

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3306 of 2017**

Om Prakash Khatri S/o Late Shri Virendra Kumar Khatri, Aged About 30 Years R/o Rajendra Nagar, Geedam Naka, Geedam Road, Jagdalpur, District Bastar Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Rural Engineering Services, Ministry, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. The Collector, Bastar District Bastar Jagdalpur Chhattisgarh.
3. The Chief Engineer, Department Of Rural Engineering Services, Office Of Development Commissioner, Raipur, District Raipur (Chhattisgarh)
4. Superintending Engineer, Chhattisgarh Gramin Sadak Vikas Abhikaran, Pariyojana Mandal Kramank 1, Jagdalpur District Bastar Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Alok Dewangan, Advocate.
For State	:	Mr. D.R. Minj, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****12/09/2017**

Heard.

1. The only ground to reject petitioner's claim for compassionate appointment is that as per circular dated 29.08.2016, clause 6(a) as amended, the petitioner would not be entitled to compassionate appointment as his brother is in Government service.
2. The facts not in dispute are that the petitioner's father while working as a Stenographer in the office of Superintendent Engineer, Rural Engineering Services, Jagdalpur died in harness on 01.02.2016. The petitioner being his son, entitled to apply for compassionate appointment, claimed for compassionate appointment. The claim was, however, rejected by impugned order (Annexure P/1) by taking recourse to the disqualification prescribed in clause 6(a), as amended vide circular dated 29.08.2016.

3. The only question arising for consideration is whether the circular dated 29.08.2016 would be applicable or the policy which was in force on the date of death of the employee would be applicable.

4. This issue is no longer res integra and decided by this Court in series of decisions. In one of such decision in case of **Lileshar Prasad Tiwary Vs. The Sate of Madhya Pradesh and others** passed by this Court on 18.03.2010 in WPS No.1695 of 2005, it was held thus:

“(7). It is not in dispute that the date on which the father of the petitioner died, the earlier circular dated 24-03- 1975 (Annexure A-12) was in force and in existence. The said policy of considering the case for grant of compassionate appointment in case of death of a government servant within three years from the date of his retirement was superceded by issuance of circular dated 10-06-1994 (Annexure A-13). It appears that initially when the petitioner was given appointment, he was found eligible in view of the policy contained in circular dated 24-03-1975, but later on, the Joint Director opined that the petitioner is not entitled to such appointment and his services were terminated. It is apparent that this decision to terminate the services of the petitioner was founded on application of policy contained in circular dated 10-06-1994 (Annexure A-13). This is reflected from averments contained in the return to the effect that the petitioner ought not to have been appointed as Lower Division Clerk on compassionate ground as the father of the petitioner had died after his retirement.

(8) In the case of Abhishek Kumar Versus State of Haryana and others, (2006) 12 Supreme Court Cases 44, while considering a case relating to compassionate appointment, where the government servant had expired on 10-02-2001, it was held that the case was required to be considered in terms of the Rules which were in existence in the year 2001. In that case, it was found that the subsequent notification dated 28-02-2003 was relied upon by the employer to resist the claim of compassionate appointment and on that basis, petition was dismissed by the High Court. In the aforesaid context, the Supreme Court observed as under:-

"The appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001."

5. Therefore, the circular which was in force on the date of death would be applicable. According to the disclosure made by the parties before this Court the circular which was in force on the date of death was issued on 14.06.2013. A perusal of such circular shows that there was no such condition that in case there is any other member of the family in the Government employment, benefit of compassionate appointment would not be applicable. This was, in fact, subsequently added by circular dated 29.08.2016 i.e. prior to the death of the Government employee. Therefore, the conclusion is obvious that it was circular of 2013 which would be applicable and not the circular of 2016.

6. In the result, the petition is allowed. Impugned order is quashed and the respondents are directed to consider petitioner's claim for compassionate appointment strictly in accordance with policy dated 14.06.2013.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha