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

Date of Decision: May 17, 2017

+ W.P.(C) 792/2016, CM No. 3467/2016

ASHWANI BHASIN Petitioner
Through: Mr. Sujeet Kr. Mishra, Adv.

versus

AIRPORT AUTHORITY OF INDIA & ORS Respondents
Through: Mr. Digvijay Rai, Adv. for R1&R2.
Mr. Vivek Goyal, CGSC with
Ms. Vanya Khanna, Adv. for R3 and
R4.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **17.05.2017**

1. The present petition has been filed by the petitioner inter-alia seeking a direction to the respondent Nos.1 and 2 to issue appointment/joining letter to him in a suitable Group D post with all ancillary benefits, back wages etc.
2. The facts are, the petitioner's mother Late Smt. Usha Bhasin who was working as Senior Superintendent (P) with the respondents 1 and 2 Authority expired on September 24, 2005 after putting in 36 years of service. In the month of October 2005, the petitioner applied for an appointment in an appropriate post as per his qualification on compassionate

grounds. It is matter of record that on April 28, 2010 the respondents 1 and 2 had issued an order which was captioned as “*employment to the dependants of employees who died while in service*”, whereby recommending the name of the petitioner for appointment on compassionate basis. Between 2010-2014, concedingly order dated April 28, 2010 has not been given effect to till date. In other words, the petitioner has not been issued any appointment letter. It is in this background, the present petition has been filed.

3. Learned counsel for the petitioner would urge that the non implementation of the order dated April 28, 2010 is illegal and in violation of Article 21 of the Constitution of India as the respondents 1 and 2 having taken a conscious decision to grant compassionate appointment could not have sat over the matter making the recommendation otiose. He states, that the purpose of compassionate appointment is for mitigating the hardship due to the death of the bread earner in the family and such appointment should therefore be provided immediately to redeem the family, which is in distress. He states, that there was a legitimate expectation of the petitioner that the respondents 1 and 2 would honour their own recommendation for compassionate appointment. He would rely on the instructions issued by the

DoPT from time to time and the judgments of the Supreme Court in the following cases:-

(i) JT 1989 Vol. 3 SC 570 Smt. Sushma Gosain and ors v. Union of India and Ors;

(ii) JT 1996 5 SC 319 Himachal Road Transport Corporation v. Dinesh Kumar and connected appeal;

(iii) JT 1996 9 SC 197 Hindustan Aeronautics Limited v. Smt. A. Radhika Tirumalai.

4. On the other hand, Mr. Digvijay Rai, learned counsel appearing for respondents 1 and 2 would submit that the compassionate appointment in the respondents 1 and 2 Authority is governed by a Scheme called as “*Compassionate Appointments of Dependants in AAI*”. He states, no doubt that order dated April 28, 2010 was issued, but since the petitioner was not given joining to the said post in terms of the said order, the petitioner made representation only in June 2014 i.e after more than four and a half years and the present petition filed in 2016, the present petition requires dismissal. He states, that in terms of the Scheme for compassionate appointments in the respondents 1 and 2 Authority can be made only upto 5% of direct recruitment vacancies. No compassionate appointment can be made if there

is no vacancy. He states, that this Court vide order dated April 27, 2010 in W.P.(C) No. 8008/2008 and W.P.(C) No. 8532/2009 owing to redeployment issue, directed gainful employment of excess/temporarily retained manpower in Delhi 201(Non-Executives) and Mumbai 685 (Non-Executives). In other words, due to leasing of Airports at Delhi and Mumbai to Joint Venture companies, a large number of employees not absorbed by JVCs became surplus and they were required to be gainfully redeployed by the Airports Authority of India. Hence, it was not found feasible to make any compassionate appointment as there were no vacancies.

5. That apart, he states, that after the death of mother of the petitioner, amounts of Rs.2,34,538/- towards DCRG, Rs.6,63,740/- towards CPF, Rs.75,000/- towards GSLIS and Rs.50,000/- towards benevolent fund i.e a total of Rs.10,23,278/- have been paid. Mr. Rai has drawn my attention to the counter-affidavit wherein a specific plea has been taken that owing to the order passed by this Court on April 27, 2010 directing gainful deployment of excess/temporarily retained manpower at Delhi and Mumbai, it was decided vide letter dated April 29, 2010 that the implementation of the order dated April 28, 2010 be kept in abeyance till further instructions from the corporate headquarters. He also states that vide letter dated May 14, 2010

the order dated April 28, 2010 regarding grant of employment assistance was cancelled by the Competent Authority of the respondents 1 and 2. He states, in view of the cancellation of order dated April 28, 2010, the petitioner cannot seek implementation of a non-existing order. He seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, one of the submissions made by the learned counsel for the petitioner is, that the orders dated April 29, 2010 and May 14, 2010 are forged and fabricated. He states that the process which was followed while issuing order dated April 28, 2010 has not been followed while issuing the said orders. The said plea, is unsustainable. It is one thing to say that the said orders are forged and fabricated but other thing that the orders have been issued without following the process as was followed while issuing order dated April 28, 2010. To verify this submission made by the learned counsel for the petitioner, I had called for the relevant record from the respondent No. 2. There is no dispute that the orders dated April 29, 2010 and May 10, 2010 have been issued by the corporate office of the Airports Authority of India, the respondent No.1 herein. The record at page 12 depicts the noting with regard to the receipt of the letters by the respondent No.2 from the corporate office, which surely

demonstrate, the same are not forged and fabricated. So, the plea of the learned counsel for the petitioner need to be rejected.

