

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.8368 of 2014

Date of decision : 15.02.2016

Babita

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

Present: Mr. B.S.Rathee, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate
for respondent No.1.

Mr.I.P.S.Doabia, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J.

1. Petitioner has assailed order dated 3.3.2014 (Annexure P-8) and order dated 22.4.2014 (Annexure P-10) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal), whereby miscellaneous application filed by the petitioner for compliance of order dated 1.2.2013 (Annexure P-4), passed in OA No. 1103-HR-2012, was dismissed and review sought against that order was also

declined.

2. Petitioner alleged that vide order dated 1.2.2013, passed by the Tribunal, her claim regarding compassionate appointment, being daughter of deceased Banarsi Dass, was accepted and she was held entitled to grant of a consideration for purpose of a compassionate appointment on account of death of her father. Earlier the competent authority had declined claim of the petitioner on the following grounds:-

“(a) You were married at the time of death of the deceased.

(b) You were not dependent on the deceased at the time of his death.

(c) All the daughters of the deceased were married and wife of the deceased is getting pension of ₹ 7,000/- approximately per month.”

3. While accepting the claim of the petitioner for consideration, it was observed by the Tribunal that the observations made in the course of the order ought to go into consideration and will not be open to the competent authority to record any other premise to impede the grant of a favourable consideration to the plea raised by the petitioner. The implementation of the order was directed to be made within two months from the date of passing of the order dated 1.2.2013.

4. Petitioner was married, but thereafter had separated

from her husband and was residing with her mother, who was receiving pension. Petitioner claimed that she was dependent upon her father. All the three grounds, on which claim of the petitioner was rejected vide order dated 6.9.2012, were negated by the Tribunal and the authority was directed not to take into consideration those very grounds at the time of consideration of the candidature of the petitioner for compassionate appointment. The order dated 1.2.2013 passed by the Tribunal was never assailed by the respondents and the same had attained finality.

5. Pursuant to the direction issued in the said order and non implementation thereof, petitioner filed execution application before the Tribunal. It was in the form of execution and compliance of the order passed by the Tribunal. The Tribunal has rejected the claim of the petitioner on 3.3.2014 on the ground that the claims of the persons recommended for appointment on compassionate ground were far stronger than the case of the petitioner, therefore, the petitioner was not preferred. It is pertinent to observe here that while deciding the case of the petitioner on 1.2.2013, the Tribunal did not observe that the consideration of the candidature of the petitioner for compassionate appointment was to be made vis-a-vis merits of other candidates. No such making of comparative assessment was ordered by the Tribunal, nor the merit of the petitioner was to be assessed vis-a-vis other candidates. The Tribunal in the

application for execution, has virtually nullified the order dated 1.2.2013 passed by the Tribunal and has virtually dismissed the claim of the petitioner in the guise of mere direction for 'consideration' flowed from the tribunal.

6. The stand of the respondents that the mother of the petitioner was drawing pension of ₹ 8,300/- per month and the petitioner was not dependent upon the deceased at the time of his death and the screening committee had recommended the cases of those persons, who were in worse condition than the petitioner, was not to be taken cognizance of, in view of the conditions made in para No.6 of the order dated 1.2.2013, which have been reproduced in the preceding para.

7. In the review application, the plea of the petitioner was that the ground taken by the competent authority, while rejecting the claim of the petitioner, was the same as earlier taken and the same had already been set aside by the Tribunal, therefore in execution, the Court cannot go beyond the order passed in the main case. The review was not entertained by the Tribunal.

8. The consideration, which has been given pursuant to the order passed by the Tribunal, is revolving around the same grounds which were specifically negated before the Tribunal and the Tribunal had specifically ordered that the authority, while giving fresh consideration, was not to be swayed by those

authority and accepted by the Tribunal.

10. We have perused the record and found that the order dated 1.2.2013 passed by the Tribunal has already attained finality and is binding inter se between the parties to the case. The filing of miscellaneous application (E-431 of 2013 in OA No.1103-HR-2012) was like an execution of the order dated 1.2.2013, therefore, the Executing Court was not supposed to go beyond the scope of the order. The consideration on which the claim of the petitioner has been declined is totally cryptic and non existent.

11. The background in which consideration has been made is totally unsustainable because no such consideration could have been made by the committee, as the considerations fall squarely within the ambit of those grounds, which were specifically ordered to be ignored by the Tribunal while accepting the claim of the petitioner.

12. Having given thoughtful consideration to the controversy, we are of the firm opinion that the claim of the petitioner deserves to be accepted.

13. Accordingly, this petition is allowed. Impugned order dated 3.3.2014 passed in execution application No.413/2013 in OA No.1103-HR-2012 and order dated 22.4.2014 passed in RA No.060/00054/2014 in MA (E) No. 431 of 2013 in OA No.1103/HR/2012 are hereby set aside. Respondents are

directed to implement the order dated 1.2.2013 passed in OA No.1103-HR-2012 in letters and spirit. Since the consideration of the candidature of the petitioner was projected by the respondents on those very grounds on which claim of the petitioner was accepted, therefore, only irresistible conclusion that can be drawn is that the respondents be directed to give compassionate appointment to the petitioner. Ordered accordingly.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

February 15, 2016

anita