

GAHC010092772021



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

Case No. : WP(C)/3349/2021

MARAMI SAUD
W/O LATE EX HAV AJOY KUMAR SAUD
RESIDENT OF SATGAON, PO NARENGI, DIST KAMRUP M ASSAM 781026

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF DEFENCE, GOVT. OF INDIA, NEW DELHI 110011

2:THE COMMANDING OFFICER

HQ 51 SUB AREA

C/O 99 APO
908651

3:THE WELFARE OFFICER
WELFARE COMPLEX
HQ EASTERN COMMAND
C/O 99 APO
908542

4:THE DIRECTOR

DIRECTORATE OF SAINIK WELFARE
HOUSE NO. 74
SAINIK BHABAN
LACHIT NAGAR
GUWAHATI 78100

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 28.05.2024

Heard Mr. K.U. Ahmed, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC for all the respondents.

2. By filing this petition, the petitioner has assailed the order dated 11.01.2020 passed by the Col, OC Troops for GOC, whereby the claim of the petitioner for compassionate appointment is was rejected on the ground that the husband of the petitioner was not medically boarded out of service and had retired from service on attaining the age of superannuation on 31st October, 2003.

3. The case projected is that the husband of the petitioner was serving under the Indian Army and he had undergone surgical operation and finally placed in the low medical category, wherein, he was found medically unfit and thereafter released from service on 31.10.2003. The petitioner has contended that she was appointed as messenger in the year 2007 on contract basis by the respondent authorities. In the year 2012, she was removed from service as messenger. Thereafter, the petitioner has claimed for engagement under the scheme of compassionate appointment of the respondent authority. However, her application was rejected by the respondent authority. Being aggrieved of rejection of her claim, the petitioner approached this Court by filing WP(C) 3678/2018 and this Court vide order dated 28.02.2019 had disposed of the same. The relevant paragraphs are quoted herein below:-

“10. As regards the submission made by the learned ASGI that this Court had made an

observation that the petitioner's husband did not expire while in service but after superannuation and the claim of the petitioner for appointment perhaps would not be justified as it is outside the scheme of compassionate appointment, it may be mentioned that the petitioner is not seeking appointment on the death of her husband but on the ground that her husband was medically boarded out while alive and was unfit for civil employment. Since it is not the claim on the death of husband of the petitioner but, because of medical condition of her husband, this Court is of the view that the petitioner's case can be considered under the aforesaid scheme also.

11. In this regard, it may also be noted that the petitioner is presently serving as a Messenger on contractual basis since 2007 which indicates that she is otherwise eligible and suitable to discharge the duties of Messenger and hence, there should not be any difficulty on the part of the authorities to appoint her on regular basis under the aforesaid scheme.

12. Accordingly, the present petition is disposed of with direction to the respondent authorities to reconsider the case of the petitioner under the scheme for compassionate appointment as applicable by examining as to whether the petitioner's husband at the time of his service, was found unfit for civil employment and if that is so, the petitioner's appointment should be considered as her age can also be relaxed in terms of the paragraph 6 of the aforesaid scheme, more so, when she has been serving as a Messenger since 2007."

4. It is contended that the since the direction of this Court has not been complied with, a contempt petition was filed and during the pendency of the contempt petition, the authority has issued the impugned order dated 11.01.2020 rejecting the claim of the petitioner.

5. Mr. K.U. Ahmed, learned counsel for the petitioner by referring to the report of the medical board submits that the medical board has clearly remarks that the husband of the petitioner was fit for release/discharge in medical category (A3 P3). He submits that as per the scheme for compassionate appointment, it provides that a dependent family member of a government servant died in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency, the dependent family member would be appointed on compassionate ground. If a member is medically boarded out and unfit for civil employment, the dependent family member shall be appointed on compassionate ground. He submits that since the husband of the petitioner has been discharged after having found to be medically unfit for civil employment, the petitioner

is entitled for appointment on compassionate ground as per the scheme for compassionate appointment. According to the petitioner, the extent of permanent disability of the petitioner is 20 %.

6. On the other hand, Mr. H. Gupta, learned CGC while referring to the medical board report has explained the remarks which has been relied upon by the petitioner. As per the Army Order 3/2001 regarding Health Care System In The Army-Instructions For Medical Examination And Categorisation Of Serving JCOs/Ors, he submits that Physical Capacity (P3) has moderate disablement with limited physical capacity and stamina, Can undergo exertion not involving severe strain. He further submits that the husband of the petitioner was released on superannuation on 31.10.2003 on attaining the age of superannuation and not released or boarded out due to medically unfit for civil employment.

7. Due consideration has been extended to the submissions made by the learned counsel for the parties.

8. The object of scheme for compassionate appointment provides that same is to grant appointment on compassionate ground to the dependent family member of a government servant, who died-in-harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the government servant concerned from financial destitution and to help it get over the emergency. So far as, army personnel is concerned, it is applicable to a dependent family member who was a member of an armed forces, amongst other, is medically boarded out and is unfit for civil employment.

9. The record reveals that the husband of the petitioner was retired on attaining the age of superannuation and he was not discharged on medical ground or was not declared to be medically unfit for civil employment.

10. On perusal of the Army Order 3/2001 Health Care System in the Army-Instructions For Medical Examination and Categorisation of Serving JCOs/Ors, this

Court finds that as per medical board report, the petitioner was not found unfit and was not boarded out or medically unfit for civil employment. It also reflects that the petitioner was fit to certain extent of disability .

11. Unless it is clearly demonstrated that the husband of the petitioner was medically boarded out and is unfit for civil employment, the dependent family member of the Armed personnel cannot claim for Pappointment on compassionate ground under the scheme as it clearly provides that it will be applicable to a member of an armed personnel who dies during service, who killed in action or is medically boarded out and is unfit for civil employment.

12. On perusal of the order of this Court in WP(C) 3678/2018, it is seen that this Court disposed of the writ petition with a direction to the authorities to reconsider the case under the scheme for compassionate appointment by examining as to whether the husband of the petitioner at the time of service was found unfit for civil employment and if that be so, the petitioner's appointment should be considered in terms of the provision of the scheme.

13. As noted above, the husband of the petitioner was retired on attaining the age of superannuation and he has not been discharged from service or medically boarded out or has not been declared unfit for civil employment. Thus the claim of the petitioner for compassionate appointment under the said scheme, in the considered view of the Court cannot be considered as the same is not covered by the scheme for compassionate appointment.

14. It is noticed that the respondent authority has considered the case of the petitioner and the ground of rejection, in view of this Court, is found genuine. Therefore, since the petitioner is not entitled to be appointed on compassionate ground under the scheme for compassionate appointment, no relief can be granted to the petitioner.

15. For the foregoing reasons as discussed hereinabove, I find no merit in this

petition and the same stands dismissed. However, no order as to costs.

JUDGE

Comparing Assistant