the Tribunal to consider the case of the applicant on merit is not an invitation to the authorities to write an essay by selectively reproducing some rulings were as ignoring few others. The question of legal pronouncement comes into picture only where the facts are clear, the parameters are sound and practical, the evaluation is methodical and objective and transparency is beyond doubt as also the result are for all to see.

10. In view of the above observations the respondents are directed to place the applicant in is original earlier stated position, consider him at no.1 position amongst the waitlisted candidates. If there is no other applicant senior to him with respect to the date of application and then consider him in the next meeting to be held for this purpose. Needless to mention that the justice and fair play demands that the result of the selection process on objective parameters to be adopted for this purpose, if not already in existence. The applicant's case will not be rejected on the reasons of delay and age of entry, if he was within the age limit or without age relaxation at the time of death of his father. With these observations the authorities are also directed to inform the applicant his position amongst the waitlisted candidates and the expected time frame of his case coming up for consideration in the next meeting of competent committee for this purpose.

11. With the above observations the OA is disposed of. No cost."

12. Submission of learned counsel for the Union of India is, first the reasoning given by the Tribunal is erroneous. The claim made by the private respondent was wholly belated as made almost 7 years after occurrence of the death. No claim came to be made till the factum of death was first communicated to the mother of private respondent, by the department. Clearly the deceased was not living with the respondent/claimant. There was no element of dependency

either at the time of occurrence of death or for long period of almost 7 years thereafter.

13. Second, it has been submitted, the claim of the private respondent was considered in accordance with law. He was found entitled to consideration, in order to seniority of his application made, at serial 52. That decision of the petitioner authorities was not doubted by the Tribunal, inasmuch as vide order dated 7th November, 2000 the Tribunal disposed of the Original Application no.596 of 2000, leaving it open to the petitioner authorities to consider the claim of private respondent without any discrimination. No further direction was issued to grant any precedence or preference in consideration of that claim. Further, order passed by the Tribunal dated 14th March, 2006 was not such as may have created any substantive right in the private respondent to be granted compassionate appointment. Only this much was observed that delay may not be a ground to reject the claim. Further, direction was issued to consider relaxation of age, if required. At the same time, the Tribunal reiterated the criteria of merit to be applied on the strength of norms prescribed to consider the application for grant of compassionate appointment.

14. Having considered the claim of the private respondent, in that light, it was found that he was entitled for only 63 marks out of 100 placing him at serial no.13. At that stage, other factors have also been considered and the claim made by the private respondent had been rejected.

15. Therefore, it has been submitted that the Tribunal has erred in not taking into account the above facts and

circumstances as were critical to the reasoning necessary to allow the relief granted by the Tribunal. Failure to consider the same is cited to be a patent error, as may not allow the order of the Tribunal to be sustained.

16. Alternatively, it has been submitted, the reasoning given by the Tribunal does not support its conclusion. Even if the Tribunal was right in its reasoning that the procedure followed by the petitioners was opaque or not transparent, it may never have led to the relief to place the private respondent at seniority position no.1 without setting aside the finding of award of 63 marks out of 100 and without setting aside the conclusion reached by the petitioner that private respondent was entitled merit position 13.

17. Here reliance has been placed on comparative chart prepared by the selection committee disclosing the marks awarded to 15 candidates whose cases were considered (including the private respondent) in March, 2006 and also the position of the private respondent which was not higher than 13.

18. On the other hand, learned counsel for the private respondent would first contend that the order of the Tribunal does not require any interference. Referring to paragraph 26 of the counter affidavit filed by the petitioner in Original Application No.596 of 2000, it has been submitted that the petitioners had clearly conceded to grant employment to the private respondent, as per his seniority. Therefore, it has been asserted with vehemence that petitioners cannot resile from the admission and they cannot reject the claim of the private respondent alleging lower merit position.

19. Second, it has been submitted, there was no credible material brought before the Tribunal to establish that the private respondent had been awarded 63 marks out of 100 or that he was placed at lower merit position.

20. Third, it has been submitted, since the private respondent had made his application for grant of compassionate appointment in the year 1995, considering the fact that earlier directions had been issued by the Tribunal providing for consideration of his claim without any objection as to delay and further in light of grant of relaxation of age, there survived no option with the petitioner except to grant of compassionate appointment.

21. As to the initial delay in filing the application, it has been submitted, the private respondent was a minor on the date of occurrence of death, he being 16 years of age. Therefore, there was no delay.

