

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 552 of 2015**

Vinod Kumar Vishwakarma S/o Shri Bachchu Vishwakarma, aged about 40 years, R/o Devkar, Tahsil Devkar, Police Station Devkar, Civil and Revenue District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Director General of Police and Others S/o CRPF CG & Controlled New Delhi, Police Department Delhi.
2. Office of the Commandant 24 Battalion CRPF Yabi Niwas, Near Jawar Tunnel, C/o 56, ADO Jammu Tav Tahsil Post District Jammu.
3. Govt. of India, Through Secretary, Ministry of Department at PO District Delhi.

---- Respondents

For Appellant	:	Shri A.S.Rajput, Advocate.
For Respondents/Uol	:	Shri Raj Kumar Gupta, Standing Counsel.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****24/11/2015**

1. I.A. No. 1 of 2015 has been filed to condone delay of 35 days in filing the appeal. For the reasons stated in the application, delay is condoned.
2. The present appeal has been filed against order dated 12.8.2015 dismissing Writ Petition (S) No. 1846 of 2015.
3. Learned Counsel for the Appellant submits that the claim for compassionate appointment has been wrongly rejected. The Appellant

belongs to the reserved category and therefore was eligible to be considered for three years age relaxation. His father had gone missing while in service. It was lastly submitted that he had applied before the age limit of 28 years for appointment, applicable to him, had run out and therefore rejection of his application on the ground that he was overage, is erroneous.

4. Learned Counsel for the Union of India submitted that the order of the Learned Single Judge is reasoned and well discussed. Compassionate appointment is not a matter of right and can be considered only in accordance with the circulars regulating the same. The Learned Single Judge has rightly held that it was a highly belated application and that the Appellant had also crossed the maximum permissible age for appointment.

5. We have considered the respective submissions.

6. The father of Appellant was in the employment of the Central Reserve Police Force posted as Head Constable in the office of Commandant, 24th Battalion CRPF, Itanagar in the State of Arunachal Pradesh. He went missing in 1991 while in service. It is an admitted case of the Appellant that he was minor at that time and therefore ineligible to apply. According to him he attained majority in the year 2001, after which he claims to have applied for compassionate appointment. Surprisingly, the Appellant has mentioned his date of birth in the Writ Petition as 10.4.1976 supported by a school marksheet thereby attaining the age of majority in the year 1994. Learned Counsel for the Appellant very fairly acknowledges that he has no instructions with regard to the time limit within which the claim for compassionate appointment had to be made.

7. The authorities had rejected his claim for compassionate appointment by the impugned order dated 8.1.2015 inter alia on the ground that he was a married person and therefore not eligible to be considered for appointment and also that he had crossed the maximum limit of age for appointment under the

circulars regulating the same which was 25 years with three years relaxation for a candidate in the OBC category.

8. The law with regard to compassionate appointment stands well settled and judicial precedents on the principles abound. Nonetheless, claims without any substance or merit continue to be made, which we are constrained to observe, fall in the category of clear frivolous litigation burdening the Courts unnecessarily. The present is a classic case of a completely frivolous litigation for a claim regarding compassionate appointment seeking ways and means to find a Government job with the least effort through litigation rather than to compete for obtaining a secure employment in a competitive world. Essentially, the Appellant seeks a back door appointment without having to face competition and doggedly pursues his claim for compassionate appointment notwithstanding the fact that it has no merit at all.

9. A claim for compassionate appointment is an exception to the constitutional mandate under Article 14 of the Constitution that all appointments in the Government or Semi-Government organisations must be made by open advertisement and competitive merit selection so as to provide equal opportunity to be considered to all who may be eligible, as employment in the Government constitutes a national wealth. A limited exception has been made to this principle by providing for compassionate appointment which is primarily aimed as a part of social constitutional philosophy of the Government to provide succor to the family of the deceased faced with sudden penury and destituteness due to untimely loss of the bread winner. It is therefore patent that there is always an urgency in a claim for compassionate appointment. If a claim is legitimately made within stipulated time and consideration is belated, different issues may arise for determination. Such is not the case presently.

10. It has repeatedly been held that compassionate appointment is not a constitutionally sanctioned mode of appointment in Government service. Any claim therefore has to be strictly in terms of the policy or circulars regulating

the same. The Courts cannot consider claims for compassionate appointment on the basis of sympathy.

11. The father of the Appellant went missing in 1991. He was therefore presumed to be dead under Section 108 of the Evidence Act after seven years. If the Appellant attained majority in 1994, evident from his date of birth mentioned in his High School Examination certificate, he could easily have applied for compassionate appointment in 1998.

12. In (2009) 6 SCC 481 (Santosh Kumar Dubey v. State of Uttar Pradesh) the deceased who was constable had become untraceable and his whereabouts were not known. A claim was made for compassionate appointment. It was held considering the nature of urgency in a claim for compassionate appointment as follows:

"10. Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate grounds could be asked for in a case of deemed death under Section 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years therefrom the period of limitation for making an application for employment in the case of the appellant expired in the year 1993."

13. If that ground were not enough, in the facts of the present case we indeed find it interesting to notice that the Appellant claims compassionate appointment as a necessity for him and yet he had the wherewithal to take on the responsibility of another's life by marrying when he did not have sufficient means for his own survival. This leaves us with the impression that he did have sources of income and only whereafter he decided to take on the responsibility of the woman that he married. It is difficult to believe that he remained in penury and destitute till the advanced age of 38 years, married without resources for survival and staked a claim for compassionate appointment according to his own case in 2001 to which he received no

response. In a writ petition, documents are primary evidence. Reference may be made to (1988) 4 SCC 534 (Bharat Singh v. State of Haryana). No representation of the year 2001 has been brought on record. The documentary evidence is for a claim for compassionate appointment made in January, 2010 after his father went missing. We may appropriately refer to the observations in Santosh Kumar Dubey (*supra*) that such a belated claim for compassionate appointment was itself evidence that the family could survive successfully and had overcome financial difficulties, if any, which may have been occasioned because of the loss of bread winner.

14. Even in a claim for compassionate appointment, competency of the person can still be tested and there is no vested right to be considered for appointment sans the other requirements of the employer and which would include age factor also.

15. In (2013) 11 SCC 178 (State of Uttar Pradesh v. Pankaj Kumar Vishnoi) compassionate appointment on the post of Sub Inspector of Police was denied on failure to meet the minimum standard of efficiency. Disapproving of the compassionate approach under Article 226 in a claim for compassionate appointment, it was observed in paragraph 22 as follows:

"22. It is accepted position that the respondent appeared in the test and could not qualify. Once he did not qualify in the physical test, the High Court could not have asked the Department to give him an opportunity to hold another test to extend him the benefit of compassionate appointment on the post of Sub-Inspector solely on the ground that there has been efflux of time. The respondent after being disqualified in the physical test could not have claimed as a matter of right and demanded for an appointment in respect of a particular post and the High Court could not have granted further opportunity after the crisis was over. "

16. Last but not the least, a claim for compassionate appointment cannot be put at par with the inheritable estate of the deceased vesting any right in the legal heirs to be considered for compassionate appointment. Nothing has been placed before us that any application by the Appellant was made within time

prescribed even if it be reckoned in accordance with Section 108 of the Indian Evidence Act. The Respondents are not obliged to keep a post vacant waiting for the successor legal heir to attain the age of majority and then provide him easy entry into the Government service by what may be euphemistically described as back door entry based on succession.

17. The appeal is wholly frivolous and is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE