

GAHC010041572024



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

Case No. : WP(C)/1195/2024

DILWAR HUSSAIN
S/O- LATE NK ABDUL BARIK,
R/O- VILL- GUARIGRAM,
P.O.- BHANGA BAZAR,
P.S.- BADARPUR,
DIST.- KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HOME AND POLITICAL DEPARTMENT,
DISPUR, GHY-06.

2:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REPRESENTED BY ITS CHAIRMAN

THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR
GUWAHATI-06.

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07.

4:THE DISTRICT LEVEL COMMITTEE
REPRESENTED BY ITS CHAIRMAN

THE DISTRICT COMMISSIONER

NALBARI

DIST.- NALBARI
ASSAM
PIN- 781335.

5:THE SUPERINTENDENT OF POLICE
NALBARI
ASSAM
DIST. NALBARI
ASSAM
PIN- 781335.

6:THE COMMANDANT
14TH ASSAM POLICE BATTALION
DAULASAL
NALBARI
ASSAM
PIN- 781312

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 08.05.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Additional Senior Govt. Advocate for the respondents.

2. The father of the petitioner, Late N.K. Abdul Barik had died-in-harness on 07.11.2012 while serving under the Commandant, 14 A.P.Bn. The petitioner had applied for appointment on compassionate ground on 16.07.2013. The candidature of the petitioner was considered in the DLC meeting held on 23.05.2014 and as the vacancy position of Constable and Grade-IV post did not allow, the candidature of the petitioner was directed to be put up in the next

DLC meeting.

3. Accordingly, the case of the petitioner was put up again in the DLC meeting held on 24.06.2016. It is projected that although for the post of Grade-III Constable, the cadre strength was 790 and man in position was 770, 5% of the cadre strength was 40 and 5% of the man in position was 39 and 3 nos. of posts were already occupied on compassionate ground. Similarly, in the Grade-IV post, the cadre strength was 96 and man in position was 84, 5% of the cadre strength was 5 and 5% of the man in position was 4 and 3 nos. of posts were already occupied on compassionate ground.

4. The learned counsel for the petitioner submits that one clear vacancy existed in Grade-III and Grade-IV post under the establishment of the Commandant, 14 A.P.Bn. However, his candidature was rejected by the said DLC meeting held on 24.06.2016. On the ground that the vacancy position being available, the candidature of the petitioner could not have been rejected, the present writ petition has been filed under Article 226 of the Constitution of India.

5. To explain delay, the learned counsel for the petitioner has submitted that the counsel of the petitioner had submitted a RTI application and in response to the said RTI application, the Commandant, 14 A.P.Bn. had forwarded him the photocopies of the DLC minutes for the year 2014 and 2016 in respect of the petitioner. It is submitted that only on perusal of the said RTI reply, the petitioner came to learn that his candidature was rejected in the year 2016. Accordingly, It is submitted that the respondent authorities had violated Clause-24(d) of the OM on compassionate appointment bearing no. ABP.50/2006/Pt/182 dated 01.06.2015.

6. The learned Additional Senior Govt. Advocate has submitted that applications for appointment on compassionate ground cannot be considered after a delay of several years although the respondent authorities may have been at fault and in support of his contention, reliance is placed on paragraph 7.4 and 7.4 of the case of *State of West Bengal. Vs. Debabrata Tiwari*, AIR 2023 SC 1467 : (2023) 0 Supreme (SC) 191. The said paragraph 7.4 and 7.5 of the said judgment is quoted below:

“7.4. 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.

7.5. 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.”

7. In view of the ratio laid down in the case of *Debabrata Tiwari (supra)*, notwithstanding that the petitioner might have received the information of rejection of his candidature in 2016 pursuant to RTI reply dated 16.02.2024, but

the fact remains that the petitioner has approached this Court after more than 11 years from the date when his father had expired.

8. In view of the inordinate delay in approaching this Court, the Court is disinclined to entertain this writ petition and accordingly, this writ petition stands dismissed.

JUDGE

Comparing Assistant