

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4512-CAT of 2013

Date of decision: 10.09.2015

Deepak Kumar

.....Petitioner(s)

Versus

**Central Administrative Tribunal,
Chandigarh & others**

.....Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

*** * ***

Present: Mr. Shailendra Sharma, Advocate for the petitioner(s).

Mr. D.R. Sharma, Advocate for respondents No.2 to 5.

DARSHAN SINGH, J.

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari quashing the impugned orders dated 30.9.2011 and 4.11.2011 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal) vide which the Original Application No.849-PB-2010 and review

application No.76/2011 respectively have been dismissed. A prayer has been made to issue a writ of mandamus directing the respondents to consider the case of the petitioner afresh for an appointment on compassionate grounds.

2. Gopal Dass, the father of the petitioner, was working as Line Inspector under respondent No.5. He suddenly died on 9.5.2006 while in service leaving behind Smt. Sham Rani, his widow, Sonia Yadav and Dolly Yadav, his daughters, petitioner-Deepak Yadav and Jatinder Yadav, his sons. The petitioner vide application dated 18.11.2006 applied to respondent No.5 for appointment on compassionate ground. Respondent No.5 forwarded the application of the petitioner with recommendation of appointment on compassionate ground to Group 'C' Post vide letter dated 24.2.2007 but vide letter dated 29.5.2008, respondent No.3 rejected the case of the petitioner. Thereafter, the petitioner wrote the letter dated 29.5.2008 to respondent No.5 with a copy to respondent No.4 highlighting the pathetic condition of his family and requested to reconsider his case. As no action was taken by the respondents, the petitioner filed the Original Application which was dismissed by the learned Tribunal vide impugned order dated 30.9.2011. The review application filed by the petitioner was also dismissed vide impugned order dated 4.11.2011. Hence, this petition.

3. The respondents contested the claim of the petitioner before the learned Tribunal on the ground, inter alia, that on over all assessment the family of the petitioner was not found to be living in

indigent condition. That the claim of the petitioner was rejected in the year 2008 but he filed the OA in 2010 which was time barred and not maintainable. It was further pleaded that the case of the petitioner was thoroughly considered by competent Authority and the same was rejected because the petitioner has earned the less points.

4. We have heard Mr. Shailendra Sharma, Advocate, learned counsel for the petitioner and Mr. D.R. Sharma, Advocate, learned counsel for respondents No.2 to 5 and have carefully perused the paper book.

5. Learned counsel for the petitioner contended that this fact is not disputed that the father of the petitioner has died on 9.5.2006 while in service, who was serving as Line Inspector with the respondents. The petitioner fulfills all the conditions for appointment on compassionate ground. He contended that the appointment on compassionate ground has been declined to the petitioner on the ground that he has secured less than 55 points as per the Policy issued on 27.6.2007. He contended that this Policy/clarification was issued later on and could not have been applied retrospectively. On the date of death of the father of the petitioner, the Policy dated 9.10.1998 was applicable and in that Policy there was no condition of getting the points. He contended that even the learned Tribunal had observed that the Policy dated 27.6.2007 requires re-examination by the respondents as there was no rationale and objects to be achieved by framing such Policy but even then the claim of the petitioner has been dismissed.

6. He further contended that the petitioner has moved the application for appointment on compassionate ground about six months after the death of his father i.e. on 18.11.2006. The respondents caused delay and kept the application pending. Thus, he pleaded that the petitioner is entitled to be considered for appointment on compassionate ground as per the Policy dated 9.10.1998. To support his contentions, he relied upon case CWP No.6173/CAT of 2011 titled as **“Bhupinder Batra versus Union of India & others”** decided on 5.10.2011.

7. On the other hand, learned counsel for the respondents contended that the Original Application filed by the petitioner before the learned Tribunal was barred by limitation. He further contended that the case of the petitioner was duly considered by the competent Authority as per the Rules/Policy issued by the Central Government from time to time. He contended that to secure the appointment on compassionate ground, the petitioner was required to obtain minimum 55 points but the petitioner has not been able to obtain the minimum required points. So, his claim was rightly rejected by the learned Tribunal as well as the respondent-Department.

8. We have duly considered the aforesaid contentions.

9. This fact is not disputed that the father of the petitioner, namely, Gopal Dass, who was serving as Line Inspector under respondent No.5, has died on 9.5.2006. The petitioner, the son of deceased Gopal Dass, has moved an application on 18.11.2006 for appointment on compassionate ground. This fact is also not

disputed that at that time the Policy dated 9.10.1998 issued by the Government of India Ministry of Personnel Public Grievances and Pensions was applicable for compassionate appointments. It is also not disputed that in the said Policy there was no requirement of securing the points to claim the appointment on compassionate ground. For the first time, this requirement/weightage system was introduced on 27.6.2007 i.e. much after the date of death of Gopal Dass, the father of the petitioner and even much after the date, when the petitioner had moved application for appointment on compassionate ground.

10. A Full Bench of this Court in case **Krishna Kumari versus State of Haryana and others 2012 (3) PLR 383** has laid down that the Policy applicable on the date of death of an employee will apply to consider the case of his wards for appointment on compassionate ground. So, the letter/policy guidelines issued on 27.6.2007 were not in existence on the date of death of the father of the petitioner i.e. 9.5.2006 and even on the date, when he moved an application for appointment on compassionate ground as 18.11.2006.

11. The letter/policy guidelines dated 27.6.2007 has no retrospective effect and cannot be made applicable to the case of the petitioner as his father has died much before the issuance of this letter and he had even applied for appointment on compassionate ground before issuance of this letter/policy guidelines. Thus, the respondents were required to consider the case of the petitioner as per the Original Policy dated 9.10.1998 without adverting to the

subsequent letter dated 27.6.2007. Thus, approach of the respondents is not legally sustainable and the learned Tribunal has also erred in declining the claim of the petitioner.

12. Thus, keeping in view our aforesaid discussion, the present petition is hereby disposed of with a direction to the respondents that the case of the petitioner seeking compassionate appointment be considered afresh in the light of the Policy governing compassionate appointment dated 9.10.1998 without adverting to the subsequent letter dated 27.6.2007. The needful be done within a period of two months from the date of receipt of the certified copy of this order.

(DARSHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

September 10, 2015
ps