

\$~45

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

+ **W.P.(C) 11932/2015**

%

Judgment dated 21st December, 2015

KAPIL DEV

..... Petitioner

Through : Mr. S.K. Gupta, Advocate for Mr. Amit
Anand, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through : *Nemo*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL 31670/2015

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 11932/2015

3. Challenge in this writ petition is to the order dated 13.04.2015 passed by the Central Administrative Tribunal in review petition and order dated 29.01.2015 in OA filed by the petitioner herein.
4. Mother of the petitioner was employed as an Aya in Lady Hardinge Medical College and Smt. S. K. Hospital. She sought voluntary retirement as she had suffered a paralytic stroke in the year 2007 and remained under constant treatment and thereafter claimed to be 75% disabled and thus unfit to carry out her duties. The mother of the petitioner also requested the respondent that in lieu of her employment, her son should be given employment. Her application for voluntary retirement was accepted. Meanwhile, the petitioner's mother expired on 21.05.2015. The grievance

of the petitioner is that despite repeated requests including furnishing all documents as required by the respondent, the petitioner has not been given compassionate appointment.

5. Heard.
6. It is settled law that compassionate appointment is not a right and the object of granting compassionate appointment is to grant appointment to a dependant family member of a Government Servant who dies in harness and leaves his family without any means of livelihood.
7. 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.”

8. 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.”

9. 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”

10. 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.
11. 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.

12. It is not in dispute before us that the petitioner is more than 34 years of age and even at the time of demise of his mother his father was working in a government job. The aim and objective of providing compassionate appointment is in those cases, where an earning member of the family dies in harness leaving minor children without any financial aid and assistance.
13. In the instant case, the father of the petitioner was a government servant at the time of demise of mother of the petitioner and petitioner was 34 years of age when his mother expired and he was not dependant on his mother.
14. We find no merit in the present writ petition and the same is accordingly dismissed as infructuous.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 21 , 2015

gr/pst