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

+ **W.P.(C) 1491 OF 2016**

Date of decision: 13th July, 2017

VIMNESH KUMAR Petitioner

Through: Mr.M.K.Bhardwaj, Adv.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr.Rajesh Kumar, Mr.Pradeep
Jha, Mr.Atul Krishna, Advs. with Mr.Vivek
Kumar Singh, Law Officer CRPF.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

1. The petitioner aged 22 years is the son of Late Head Constable Om Prakash. He seeks compassionate appointment which has been denied because of his marital status under the scheme of compassionate appointment.
2. Father of the petitioner had expired on 12th December, 2011. He was the only earning family member.
3. The petitioner and his mother moved applications/representations seeking compassionate appointment for the petitioner in January and March, 2012. The

petitioner was asked to submit documents including those relating to his educational qualification, residential certificate, details of movable and immovable properties etc. The petitioner was thereupon asked to appear for Physical and Endurance Test and Medical Examination in August, 2012. The petitioner had also qualified the typing test on 18th March, 2013 and was held eligible for appointment to the post of Constable. His case was recommended for appointment to the post of Constable (Mali/Fitter/Driver/Cook etc.). However, the petitioner's mother had submitted a representation seeking appointment as a Head Constable (Ministerial). The appointment process for various reasons took time.

4. By communication dated 1st November, 2014, the respondents rejected the request of the petitioner for compassionate appointment on the ground he had got married and therefore, was not eligible.

5. The respondents had rejected the claim of the petitioner for compassionate appointment on the basis of clarification issued by the Dept. of Personal Training on 30th May, 2013, which is to the following effect:-

“Whether ‘married son’ can be considered for compassionate appointment?”

No. A married son is not considered dependent on a government servant.”

6. The aforesaid clarification was examined by the Punjab and Haryana High Court in WP(C) 16510/2014 titled *Union of India vs. Central Administrative Tribunal & Anr.* decided on 12th August, 2014 wherein reference was made to the scheme of compassionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) vide memo dated 9th October, 1998. Note-1 of the scheme defines the expression “Dependent Family Members” which reads as under:

“Note 1 ‘Dependent Family Member’ means

- (a) spouse; or*
- (b) son(including adopted son); or*
- (c) daughter (including adopted daughter); or*
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,*

Who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

Reference was also made to the clarification issued by DOPT No.14014/02/2012-Estt. (D) dated 25th February, 2015 which is to the following effect:-

<i>S.No.</i>	<i>Question</i>	<i>Answer</i>
	<i>Whether “married son” can be considered for compassionate</i>	<i>Yes, if he otherwise fulfils all the other requirements of the Scheme i.e. He is</i>

	<i>appointment?</i>	<i>otherwise eligible and fulfils the criteria laid down in this Department's O.M. dated 16h January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. The FAQs dated 30th May, 2013, may not be reopened.</i> <i>Sr.No.13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.</i>
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7. It is clear from the clarification issued on 25th February, 2015 that earlier clarification dated 30th May, 2013 has been withdrawn. Punjab and Haryana High Court elucidating on the expression 'Dependent Family Member' as defined in Note-1 quoted above held that the said definition would have precedence and should be applied to determine and decide whether the candidate seeking compassionate appointment is a dependent family member or not. Marriage by itself could not be the determining criteria. The said decision is in consonance

with the clarification which has been issued by DOPT dated 25th February, 2015 withdrawing the earlier clarification dated 30th May, 2013.

8. We also notice in the facts narrated that some time was taken for consideration of the application for compassionate appointment and formalities etc. The petitioner was admittedly unmarried on the date when his father had died and when he had submitted his application for consideration. He had got married in March, 2013. The petitioner claims that the reason why he got married was because his mother was not keeping well and he was the only son. The respondents have not rejected the petitioner application for any other reason except marriage.

9. In view of the aforesaid discussion, we set aside the impugned order dated 1st November, 2014 by which the petitioner's candidature seeking compassionate appointment was rejected on the ground of his marital status. The respondents would consider the case of the petitioner for appointment in accordance with law and the scheme without being influenced by his married status.

10. Learned counsel for the respondent had submitted that this Court should not entertain the present writ petition on the ground of forum convenience. We do not think it will be appropriate to dismiss the present petition on this ground as the present writ petition has been pending since February, 2016 when notice was issued. The issue and question involved is

limited. It may not be appropriate in the facts of the present case to relegate the petitioner to another Court on the aforesaid principle. The petitioner as noted above is seeking compassionate appointment and it is obvious that he does not have financial resources.

11. The case of the petitioner would be examined within six weeks from the date the copy of this order is received.

12. We clarify that we have not expressed any opinion on the merits of the case as to whether the petitioner is otherwise eligible for compassionate appointment.

The writ petition is disposed of, without any order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 13, 2017
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