

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 19242 of 2016
Date of decision: 19.09.2016**

Gurvinder Singh

.....Petitioner

Vs.

Central Administrative Tribunal, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Ramneek Vasudeva, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Through the instant petition under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the order dated 03.11.2015, Annexure P-1 passed by the Central Administrative Tribunal, Chandigarh (in short, "the Tribunal"); order dated 31.03.2014, Annexure P2 and reply to the legal notice dated 07.06.2014, Annexure P-3, whereby his claim for compassionate appointment on account of death of his father against Group-D post has been rejected. Direction has also been sought to the respondents to consider the claim of the petitioner for compassionate appointment on Group-D post in the light of the policy guidelines dated 09.10.1998, Annexure A.11 or in the alternative, to consider creation of

supernumerary post to adjust the petitioner in accordance with the directions given by the Apex Court in ***Smt. Sushma Gosain and others vs. Union of India and others***, AIR 1989 SC 1976.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The father of the petitioner late Sh. Prem Singh was employed as MTS (Multi Tasking Services) at Main Post Office, Ropar. He joined the respondent-department in the year 1984 and expired on 05.08.2003 at the age of 45 years while in service. He left behind his widow Smt. Surinder Kaur, four minor daughters and one minor son i.e. the present petitioner who was only 10 years old at the time of his death. On 15.10.2003, the mother of the petitioner, Smt. Surinder Kaur sent a request to the Office of the respondent No.5 for appointing her on compassionate grounds. Thereafter, she suffered a severe heart attack on account of which the doctors advised her complete bed rest. Thus, she was not in a position to do any job. The respondent department assured her that the case for compassionate appointment will be considered after her son attained majority. Immediately on attaining the age of majority, the petitioner made a request to the Post Master, Main Post Office, Ropar for appointment on compassionate grounds, stating that he fulfilled all the educational requirements for service and was in dire need of job because there was no source of income of their family except a meager pension of his father. Vide letter dated 22.3.2012, the office of respondent No.4 directed the petitioner to send the copy of letter issued by them regarding remittance of documents, showing whether his case had been rejected or not. Again on 04.04.2012, the office of respondent No.4 directed the petitioner to submit certain documents such as Educational Certificates, application from the wife of the deceased seeking employment for her son, No Objection

Statement from other dependents of the deceased, No Property Certificate etc. The petitioner submitted all the documents vide letter dated 04.04.2012 (Annexure A-4). On 05.06.2012, the petitioner sent another letter to respondent No.4 to consider his case for compassionate appointment keeping in view his financial condition. On 01.08.2012, the mother of the petitioner sent a letter praying for compassionate appointment to her son. Vide order dated 31.03.2014, the claim of the petitioner for compassionate appointment was rejected by respondent No.4 on the ground that his case was not so indigent and deserving in comparison to the cases which were approved. Thereafter, the petitioner again approached the respondent authorities through his counsel vide legal notice dated 12.04.2014. Vide letter dated 07.06.2014, respondent No.4 denied compassionate appointment to the petitioner by referring to the order dated 31.03.2014 (Annexure A-8). Aggrieved by the action taken by the respondents, the petitioner filed Original Application before the Tribunal challenging the validity of the impugned order dated 31.03.2014 as well as reply to the legal notice dated 07.06.2014. The respondents jointly filed their written statement denying the claim of the petitioner for compassionate appointment. The petitioner also filed replication to the said written statement reiterating the grounds mentioned in the original application. Vide order dated 03.11.2015, Annexure P-1, the Tribunal dismissed the application. Hence, the present writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. In the scheme for compassionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension,

Annexure A.11, under the head “determination/availability of vacancies”, clauses (e) and (f) read as under:

- “(e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending on availability of a suitable vacancy meant for the purpose of compassionate appointment.
- (f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list”.

5. A perusal of the above clauses shows that appointment on compassionate grounds could be given depending on the availability of suitable vacancy. Further, appointment on compassionate grounds cannot be claimed as a matter of right. It is settled law that the public appointments are to be given by giving equal opportunity to all eligible persons under Article 16 of the Constitution of India but by way of exception, compassionate appointment can be given, as per applicable policy, to overcome the situation at the time of death of the employee or within reasonable time thereafter. No right of reservation can arise in the said category. Appointment on compassionate ground is not another source of recruitment but merely an exception to enable the aggrieved family to get over sudden financial loss. Reference may be made to the judgments of the Supreme Court in *Umesh Kumar Nagpal vs. State of Haryana and others*, 1994 (4) SCC 138, *Punjab National Bank and others vs. Ashwani Kumar*

Taneja, AIR 2004 SC 4155 ***and State of Jammu and Kashmir vs. Sajad Ahmed Mir***, AIR 2006 SC 2743.

6. In the present case, the father of the petitioner expired in the year 2003. He applied for appointment on compassionate grounds only after he attained majority in the year 2012. It has been categorically recorded by the Tribunal that after receipt of requisite documents, the case of the petitioner was placed before the Circle Relaxation Committee. At that time, points system had been introduced in the respondent department for assessing the claims for appointment on compassionate grounds. The petitioner had earned a total of 73 points and secured 8th position amongst 19 candidates. The last candidate approved for appointment by the Circle Relaxation Committee got 88 points. The case of the petitioner was rejected by the Committee after examining all the aspects i.e. financial position, assets and liabilities of the family and also keeping in view the limited number of vacancies and points earned by the petitioner. It was further recorded by the Tribunal that the family had managed to sustain itself for nearly 10 years. The number of vacancies against which appointment on compassionate grounds could be made was limited. Further, the petitioner got lesser number of points than the persons recommended for appointment on compassionate grounds. Thus, it was held by the Tribunal that the claim of the petitioner for appointment on compassionate grounds was rightly rejected by the respondent department. The relevant findings recorded by the Tribunal in its order dated 03.11.2015 read thus:-

“11. We have given our careful consideration to the matter. Law on the subject of compassionate appointment has come up for consideration before the Hon’ble Supreme Court in catena of cases and entire law can be broadly summarized as follows:-

- (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground in Groups 'C' and 'D' post alone. (***Umesh Kumar Nagpal Vs. State of Haryana***, JT 1994 (3) SC 525.
- (ii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help out to get over the emergency.
- (iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased is legally impermissible.
- (iv) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised. Besides, appointment on compassionate grounds can be made only, if a vacancy is available for that purpose (***Himachal Road Transport Corporation Vs. Dinesh Kumar***, JT 1996 (5) SC 319 **and** ***Hindustan Aeronautics Vs. Smt. A. Radhika Thirumalai***, JT 1996 (9) SC 197.

12. In the present case, the father of the applicant expired in 2003, the applicant applied for appointment on compassionate grounds only after he attained majority when the points system had been introduced in the respondent Department for assessing the claims for appointment on compassionate grounds. Meanwhile the family has managed to sustain itself for nearly 10 years. Besides the number of vacancies against which appointment on compassionate grounds could be made was limited and the applicant got lesser number of points than the persons recommended for appointment on compassionate grounds.

13. Hence keeping in view the facts of the matter and the case law cited above, we conclude that there is no merit in this OA and the same is rejected.”

7. The findings have been recorded by the Tribunal after appreciation of entire evidence on record including the financial condition of the family and the case law on the point. Learned counsel for the petitioner has not been able to show that the said findings are illegal or erroneous warranting interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. With regard to the judgment relied upon by the petitioner in *Smt. Sushma Gusain's* case (supra), suffice it to notice that each case has to be decided on its own facts. The factual position in the said case being different, the petitioner cannot derive any advantage from the said decision. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 19, 2016
‘gs’

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes