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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 771/2017 and CM No. 3548/2017 (Stay)

GOVT OF NCT OF DELHI AND ORS Petitioners
Through Mr. Siddharth Dutta, Advocate
versus

GURMEET KAUR Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **03.03.2017**

The question relates to compassionate appointment of Gurdev Singh son of late Head Constable Hargovind Singh who had died in harness. This is a particularly hard case, as the elder sister of Gurdev Singh is a widow and she along with her three minor children are residing in her parental house.

2. The Principal Bench of the Central Administrative Tribunal ('Tribunal', hereafter) in the impugned order dated 27th September, 2016, whilst allowing OA No. 353/2016 observed:-

“8. It will be seen from the order of the Tribunal in OA no. 2409/2012, already cited above, that at that point of time itself, i.e. three years ago, all the facts were before the Tribunal, in fact, the further fact that the elder daughter and her three young children are also dependant on the applicant due to the death of the husband of elder daughter was also

before the Tribunal. Anyone familiar with realities of the Indian society would realise that the extra burden of looking after of the elder daughter and her three children has compounded the financial problem of the applicant. Moreover, reliance of the respondents on the younger daughter being an SI in Delhi Police, in my view, is misplaced. This daughter would get married and would soon have an independent family. What would be left in the family of the deceased government servant would be his wife (the applicant), son, elder daughter and her three children to be look after without an earning member. I do not suppose it can be anybody's claim that the applicant is less deserving. The other ground of the applicant's son being overage is rejected because this is only due to the fact that the respondents have been delaying this matter. On the date of the death of the concerned Govt. servant, he was very much within the 30 years limit.

9. In view of the above discussion, the respondents are directed to appoint the applicant's son on compassionate ground as Constable (Driver) within a period of 90 days from the receipt of certified copy of this order. No order as to costs."

2. Pursuant to the directions given vide order dated 30th January, 2017, the petitioners have file the affidavit. It is stated that vide letter dated 07.02.2012, Gurdev Singh was denied compassionate appointment being "less deserving" and on account of "non-availability of vacancy". There is a

contradiction in the said reasoning. The observation that Gurdev Singh was “less deserving” would show that there were more deserving cases, who were appointed. Non-availability of any vacancy under the 5% quota would be rather difficult to accept. This order was challenged in OA No. 2409/2012 which was partially allowed vide order dated 11th October, 2013 with a direction for fresh consideration. The case of the respondent was put up before the Police Establishment Board which rejected the claim as “less deserving” and on account of “overage”. The ground of “overage” is specious, for consideration ought to have been made in terms of the order of the Tribunal dated 11th October, 2013. With regard to the observation “less deserving”, no reasons have been given or indicated. No comparison with other cases which were found deserving, was made.

3. In the impugned order dated 27th September, 2016, the relevant paragraphs of which has been reproduced above, the Tribunal has noticed that Gurdev Singh’s widowed elder sister, along with her three young children, is residing with the respondent. This is not a normal case, but a hard and compelling case. We would not, in these facts, accept the general statement, or rather the conclusion, “less deserving” without elucidation and reasons.

4. Learned counsel for the petitioners has relied upon the decision of the Supreme Court in ***Chief Engineer (Naval Works) & Ors. vs. A.P. Asha, (2016) 2 SCC (LS) 206.***

5. This judgment reversed the finding of the High Court, observing that compassionate appointments have to be granted as per the extant policy and accordingly when more deserving cases exist, less deserving cases have to be rejected/disallowed. It was also observed that the Tribunal/High Court

should not repeatedly issue directions to the authorities to examine the case for compassionate appointment.

6. The facts of the present case, as noticed by the Tribunal, are peculiar and it is apparent that the orders of the petitioner-authorities dated 21st February, 2014 and 25th August, 2014 did not discuss or deal with the aforestated issues. The orders denying Gurdev Singh compassionate appointment are completely silent and no justification/reasons have been given to point out how the case of the respondent, in spite of the factual matrix, was less deserving than other cases.

7. In view of the aforesaid position and factual matrix, we do not find any merit in the present petition and are not inclined to interfere with the finding given by the Tribunal.

With the above observations, the petition is dismissed. Pending application also stands disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 03, 2017/sd