

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

Date of decision: 01.05.2017

CWP No.8587 of 2017

Virender

...Petitioner

Vs.

Canara Bank & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vivek Khatri, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The nagging issue has been clarified on perusal of file of CWP No.24460 of 2016 mentioned in the interim order dated 26.04.2017. In that writ petition filed by Virender, the petitioner herein, the representation dated 07.11.2013 is neither a pleaded fact nor a copy thereof has been produced. That writ petition was disposed of on 28.11.2016 on the basis of which ex parte directions the Bank has had to pass an order in implementation. The claim of the petitioner for compassionate appointment in the respondent Canara Bank has been rejected. The reason for declining the prayer is that the financial condition of the petitioner is comfortable and, therefore, he does not deserve compassionate appointment. This is not an invalid reason for rejecting such a claim and is covered on the point by many decisions of the Courts including of the Supreme Court in including in case Umesh Kumar Nagpal Vs. State of Haryana & others, (1994) 4 SCC 138.

Moreover, in view of MGB Gramin Bank Vs. Chakarvarty Singh, (2014) 13 SCC 583, the relevant date is the date of consideration. At the time of consideration under Court directions [not voluntarily by the

Bank] a time lapse of about 5 years has falling in the way and, therefore, the petition not only has no merit, but suffers from delay and laches as well.

Mr. Khatri has produced a letter dated 21.11.2013 issued by the Public Information Officer of the Bank. A photocopy of the letter is taken on record as mark – 'A'. This letter refers to the subject request of Virender dated 07.11.2013 the public information officer informing the petitioner that he had to pay a sum of ₹10/- to get his case processed for supply of information sought. On a query put as to whether the amount had been paid and the matter pursued, the answer was in the negative.

Mr. Khatri has also referred to some other documents which suggest that the petitioner pursued his request under RTI, which has borne no fruit. If the petitioner relies on a document, he must conclusively prove its existence in writ proceedings, which is a jurisdiction based on exchange of affidavits. To establish this as a fact, that is, whether a request was made for compassionate appointment by representation 07.11.2013, the petitioner has remedy available in first appeal and then before the State Information Commission after he fulfills the demand of deposit of ₹10/- for processing the case. The petitioner is also free to move the Civil Court.

On facts, the request had been declined to protect third party rights. The result is that there is no parity. Much of the asserted right to ex gratia appointment may depend on the existence of representation dated 07.11.2013 which has not seen light of the day and that is why it was possibly not mentioned in CWP No.24460 of 2016. If the representation does not exist the claim may be suffering from delay & laches. In any case compassionate appointment cannot be claimed as a matter of right.

Still further, I would not interfere in this matter on equitable considerations. The petitioner was charged of a criminal offence under

Sections 498-A/306 read with Section 34 IPC i.e. abetment of suicide by his wife. His wife was an employee of the Bank and the claim of the petitioner is by the husband arising out of death of his wife. He may have been acquitted of the criminal charge, but I have no reason to interpret the guidelines on compassionate appointment prevailing in the Bank which came into force on 31.07.2004 prescribing that one of the exceptional circumstances under which compassionate appointment is applicable is when an employee dies within 5 years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependant spouse and / or minor children, then in such a case appointment on compassionate grounds may be offered to one among the next of kin of the deceased employee. The word 'may' suggest that it is directory and not mandatory provision.

In the background of this case on the finding that there is no financial stress to the family, I would refuse to exercise my discretionary jurisdiction under Article 226 of the Constitution and reject the petition. Consequently, the petition is dismissed with liberty to the petitioner to exhaust his channels under the Right to Information Act or approach the Civil Court on the basis of the alleged representation dated 07.11.2013 to see on evidence it was not used as a stepping stone to bridge delay, laches and limitation.

However, in case there are service benefits lying with the Canara Bank in the account of the deceased wife of the petitioner as part of the estate of the deceased, then the petitioner can always apply for such benefits and the Bank will consider the request in accordance with law by keeping in mind the rules of succession and inheritance of the deceased wife of the petitioner and the rights of the deceased wife from her paternal side

including her mother etc. and strictly as per the Indian Succession Act, 1956 and the Hindu Succession Act, 1956.

As a result of the above discussion, the petition is dismissed.

01.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>