22. Last, it has been submitted, since the application was moved by the private respondent in the year 1995, he had acquired a substantive right to get his application decided under the then prevailing policy. Referring to the communication dated 8th December, 1999, it has been submitted that the petitioner had promised to grant appointment to the private respondent in order of his seniority position, 52. In that regard, reference has been made to para 26 of the counter affidavit filed in Original Application 596 of 2000 (as quoted above). On this point, learned counsel for the private respondent has relied on a decision of Supreme Court in **Indian Bank & Others Vs. Promila And Another** reported in (2020) 2 SCC 729,

whereas learned counsel for the petitioners has relied on another decision of the Supreme Court in **N.C. Santhosh Vs State of Karnataka & Others reported in 2020 (7) SCC 617.**

23. Before we proceed to consider the rival contentions, it may be noted, at the stage of this writ petition being entertained, a difference of opinion had arisen before the division bench hearing the petition. While, one learned Judge had proceeded to call for a counter affidavit, the other had proposed to dismiss the writ petition. Upon the matter being referred to the third learned Judge, a majority opinion resulted that the matter required consideration. Accordingly, in light of the majority view, pleadings were exchanged. Counter Affidavit has been filed. No rejoinder affidavit is proposed to be filed.

24. In the first place, it may be noted, by the first order passed by the Tribunal, only a direction had been issued vide order dated 15.09.1999, to deal with the application made by the private respondent. In its second order dated 07.11.2000, the Tribunal provided that the petitioners may not deviate from their practice and rules and may offer due consideration to the claim made by the private respondent and that he may not be discriminated. It is a fact that in compliance of that direction, the petitioners proceeded to reject the claim made by the private respondent, vide communication dated 09.03.2002. Upon challenge raised to that order, the Tribunal vide its order dated 14.03.2006 passed in Original Application No.1255 of 2002 provided for fresh consideration of the respondent's claim, on merits. Again, the Tribunal reiterated that that consideration may

arise on the prescribed norms for grant of compassionate appointment, if need be, by granting age relaxation etc.

25. It is completely wrong on part of the private respondent, to claim any promise made at that stage - to grant appointment in order to seniority, being serial no.52. Language of the communication dated 08.12.1999 is clear and creates no doubt. It clearly states that at that time, various applications claiming grant of compassionate appointment were pending, since 1992. Therefore, it was communicated that the petitioner's application would be considered, in accordance with the seniority list position of his application that stood at Serial No.52.

26. Seen in that light, averments made in paragraph no.26 of the counter affidavit filed in Original Application No.596 of 2000 cannot be relied to hold any substantive right had arisen to the private respondent to be granted compassionate appointment. Any doubt in that regard would stand removed upon a plain reading of the order dated 07.11.2000 passed by the Tribunal in Original Application No.596 of 2000. As quoted above, the Tribunal decided the said Original Application and only directed that the claim of the private respondent be given due consideration as per the existing norms and he may not be discriminated against. Thus, despite the averments made in paragraph no.26 of the counter affidavit, the Tribunal only recognised the right of the private respondent to have his application for grant of compassionate appointment, considered in accordance with law. Thus, no substantive right to appointment arise in favour of the private respondent.

27. In absence of substantive right of compassionate appointment having arisen at that stage, the submission being advanced by learned counsel for the private respondent to the contrary, is misconceived.

28. As to what transpired thereafter, again the documentary evidence admits of no doubt. On 09.03.2000, the claim of the private respondent was rejected upon consideration of his family size as also his family pension and further in view of the delay. Upon challenge raised to that order, the Tribunal vide its order dated 14.03.2006 (in Original Application No.1255 of 2002), required the case of the private respondent to be reconsidered on merits.

29. Besides noting the rival submissions, the order of the Tribunal does not contain any reason to reject the reasoning offered by the private respondent in the communication impugned before it, namely, communication dated 09.03.2002. At the same time, the Tribunal required reconsideration of the claim with further stipulation with respect to grant of relaxation of age etc.

30. Seen in that light, the petitioners appear to have re-examined the case of private respondent and found him entitled 63 out of 100 marks.

31. While it may have remained from the petitioner to produce the record before the Tribunal, in the proceeding giving rise to this petition, the order of the Tribunal is wholly laconic. The Tribunal has only reasoned that the procedure followed by the petitioners was opaque. They did not disclose the number of vacancies available for each year, the number of names of the candidates considered, the

parameters prescribed for evaluating the overall merit of the applicants, the objective mechanism etc.

