

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 25486 of 2014 (O&M)
Date of Decision: November 15, 2017

Arjun Kumar

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.A. Sheoran, Advocate,
for the petitioner.

Mr. Karan Bhardwaj, Advocate,
for the respondents.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has challenged the communication dated 07.10.2014 (Annexure P/1) by which petitioner's claim for compassionate appointment has been turned down on the score that one of the family member is entitled for compassionate appointment since petitioner's mother was appointed on compassionate ground due to the death of petitioner's father and she exhaust the claim.

2. Petitioner's father died on 16.10.1996. Consequently, petitioner's mother was appointed as Mazdoor on compassionate ground on 16.07.1999. While she was serving with the respondent, she died on 12.01.2013. Thus, petitioner submitted his application for compassionate appointment as he was wholly dependent on deceased mother.

3. Learned counsel for the petitioner submitted that impugned order and the reasoning assigned by the respondent in the communication

dated 07.10.2014 is contrary to the Scheme dated 16.01.2013 for the purpose of compassionate appointment. Under the Compassionate Scheme, there is no prohibition for considering second compassionate appointment in a family. It was further submitted that the object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness at the relevant point of time etc., whereas as on the date of petitioner's mother's death on 12.01.2013, petitioner was wholly dependent family member of the deceased mother. In the absence of specific provision in the scheme prohibiting for second compassionate appointment in a family rejection of the petitioner's claim for compassionate appointment is highly arbitrary and illegal.

4. Per contra, learned counsel for the respondents submitted that once a member of the family of deceased is appointed on compassionate ground, there cannot be second appointment in the very same family since family member of a Government is required to be taken into consideration. On earlier occasion as and when petitioner's father died, petitioner's mother who was dependent of the deceased petitioner's father, was given compassionate appointment. Thus, there is no infirmity in the communication dated 07.10.2014.

5. Heard learned counsel for the parties.

6. Undisputed facts of the Scheme for compassionate appointment and its object is crystal clear that the object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness. As on the date petitioner's mother death i.e. on 12.01.2013, petitioner was a dependent family member.

Therefore, the interpretation or reasons assigned in the impugned order

dated 07.10.2014 is contrary to the Scheme for compassionate appointment. Learned counsel for the respondents relied on Annexure R/1, Government of India instructions dated 22.03.1999 in which there is a prohibition for compassionate appointment (in respect of para No. 1(b)). At the same time Para No.1(c) of Annexure R/1, it is permissible for the purpose of claiming further compassionate appointment by the dependent of the compassionate appointee. The aforesaid circular/instructions of the Government of India vide Annexure R-1 is not relevant for the purpose of deciding the present petition since no such clauses like Para No. 1(b) are incorporated in the Scheme for compassionate appointment issued on 16.01.2013. Therefore, any reliance on the instructions dated 22.03.1999 may not hold good.

7. At this stage, learned counsel for the respondents raised preliminary objection regarding maintainability of this writ petition stating that deceased mother of the petitioner was working as Mazdoor in the Commandant, 9 Field Ordnance Depot, Pin 909909 c/o 56 APO. Since service of the petitioner's mother is in the Army, therefore, the above writ petition is not maintainable. Supreme Court of in the case of ***Mohammed Ansari vs. Union of India and others***, reported in (2017) SCC OnLine SC 83, in para no.13 held as under:-

“13. The aforesaid decision makes it clear that the proceedings under the 1950 Act as well as the 1965 Rules are maintainable and do not amount to double jeopardy. The principle that is deducible is that the person aggrieved under the 1950 Act at that juncture can approach High Court and similarly, the same person aggrieved by the imposition of punishment under the disciplinary proceeding can challenge the same under Article 226 of the Constitution before the High Court.

Thus, it is graphically clear that this Court did not think that the aggrieved party can agitate the grievance before the Central Administrative Tribunal under the 1985 Act.”

In view of aforesaid decision, respondents' preliminary objection of maintainability of CWP is rejected.

8. Accordingly, communication dated 07.10.2014 (Annexure P/1) is set aside. The concerned respondent is hereby directed to re-consider the petitioner's name for compassionate appointment and issue necessary order of appointment, if petitioner is otherwise eligible, within a period of three months from today.

9. CWP stands allowed.

November 15, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No