7. Despite the stand by the respondents 1 and 2 in their counter-affidavit the petitioner has not cared to amend the writ petition, challenging the said orders. In the absence of a challenge, this Court must proceed on a premise that the order dated April 28, 2010 stands withdrawn/not existing. Hence, the petitioner cannot lay a claim for compassionate appointment on the strength of the said order. Even otherwise, it is noted that the deceased employee expired on September 24, 2005. No doubt, the petitioner submitted the application immediately thereafter. The respondents 1 and 2 did not take any action on the application of the petitioner till 2010 i.e five years after the application was made by the petitioner. At least, nothing has been brought to my notice that the petitioner had been pursuing the matter of his appointment. This I say so, only to draw a point that petitioner had not shown keenness/urgency to get an appointment. It is a settled position of law, the compassionate appointment is to tie over a situation which arose because of death of a bread earner. It seems, the petitioner was not in a hurry. Even otherwise, after the issuance of order dated April 28, 2010, the petitioner except stating in the petition that he has been pursuing the matter

with the Authorities, has not placed any document on record to show in support of his contention. The only representation is dated June 03, 2014, almost four years after the issuance of order dated April 28, 2010. The very purpose for which the compassionate appointment is sought, cease to exist.

8. That apart, the facts in this case demonstrates, the family of the deceased employee including the petitioner has received Rs.10,23,278/-, which is a substantial amount and surely, sufficient to mitigate the hardship resulted because of the death of a bread earner.

9. The stand of the respondents that the order dated April 28, 2010 was withdrawn because of the order passed by this Court in two Writ Petitions calling upon the respondent No.1 to redeploy the employees, who were not absorbed in the JVCs at Delhi and Mumbai, is appealing. The stand of the respondents 1 and 2 that in view of the Scheme of the Compassionate Appointment, that the same can be made against 5% of the vacancies of the direct recruitment and in the absence of any vacancy, the compassionate appointment could not have been made, is also appealing. I take on record, the statement of Mr. Digvijay Rai that none of the 35 persons who were recommended for compassionate appointment have been given the appointment.

10. I also note, the stand of the respondents that since 2008 no compassionate appointment has been made in the respondents 1 and 2.

11. Insofar as the judgments relied upon by the learned counsel for the petitioner are concerned, in *Smt. Sushma Gosain and Ors (supra)*, the Supreme Court was concerned with a similar issue of compassionate appointment, where one employee Ram Kumar expired in October 1982 leaving behind his widow and two minor children. Despite the widow clearing the trade test, she was not appointed. In September, 1985 she filed a writ petition seeking her appointment in a suitable post. The writ petition was resisted on the ground that appointment of ladies in the establishment was prohibited. The High Court dismissed the writ petition. The Supreme Court held that the ban on appointment of ladies was made in 1985. It also held there should not be any delay in appointments. The purpose of providing compassionate appointment is to mitigate hardship due to the death of the bread earner in the family. Such appointment should be provided immediately. The Supreme Court directed appointment of the petitioner therein. Suffice to state, the judgments can be differentiated on facts and would have no applicability.

12. I may only state that the conduct of the petitioner, as noted above,

surely suggest that petitioner was not in a hurry to seek an appointment.

13. Insofar as the judgment of the Supreme Court in ***Himachal Road Transport Corporation v. Dinesh Kumar and connected appeal (supra)***, is concerned, in fact the said judgment would not be of any help to the petitioner. Rather, it would be against the petitioner, inasmuch as the Supreme Court has stated in the absence of a vacancy it was not open to the corporation to appoint a person to any post as the said act amounts to gross abuse of powers of a public authority. The Supreme Court also held that the Himachal Administrative Tribunal could not have given direction to appoint any person to a post or direct the concerned authorities to create a supernumery post and then appoint a person to such a post.

14. On similar lines, is the judgment of the Supreme Court in the case of ***Hindustan Aeronautics Limited v. Smt. A. Radhika Tirumalai (supra)***, wherein the Supreme Court held that in view of ban on fresh recruitment and reduction in work force no vacancy being available, no appointment can be made.

15. In view of my discussion above, the petitioner is not entitled to any relief. The present petition is dismissed. No costs.

CM No. 3467/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 17, 2017*/ak*