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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9065/2015

Date of judgment :21st September, 2015

MAHBOOB ALI

..... Petitioner

Through : Mr. Samrender Kumar with Mr. Kisley
Komal, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through : Mr. Arun Birbal with Mr. Sanjay
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL 20515/2015 & 20516/2015

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM.APPL 20517/2015(delay) & 20518/2015(delay)

3. By the present applications, the petitioner seeks condonation of delay in re-filing the present petition.
4. Heard.
5. For the reasons stated in the applications, delay in re-filing the present writ petition is condoned.
6. Applications stand disposed of.

W.P.(C) 9065/2015

7. In the present petition , the petitioner seeks quashing and setting aside of the order dated 22.04.2008 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 159/2007.

8. The facts of the present case in nutshell are as under:

“Applicant’s father Sh. Hassu was a permanent employee of the respondent-DDA as Mali. Applicant’s father died on 07.07.1999 after receiving multiple injuries on the head after being hit by one Chowkidar. Applicant’s mother (widow of late Sh. Hassu) gave representations for compassionate appointment to her son being the only son of the deceased employee. However, such appointment has not been granted so far. Applicant was informed vide letter dated 13.03.2003 that his request had been rejected as screening committee did not find it a fit case for appointment on compassionate ground. It has been submitted that the welfare inspector who had visited the village has wrongly reported that applicant has got 400 sq. Yards house and has no other property. No other grounds for rejection were disclosed to the applicant. Applicant has appeared before Lok Adalat on 16.07.2004 but there was no outcome even after that and the matter was closed. Applicant has accordingly prayed for direction to verify the matter again by having a proper inquiry from the village pradhan and Patwari concerned and look into the revenue record of property of applicant and provide him employment on compassionate ground.”

9. Mr. Samrender Kumar, learned counsel appearing on behalf of the petitioner submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and is based upon assumptions and presumptions.

10. The counsel for the petitioner strongly urged that the Welfare Inspector who had visited the village has wrongly reported that the petitioner owns about 400 Sq. Yards and has no other property. The counsel further contended that the Tribunal has failed to appreciate that the petitioner has vested right to be appointed on compassionate grounds.
11. Mr. Arun Birbal, learned counsel appearing on behalf of the respondent submits that the compassionate appointment is not a matter of right and only cases of extreme hardship must be covered for such appointment. The counsel further clarified that the case of the petitioner was examined by the Screening Committee which comprised of senior officials of DDA and after taking into account overall financial conditions of the petitioner including the liabilities, the application of the petitioner for appointment on compassionate ground was rejected. The Screening Committee noticed that it was not a fit case for compassionate appointment and there was sufficient evidence on record for the screening committee to assess the financial condition of the family of the deceased. The counsel for the respondent further argued that the compassionate appointments are for the cases of immediate hardship, however in the present case the death of the employee took place in 1999 and therefore, there is no immediate hardship.
12. We have heard the learned counsel for the parties in detail and considered their rival submissions and have also perused the record which was before the Tribunal, copies of which were produced before this court.

13. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate ground exceed the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed so that the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair-play and non arbitrariness.
14. The very object of making provision for appointment on compassionate ground is to provide succour to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim is an ante thesis for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though

Sh. Hassu, the father of the petitioner (Mahboob Ali) seeking appointment on compassionate ground had died on 07.07.1999, Mahboob Ali sought judicial redress, for the first time, by approaching the Tribunal in the year 2007. By now, eight years have been passed by and as such there can be no surviving claim for compassionate appointment.

15. So far as the question of nature and object of appointment on compassionate ground is concerned, the Hon'ble Supreme Court in the case of ***Umesh Kumar Nagpal v. State of Haryana (1994) 3 SCR 893*** observed as under:

“The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

16. In so far as delay in approaching the authorities for such appointment is considered, the Hon'ble Supreme Court in the case of ***Union of India v. Bhagwan Singh (1995) 6 SCC 436***, held as under:

“It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on 12-9-1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on

compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable.”

17. In the case of ***Haryana State Electricity Board v. Naresh Tanwar (1996) ILLJ 1066 SC***, it was stated by the Apex Court as under:

“It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years”

18. In the case of ***State of U.P. v. Paras Nath (1999) IILLJ 454 SC***, the Hon’ble Supreme Court has held as under:

“The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate

grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.”

19. In the case of ***Haryana SEB v. Krishna Devi (2002) IILLJ 773 SC***, the Hon’ble Supreme Court has observed as under:

“As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court.”

20. In the case of ***Punjab National Bank v. Ashwini Kumar Taneja (2004) IILLJ 536 SC***, the Hon’ble Supreme Court observed as under:

“It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.”

21. In the case of ***State of J&K v. Sajad Ahmed Mir AIR 2006 SC 2743***, the Hon’ble Supreme Court has held as under:

“Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with

Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution”

22. In ***State Bank of India and Anr. v. Raj Kumar (2010) 11 SCC 661***, it has been ruled by the Hon’ble Supreme Court that the dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.
23. In ***Union of India and Anr. v. Shashank Goswami and Anr. (2012) 11 SCC 307***, it has been observed by the Hon’ble Supreme Court that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis

occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

24. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms.
25. As per the order passed by the Tribunal, based on the counter affidavit filed by the DDA before the Tribunal, the case of the petitioner was considered for compassionate appointment on priority above other wait-listed cases. The case was examined by the Screening Committee comprising of senior officials of the DDA on 10.02.2003. The Committee took into consideration the financial conditions of the deceased, including the liabilities. The Committee did not consider the case of the petitioner fit for compassionate appointment. The Committee took into account the widow of the deceased, *i.e.*, mother of the petitioner is getting Rs.2,500/- per month by way of family pension. There is no unmarried daughter or any disabled dependant and no minor in the family. The widow has a residential land of about 90 Sq. Yards, besides the petitioner is a bodily abled person. In addition thereto, the Committee also considered that the family of the deceased had received Rs.68,000/- approximately by way of Provident Fund, Leave Encashment *etc.* after the death of the deceased employee. The Committee also took into consideration that in comparison to the case of the petitioner, there were others who were in dire need of financial help.

26. After perusing the above case laws, we are of the considered view that the principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over. In the instant case, the employee died in harness on 07.07.1999 and after a long delay of eight years the petitioner is before us seeking appointment on compassionate grounds. Hence, keeping in view the object and purpose of providing compassionate appointment, we are of the considered view that the decision of the respondent was in consonance with *Umesh Kumar Nagpal's* case and in our view the same should not be interfered with by.
27. For the reasons stated hereinabove, we do not find any infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 21, 2015

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