

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

% *Date of decision : July 07, 2015*

+ **LPA 416/2015**

VIKAS KUMAR

..... Appellant

Represented by: Dr.L.S.Chaudhary, Mr.Ajay
Chaudhary, Ms.Pratibha Gupta,
Advs.

versus

FOOD CORPORATION OF INDIA

..... Respondent

Represented by:

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the orders dated January 27, 2015 and March 02, 2015 dismissing the writ petition being W.P.(C)3631/2014 and the review petition filed by the appellant respectively, the appellant prefers the present appeal.

2. In W.P.(C) 3631/2014 Vikas Kumar the appellant herein claimed that his father Surender Pal Singh while working with Food Corporation of India (in short the FCI) died in harness on November 18, 2001. At the time of his father's death Vikas Kumar was a student and after passing out 12th Class from U.P. Board of Education, Allahabad he made a representation to the FCI for appointment on compassionate grounds vide his letter dated August 23, 2002. Though the respondent registered the application of Vikas Kumar for appointment against Class IV post, however the same could not be considered as no vacancy within the limit of 5% of the direct recruitment for appointment on compassionate grounds was available, hence his request was

rejected. On January 15, 2004 and February 21, 2008 Vikas Kumar made further representations for appointment on compassionate grounds. In the representation dated February 21, 2008 he also pointed out that he had in the meantime completed B.A. and thus appointment on compassionate grounds according to his qualification be granted.

3. As per the policy of the respondent a time limit of three years from the date of death of the employee in respect of appointment on compassionate grounds was fixed which limit was withdrawn by the Government of India on August 06, 2012. However, when Vikas Kumar again made a representation on September 17, 2012 he was informed that there was no vacancy.

4. The writ petition was dismissed vide the impugned order dated January 27, 2015 on the ground that in terms of the scheme for compassionate appointment vacancies were limited to 5% per year and since the same had already been exhausted in the relevant year, Vikas Kumar could not get compassionate appointment. Further the vacancies of the year 2002-2003 could not be carried forward till the year 2014 when the writ petition was filed for the reason that eligibility for compassionate appointment is for the reason that the family is indigent and deserves immediate assistance or relief from financial destitution. The learned Single Judge also noted that in respect of death of an employee in the year 2001 immediate assistance cannot be seen in 2014 when the writ petition was filed. The learned Single Judge considered Clause 7(e) of the Scheme for compassionate appointment which does not permit carrying forward a vacancy in future year as noted under:

“7(e) The committee constituted for considering a request for

appointment on compassionate grounds should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too with the ceiling of 5% of vacancies falling under DR quota in Group 'C' posts (O.M.No. 14014/18/2000-Estt. (D) dated 22.06.2001)"

5. After the impugned order dated January 27, 2015 was passed Vikas Kumar filed a review petition seeking review of the order dated January 27, 2015 for the reason that he came in possession of the Circular No. EP-01-2015-01 dated January 27, 2015 which modified the policy of appointments on compassionate grounds in FCI. Clause 2 of the said Circular noted that many vacancies for appointment on compassionate grounds were lying unfilled due to non-availability of eligible candidates. The learned Single Judge dismissed the review petition vide the impugned order dated March 02, 2015 on the ground that the Circular dated January 27, 2015 issued by the FCI does not in any manner affect the findings and conclusion of the judgment under review dated January 27, 2015.

6. Before this Court learned counsel for the appellant urged that in view of the Circular dated January 27, 2015 since many vacancies for appointment on compassionate grounds were unfilled due to non-availability of eligible applicants, he being an eligible candidate is entitled to appointment on compassionate grounds.

7. A perusal of the review petition filed by the appellant would reveal that no plea has been taken that there are vacancies available for appointment on compassionate grounds on the position on which the appellant has sought appointment. The Circular dated January 27, 2015 is

general in nature and while reviewing the policy it was noted that the unfilled compassionate vacancies of technical posts (Accounts, Quality control and Hindi) may be filled through direct recruitment and equal number of direct recruitment vacancies of non-technical posts be reduced. However, neither was an increase in the percentage of compassionate vacancies from 5% nor the carry forward of vacancy to future years as provided in Para 7(e) of the Scheme as noted above was changed.

8. It is trite law that compassionate appointment is granted to the legal heirs of the deceased to tide over in harness and is not an alternative to the direct recruitment. Surender Pal Singh, father of Vikas Kumar passed away on November 18, 2001 and Vikas Kumar approached the Court for the first time in the year 2014 and thus he cannot be held to be entitled to appointment on compassionate grounds.

9. In the decision reported as (1994) 4 SCC 138 Umesh Kumar Nagpal Vs. State of Haryana & Ors. the Supreme Court held:

“6. For these very reasons, 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.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.”

10. Consequently, the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 07, 2015
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