

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

**CWP-19733-2017 (O&M)
Date of decision:06.11.2017**

Baldev Singh & another

... Petitioners

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. H.C. Arora, Advocate for the petitioners.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

As per pleadings on record, Sh. Amarjit Singh Constable while serving under the Punjab Police was killed by terrorists on 07.02.1992.

The petitioners herein are the brother and nephew respectively of deceased Amarjit Singh.

Grievance raised in the instant petition is against denial of claim of petitioner No.2 to be considered for appointment on compassionate basis inspite of his uncle having attained martyrdom.

Mr. H.C. Arora, Advocate has raised a two fold submission. In the first instance, reliance is placed upon Memorandum dated 27.03.2017 (Annexure P-12) issued from the office of the Assistant Inspector of Police and received under the Right to Information Act and as per which petitioner No.1 has been informed that even though there is no policy of the State Government to appoint two dependant members of the terrorist victim family but the department has been taking a sympathetic and compassionate view and has been appointing two members out of the dependants of a terrorist effected family. Counsel argues that the Memo dated 27.03.2017

(Annexure P-12) would constitute a practice having been followed by the respondent/State and under such circumstances, petitioner No.2 herein being nephew of deceased Amarjit Singh was vested with a right to be appointed on compassionate basis.

The second submission raised by counsel is that the action of the State is arbitrary and violative of Articles 14 and 16 of the Constitution of India. Counsel has adverted to the averments made in paragraphs Nos.6 and 7 of the writ petition to contend that in the case of deceased Head Constable Anokh Singh and Head Constable Gurinder Singh, more than one dependants had been appointed on compassionate basis and as such, on the ground of parity itself, petitioner No.2 herein could not have been denied appointment. Further argues that action of the respondent/authorities is arbitrary inasmuch as vide impugned order dated 08.10.2014 (Annexure P-1), claim of petitioner No.2 was rejected on the ground that his claim is not covered under the relevant policy governing appointment on compassionate basis whereas subsequently, matter having been agitated and a legal notice having been served, a response dated 12.07.2017 (Annexure P-10) has been received and which would indicate that one Smt. Amraj Kaur, sister of martyr Constable Amarjit Singh has not given her willingness for providing any benefit in the nature of compassionate appointment in favour of petitioner No.2. Counsel argues that perusal of communication dated 12.07.2017 (Annexure P-10) would rather indicate that the petitioner otherwise was eligible to be considered for appointment but has been declined the benefit on account of another family member having staked her claim.

Counsel for the petitioner has been heard at length and

pleadings on record have been perused.

It is by now well settled that compassionate appointment is not a right. It is in fact a concession. Compassionate appointment is not a mode of recruitment. The objective of compassionate appointment is to mitigate the sudden financial crisis that has fallen on the family by virtue of losing the bread winner in harness.

In the present case, deceased is Amarjit Singh Constable and who was killed by terrorists in the year 1992. Concededly, Daljit Singh younger brother of Amarjit Singh was given appointment as Constable on compassionate basis in October, 1992. The objective of compassionate appointment stood fulfilled upon brother of Amarjit Singh (deceased) having been appointed as Constable.

Counsel for the petitioner has not been able to advert to any policy/instructions issued by the State Government and which would be reflective of a conscious decision having been taken by the competent authority to consider more than one dependant of a deceased employee to be appointed on compassionate basis. The Memo dated 27.03.2017 at Annexure P-12 received under the Right to Information Act at best would reflect a practice that may have been followed by the State Government at a certain point of time whereby by taking a sympathetic and compassionate view, two dependant members of a terrorist affected victim family have accommodated. Such practice can never translate into a right. A writ of mandamus would not be issued by the writ Court to enforce a practice which otherwise has not been codified in terms of issuance of any policy/instructions.

Even the plea of parity and violation of Article 14 of the

Constitution of India raised by learned counsel is misconceived. For a plea of discrimination to sustain, there has to exist a right in law. Article 14 of the Constitution of India postulates a positive concept. Even if the State Government in the past has been generous enough to issue appointment letters to more than one dependant of an employee who had died in harness or to the family of the terrorist effected sans a policy, it would not vest in the petitioner a right to claim issuance of a writ of mandamus to direct the respondent/authorities to repeat and replicate such appointments.

Even though, this Court has taken a view that the petitioner does not have a right in law to claim compassionate appointment even if there was any practice that was followed by the State Government to accommodate more than one dependant of a deceased employee, even the factual premise as emanating from the communication dated 12.07.2017 (Annexure P-10) would stand in his way. Apparently, apart from petitioner No.2, who happens to be the nephew of deceased Amarjit Singh there is another claimant Smt. Amraj Kaur i.e. sister of deceased Constable Amarjit Singh and who has furnished an affidavit opposing the claim of the petitioner.

In the totality of circumstances, this Court is of the considered view that there would be no basis that would warrant interference.

Petition is dismissed.

06.11.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

(i) Whether speaking/reasoned?	Yes
(ii) Whether Reportable?	No