

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6049 of 2016

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Shambhu Ram, S/o Late Jalim Prasad [Ex- Sweeper (Safaiwala), M.E.S., Danapur Cantt.], resident of Mohalla- Goda Bazar, P.O.- Danapur Cantt., P.S.- Danapur, District- Patna- 801503.

.... Petitioner/s

Versus

1. The Union of India through the Engineer-in-Chief, Army Headquarters, New Delhi.
2. The Engineer-in-Chief, Army Head Quarters, DHQ, New Delhi-11.
3. The Chief Engineer, Central Command, Lucknow (UP).
4. The Chief Engineer, Jabalpur Zone, Bhagat Marg, Jabalpur Cantt. (MP).
5. The Board of Officers, HQ, Chief Engineer, Central Command, Lucknow.
6. The CWE, Dipa Toli, Ranchi, Jharkhand.
7. The Garrison Engineer, Danapur Cantt., Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pradip Kumar, Advocate.

For the Respondent/s : Mr. S.D.Sanjay, Additional Solicitor General
Mr. Satyavrat Verma, CGC.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 28-07-2016

Heard learned counsel for the parties.

2. The challenge in the present writ petition is to an order dated 8th July, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') by which the Original Application No. 270 of 2011 filed by the petitioner has been dismissed both on merit and default.

3. The petitioner is son of late Jalim Prasad, who was working as Sweeper (*Safaiwala*) in the office of Garrison Engineer at Danapur



Cantonment when he died in harness on 13th May, 2003. The petitioner claims to have applied for appointment on compassionate ground against a Group 'D' post, but the same having been rejected, he moved this Court along with his mother in CWJC No. 9142 of 2009, which was disposed off by order dated 30th August 2010 directing them to approach the Tribunal for such grievance.

4. The petitioner, thus, moved the Tribunal in O.A.No. 270 of 2011, which was dismissed for default on 8th July, 2014 after noticing the stand of the respondents. The petitioner thereafter filed M.A.No. 050/00042 of 2015 before the Tribunal for recalling the order dated 8th July, 2014 which was passed *ex-parte*. The said M.A. was also dismissed by order dated 27th February, 2015 by the Tribunal upholding the preliminary objection of the respondents that the same was not maintainable as order dated 8th July, 2014 has been passed on merit. Order dated 8th July, 2014 of the Tribunal passed in O.A. No 270 of 2011 is impugned in the present writ application.

5. Learned counsel for the petitioner submits that as per the scheme of compassionate appointment, contained in Ministry of Defence ID No. 19(4)/34-99/1998-D(Lab) dated 9th March 2001, the request for compassionate appointment has to be considered by the Board of Officers (BOO) and if the applicant is not recommended in the first BOO for want of vacancy, the same has to be considered afresh along with fresh applicants by the BOO on three occasions consecutively and the final decision has to be communicated to the applicant by a detailed speaking



order. It is submitted that the said scheme was revised relating to award of points under F.No. 19(3/2009/D(Lab), Government of India, Ministry of Defence dated 22nd January, 2010 and F.No. 19(3/2009/D(Lab), Government of India, Ministry of Defence dated 14th May, 2010. Learned counsel submits that order dated 12th September, 2012 passed by the Director (Personnel and Legal), finally closing the issue with regard to compassionate appointment to the petitioner, is untenable as there has been no consideration for three years.

6. Learned counsel for the respondents submits that the case of the petitioner was considered and in terms of the scheme, he could not make it in the merit for appointment and the Competent Authority did not find it a fit case for such appointment.

7. Having considered the rival contentions, we do not find merit in the present writ application. The petitioner's father died in the year 2003. Though it is the claim of the petitioner that he had applied for compassionate appointment, but the application was without the required papers and, thus, the same could not be considered and the authorities, by letter dated 13th August, 2013, had called upon the petitioner's mother to submit certain documents. Upon the same being submitted, the matter was considered by the BOO and the screening committee and the request of the petitioner was rejected by a speaking order, as contained in Letter dated 13.11.2010. Thereafter, the case of the petitioner was again considered in the meeting of the BOO dated 29th September, 2011, but he was not recommended for such appointment. Again by passing a final speaking

order, as contained in letter dated 12th September, 2012, the claim of the petitioner was rejected. It was also indicated that the case was finally closed and will not be considered again.

8. From perusal of the orders, it is clear that as per the policy, contained in OM NO. 14014/19/2002-Estt(D) dated 5th May, 2003, the time limit prescribed for considering the case of compassionate appointment is three years which was also subject to the condition that the prescribed committee has reviewed and certified the penurious condition of he applicant at the end of first and second year and after three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. In the aforesaid background, the prescribed committee and the BOO having come to the conclusion that the case of the petitioner was less deserving than other candidates who were offered such appointment based on objective assessment of the totality of the matter, does not suffer from any error.

9. Moreover, compassionate appointment cannot be claimed as a matter of right and it depends upon the financial condition of the family of the deceased and also cannot be granted after a lapse of reasonable period. In the present case, as the father of the petitioner died more than 13 years ago and he is also more than 36 years of age, in our considered opinion, the claim for compassionate appointment cannot be said to be sustainable. The matter having been considered by the respondents initially in the year 2009 and lastly, during the period 1st April, 2011 to 31st March 2012, it clearly indicates that the matter has been considered for three

consecutive years, but the petitioner was not able to make it within the merit list under 5% vacancy available for such appointment. Thus, the right of the petitioner being limited, his case being considered and the same having been done by the authority in terms of the existing policy and having not found fit for recommendation for such appointment, we do not find any ground to interfere, either in the order of the respondent authorities refusing to appoint the petitioner on compassionate ground or the order of the Tribunal dated 8th July, 2014 dismissing O.A. No. 270 of 2011. Accordingly, the writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02.08.2016
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