32. Such being the reasoning of the Tribunal, even if correct, it may only have enabled the Tribunal to remit the matter to the authorities to examine the matter afresh. Rather than doing that the Tribunal has granted the relief to place the private respondent at merit position no.1 of the wait listed candidates and to consider his claim for grant of compassionate appointment in that order of seniority. We find that direction issued by the Tribunal to be wholly disconnected and not based on the reasoning given by it.

33. As to the findings recorded by the Tribunal, we are not convinced as to its correctness. The petitioners had been contesting the proceeding from beginning. They had, from the very beginning, disclosed that the claim made was entitled to be considered at serial no.52 and not earlier, considering the fact that the same had been made in the year 1995. In view of communication dated 08.12.1999, it was also disclosed to the private respondent at that time, application filed in the year 1992 was considered.

34. While the second communication dated 09.03.2000, did not find the acceptance of the Tribunal, inasmuch as vide order dated 14.03.2006 directions were given to decide the case of the private respondent on the strength of its own merit, there is no denying fact that the private respondent was awarded 63 out of 100 marks, upon consideration offered in March 2006.

35. As a fact, the documents brought on record by means of the Supplementary Affidavit of Lieutenant Colonel K Senthil

Kumar dated 20.03.2020 the list of candidates considered and marks and merit position awarded to them clearly disclose that the claim of the private respondent was considered and that he was awarded 63 marks out of 100 and placed at serial no.13. Prima facie, there is nothing to doubt the correctness of that fact disclosed.

36. Seen in that light, the contention of learned counsel for private respondent that the marks awarded were not to be considered and that the private respondent was entitled to grant of appointment in terms of the policy existing at the time of application filed by the private respondent is equally misconceived. In the repeated litigation brought by the private respondent, on every occasion (as noted above), the Tribunal only required the case of private respondent to be considered on merit position in accordance with the prevailing norms of the Union of India. In none of the orders passed by the Tribunal required the Union of India to consider the claim of the private respondent, in accordance with the policy existing at the time of filing of the application by the respondent, in 1995.

37. In absence of any dispute as to the award of 63 out of 100 marks to the respondent resulting in award of merit position 13, prima facie rejection of claim of the respondent was reasoned. Other than the general observations made by the Tribunal that the consideration made by the petitioner was opaque, no real or discernable reason is seen to exist to disbelieve the consideration offered by the petitioners.

38. The Tribunal has failed to take note of its earlier directions. They only required the petitioners to consider the

claim of the respondents, on its merits, as per existing norms. That consideration is clearly seen to have been offered by the petitioners. In absence of any specific defect noted in that consideration, it never became open to the Tribunal to reject the consequent result.

39. The issue on which norms may apply is not required to be deliberated any further. In the facts of the present case, once the judicial pronouncement had been made that too at the instance of the private respondent himself that his claim be considered in accordance with the prevailing/current norms, it never became open to the private respondent to contend otherwise.

40. In view of such consideration, though technically the writ petition may have warranted a remand to the Tribunal to reconsider the Original Application, we find no useful purpose would be served in making that order. Effective orders may be passed as may serve the interests of justice. As noted above, 63 out of 100 marks were awarded to the respondent and he was placed at serial No. 13 against one vacancy. No error is shown to have been committed by the petitioners in making that evaluation. Hence, the Tribunal erred in setting aside the same, on mere general and vague observations. Neither before the Tribunal, nor before us, there is any material to doubt that evaluation.

41. Then, 34 years have passed since the occurrence of death. The private respondent is about 50 years of age, today.

42. In view of the above, we also do not find any merit in the last submission advanced by learned counsel for the private

respondent, at this stage to consider the claim for compensation. That claim may arise only in deserving facts where the parties may have not only suffered irreparable hardship but may be seen to have acted with due diligence. As noted above, the private respondent slept over the claim for not less than 9 years from the date of attaining majority, before first approaching the Tribunal.

43. Accordingly, the writ petition succeeds and is **allowed** and the order of the Tribunal dated 10.12.2010 is quashed. No order as to costs.

Order Date :- 6.11.2023

A.Kr.

(Arun Kumar Singh Deshwal, J.)

(S.D. Singh, J.)