

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7237 of 2016

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1. Sumitra Devi mother of late Prabhakar Kumar Mishra, Wife of Fagu Mishra@Akshy Kumar Mishra.
2. Suraj Mishra@Suraj Kumar Mishra Brother of late Prabhakar kumar Mishra, Son of Fagu Mishra@Akshy kumar Mishra Both are residents of Village+_PO Keshopur, PS Simari, Distt Buxar.

.... Petitioners

Versus

1. The Union of India , through the secretary, Ministry of Defence , New Delhi.
2. The Under Secretary to the Government of India, Ministry of Home, Affairs New Delhi.
3. The Director General, Border Security Force, CGO, complex, Lodhi road, New Delhi.
4. The Dy. Inspector General , Sector Head quarter , Border security Force, Dhubri, Panbari, Assam.
5. The Commandant , 17 Battalia, Border Security Force, Alamganj, Dhubri Assam.
6. The Deputy Commandant, 17 Battalian ,Border Security Force, Alamganj, Dhubri Assam.

.... Respondents

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Appearance :

For the Petitioner/s : Dr. Kamal Deo Sharma, Adv.
For the Respondent/s : Mr. Awadesh Kumar Pandey, SCGC
Mr. Ravinder Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-06-2017

Heard Dr. Kamal Deo Sharma, learned counsel appearing for the petitioners and Mr. Awadesh Kumar Pandey, learned Senior Counsel for the Govt. of India, who appears alongwith Mr. R.K.Sharma, learned Central Govt. Counsel.

The petitioners are aggrieved by the order dated 14.3.2016 issued under the signature of the Commandant, 17Battalian, Border Security Force, whereby the claim advanced on behalf of the petitioners for compassionate appointment of petitioner no.2, has been rejected.



The facts of the case briefly stated is that the son of petitioner no.1 and the brother of petitioner no.2 Late Prabhakar Kumar Mishra posted in 17th Battalion of Border Security Force committed suicide after killing two Assistant Sub Inspectors (GD), namely, Babu Lal and Surendra Kumar and also causing bullet injury to a Constable, Om Prakash Sahu. Consequent upon his death that petitioner no.1 applied for compassionate appointment of her son, the petitioner no.2 herein and the application was acted upon as is confirmed from the pleadings on record of the writ petition as well as the counter affidavit. However, the process for compassionate appointment so initiated did not favourably result in the appointment of petitioner no.2 rather was rejected and which has aggrieved to the petitioners.

Dr. Kamal Deo Sharma, learned counsel for the petitioners, in reference to the guidelines present at Annexure 10 to the rejoinder filed in the present proceedings has referred to the Scheme of compassionate appointment and in reference to Paragraph 2A thereof submits that a Government servant who dies while in service including suicide, is entitled to the benefit of compassionate appointment. He submits that no enquiry was held as to the reasons which led to death of three persons including son of petitioner no.1, who is brother of petitioner no.2. He submits that the respondents



without coming to a definite conclusion as to the reasons which led to death of three persons including suicide by the late son of petitioner no.1 could not have rejected the claim of the petitioners.

The argument has been contested by Mr. Awadesh Kumar Pandey, learned Senior counsel for the Union of India, who while admitting that the process of compassionate appointment was initiated for appointment of petitioner no.2 submits in reference to Annexure R/12 that the background in which the compassionate appointment has been prayed, has not satisfied the Inspector General, to grant relief to the petitioners.

I have heard learned counsel for the parties and have perused the records.

A scheme of compassionate appointment is a beneficial piece of legislation to tide out a family in distress upon the death of the bread earner. The death can be natural or in wartime in so far as armed forces are concerned. The scheme relied upon by Dr. Sharma placed on record at Annexure 10 is issued by the Government of India in its Ministry of Personnel/ Grievances and Pension and inter alia provides for appointment to a dependent family member of a Government servant as well as to a member of the armed forces. The reliance by Dr. Sharma to the provisions present at Clause 2A to pray for compassionate appointment for the son of petitioner no.1 who is



brother of petitioner no.2 in reference to paragraph 2A is thoroughly misconceived for more than one reasons. Firstly that the provision is not applicable to the dependent family members of the armed forces personnel rather is applicable to civil servants and secondly the armed forces personnel have been separately categorized at paragraph 2B and the provisions relatable to a member of armed forces does not provide for compassionate appointment in case of suicide. Further the facts taken note of by the Inspector General to reject the prayer, do not call for interference.

In the circumstances discussed and in view of clear stipulation present in the scheme relied upon by the learned counsel for the petitioners at Annexure 10 which does not provide for compassionate appointment in case of a suicide committed by a member of an armed forces coupled with the background in which the deaths have taken place, I am not persuaded to interfere with the decision taken by the respondents as impugned at Annexure 8 as well as Annexure R/12 to the counter affidavit.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2017
Transmission Date	NA

