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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6358/2016 & CM. No. 26045/2016**

DR. SACHIN DUBEY Petitioner
Through: Mr.Anil Kumar, Adv.

versus

THE MINISTRY OF HEALTH & FAMILY WELFARE & ORS
..... Respondents
Through: Ms.Meenakshi Midha, Adv. for R-2
Mr.Arun Kumar, Adv. for UOI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **27.07.2016**

CM. No. 26045/2016

Exemption allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 6358/2016

1. This is a petition filed by the petitioner with the following prayers:-

a) Direct the Respondents to consider the case of Petitioner for compassionate appointment against any appropriate post even in class III against the 5 % vacancies as per the Rules of relevant O.M. and/or;

b) To call for records of the case.

c) Direct respondents to expedite the disposal of pending case of petitioner on merit as clear from letter dated 20.01.2016;

d) Pass such other and further orders as this Hon'ble Court may deem fit in the circumstances of the case.

2. It is noted that the petitioner's father Dr. C.P.Dubey, expired on 5th November, 2007. On 20th March, 2008, the petitioner represented to the respondent no.1 for compassionate appointment. After some correspondence, the respondent No.1 vide letter dated 24th September, 2009 has informed the petitioner that as a number of candidates applying for compassionate appointment is much higher than the number of vacancies for compassionate appointment and also the screening Committee after carefully considering his case on compassionate appointment did not recommend his case.

3. On 7th November, 2014 and 20th August, 2015, the petitioner made further representations. The representation dated 20th August, 2015 was replied to by the services department of GNCT on 2nd September, 2015, wherein it was stated that his case for compassionate appointment was placed before the Screening Committee, meetings held in the years 2009, 2010 and 2012 but the Committee did not recommend his case on merits. Again, the petitioner after the receipt of reply dated 2nd September, 2015, made representation on 28th September, 2015, which was also rejected on 13th October, 2015 by a detailed/reasoned communication. Not only that even the legal notice sent on 22nd December, 2015 was replied on 15th January, 2016.

4. From the aforesaid facts, it is revealed that the cause if any, for the petitioner to approach the Court had arisen on the receipt of the communication dated 24th September, 2009. The petitioner did not avail any judicial remedy.

5. That apart, it is also noted that the father of the petitioner had expired in the year 2007. The scheme of compassionate appointment is only to tie

over an immediate situation which would arise because of the death of the earning member. Nine years have passed since the death of the father of the petitioner. Moreover, in the communication dated 15th January, 2016, the respondents have stated the following:-

“This is with reference to you legal notice dated 22nd December, 2015 on the subject noted above.

In this connection, it is inform that the Compassionate Appointment Scheme was introduced with the object to grant appointment on compassionate grounds to a dependent family member of a govt. servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood to relieve the family of the Govt. servant concerned from financial destitution and to help it get over the emergency.

Further, the Govt. of India vide DOPT OM no.14014/6/95/Estt. (D) dated 26.09.1995 restricted appointment on compassionate grounds up to a maximum of 5% of the vacancies available for the direct recruitment quota in any Group ‘C’ or ‘D’ post.

Accordingly, while considering cases for appointment on compassionate grounds, first priority would be for families which are living to extremely indigent circumstance and having small children and no other sufficient source of livelihood in form of rent, ownership of house, land, belonging of relative values etc. the next consideration is given to cases where the family is in extremely indigent circumstances and has minor children less than 18 years of age and no other source of employment.

The committee after going through the complete details viz. Pension being received terminal benefits, liabilities in the light of available vacancies and also taking into the consideration of guidelines issued by DOPT GOI from time to time did not recommend the case during its meetings held in the year 2009, 2010 & 2012. The decision of the committee was conveyed to the applicant on all occasions.

Further, in reply to his earlier representations dated 20.08.2015 and 28.09.201, status of the case has already been intimated to the applicant vide this office letter Nos.F.16(1)/2014/S-

II/Pt. I dated 02.09.2015 and 13.10.2015 respectively.

It is further to invite your attention towards the Hon'ble Supreme Court's judgment dated 28.02.1995 in the case of the LIC of India vs. Mrs. Asha Ramchandra Ambekar and others (JT 1994 (2) SC 183) that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

Moreover as per Section 80 of CPC, no suit shall be instituted against the Government or against the public officer in respect of any act purporting to be done by such officer in his official capacity until the expiration of two months next after the notice in writing has been delivered.

In the instant matter, the case was considered by the Committee constituted for the purpose of Compassionate Appointment and the decision of the committee was only conveyed to the applicant, as such, the matter is not conveyed by the provisions of CPC relating to issue of Legal Notice. Hence, the above Legal Notice be withdrawn.

This issue with the approval of competent authority."

6. In view of the above, the prayers made by the petitioner in the present petition cannot be granted, the present petition is dismissed.

V. KAMESWAR RAO, J

JULY 27, 2016

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