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

\+ W.P.(C) 659/2017

TILAK RAJ SINGH ..... Petitioner
Through: Ms. Aarti Mahajan, Advocate

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Ms. Sangita Rai, CGSC

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **15.03.2017**

The petitioners, a differently abled person, in this writ petition impugns the order dated 26.7.2016, whereby the OA 1437/2015 filed by him has been dismissed. The petitioner also challenges the order dated 22.8.2016 dismissing RA No.169/2016.

2. The petitioner was appointed as an Upper Division Clerk ('UDC') under the disability reserved quota in July 1993.

3. The petitioner filed an application seeking voluntary retirement with pensionary benefits vide letter dated 26.8.2013. This letter had indicated that the petitioner was finding it difficult to work in the Office, which required him to frequently move from the first floor to the third floor. He was also

having a problem with his right knee and had recently suffered liver ailments.

4. The application for voluntary retirement was accepted with effect from 11.11.2014.

5. The petitioner thereafter, vide letter dated 24.11.2014, made the following request:

> "Now I request you to please obliged (sic.) me by giving my benefit which is already very late of gratuitie (sic.gratuity) commutation of pension leave salary, C.G.E.I.S., G.P.F., service to dependent, medical bill, L.T.C. Bill pending, for year 2013 for which I have Written letter on 01-10-2014 and 11 days salary of November 2014 and M.A.C.P. pending. C.R. is giving for 2013-14, if C.R. of year 2014-15 is required I can submit.
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> Now Sir I humbly request you to give me benefit of (V.RS.) retirement which are already very late. I am felling very bad and insulting to come to office for payment etc."

6. The petitioner wrote another letter dated 12.12.2014, with the following prayers:

> "The physical problem which developed in me cant the compensated if department wish to pay by giving remaining time of my service payment but can help me or oblige me by giving LTC Payment which is my right and one day salary, service to dependent, medical bill, tuition fee bill and MACP due to me from July 2013 etc.
>
> Please you are requested to reply in 15 days after that I will be free to go any where for justice with cost etc."

7. The contention raised by learned counsel for the petitioner is that vide the afore-quoted representations made by the petitioner, he had sought compassionate appointment for his dependent. Counsel submits that one of the dependents of the petitioner should be given employment, without any delay, as the petitioner faces financial penury. Reliance was placed upon the OM dated 16.1.2013, which has been quoted in Swamy's Handbook 2016. The impugned order has quoted the relevant portion of the OM, which reads:-

> *"1. Applicable to a dependent family member of.-*
> *(a) A Government servant who dies in service (including death by suicide).*

(b) is retired on medical grounds before attaining the age of 55 years (57 years in the case of Group 'D' officials);

(c) a member of the Armed Forces who-

(i) dies in service; or (ii) killed in action; or (iii) is medically boarded out and unfit for civil employment."

8. The Tribunal dismissed the prayer for grant of compassionate appointment to one of the dependents, on the ground that the petitioner was not compulsorily retired on medical grounds. The petitioner had opted for voluntary retirement.

9. Learned counsel for the respondent has submitted that after appointment as a UDC, the petitioner had remained posted at Meerut, Uttar Pradesh, his hometown. However, the petitioner used to remain on leave and as per information gathered, he was engaged in the private family business. It is pointed out that the petitioner was transferred to Aligarh, and that transfer order was challenged in OA No.2739/2005, which was allowed vide order dated 10.8.2006.

10. In order to ensure that no injustice has been done to the petitioner and to ascertain the correct facts, we had passed the following order on 27.1.2017:

"WP(C) No.659/2017

During the course of hearing, the petitioner states that his wife is running a training institute and is giving tuitions. She was an Income-Tax Payee till two years back. The petitioner will file an affidavit, within two weeks, giving details of income of his wife for last 6 years, along with details of properties owned by him, his wife and the FDRs or investments in shares held by him, his wife and children.

As per the reply filed by the respondents to the OA, the petitioner was engaged and carrying on business.

The petitioner, who is present in person, states that he is living in a joint family and his younger brother is running a computer institute, in which his wife was earlier involved and associated.

Full particulars with regard to the institute etc. would also be indicated and specified in the aforesaid affidavit. The dates of birth of his children and their educational qualifications will be also affirmed.

Relist on 15.3.2017.

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11. The petitioner has filed the affidavit dated 10.3.2017. As per the said affidavit, the petitioner owns a flat bearing House No.B-175, Dhiyan Chand Nagar, Delhi Road, Meerut, measuring 75 sq. mts., which he had bought in the year 2004. The petitioner, who appears in person, states that the correct number of the house is 170. The petitioner had constructed a building on the said land, which is on rent. The petitioner was also allotted a DDA flat in 2010-2011 under the Handicapped Quota for Rs.34.5 lacs. The petitioner has

been filing Income-Tax Returns and had declared the following net taxable income:

a) Financial Year 2010-2011 Net Rs.1,40,278/-

b) Financial Year 2011-2012 Net Rs.1,78,932/-

c) Financial Year 2012-2013 Net Rs.2,10,154/-

d) Financial Year 2013-2014 Net Rs.1,98,074/-

e) Financial Year 2014-2015 Net Rs. 52,002/-

f) Financial Year 2015-2016 Net Rs.1,32,488/-

g) Financial Year 2016-2017(Expected) Net Rs.1,04,949/-

12. The petitioner, on retirement, had received Rs.12,00,000 on account of gratuity, leave encashment and computation of pension. The petitioner was presently receiving a monthly pension of Rs.20,600.

13. The petitioner is residing in a family house at 364, Prabhat Nagar, Meerut, which is in the name of his late father, who had died in February, 2010, leaving behind three sons and a widow. The petitioner, who is present in Court, states that this house is built on a plot admeasuring 1000 sq. yds.

14. The petitioner's wife is the owner of two properties, namely, House No.A-100, Dhyanchand Nagar, Delhi Road, Meerut in an area of 150 sq. mts., which was bought in the year 2004 and B-58, Mangat Puram, Delhi

Road, Meerut, measuring 211 sq. mts., which was bought in the year 2012. Buildings have been constructed on these plots. The properties are given on rent.

15. The petitioner's wife as per the affidavit, she had the following net taxable incomes:

a) Financial Year 2010-2011 Net Income Rs.1,85,280/-
b) Financial Year 2011-2012 Net Income Rs.1,89,000/-
c) Financial Year 2012-2013 Net Income Rs.1,95,000/-
d) Financial Year 2013-2014 Net Income Rs. 86,000/-
e) Financial Year 2014-2015 Net Income Rs.1,17,000/-
f) Financial Year 2015-2016 Net Income Rs. 30,000/-
g) Financial Year 2016-2017 (Expected) Net Income Rs.1,38,000/-

16. The petitioner's wife, it is accepted, was earning from Minerva Computer Institute owned by her brother-in-law, i.e., the brother of the petitioner, where she was working. The petitioner claims that his wife had worked in the said Institute till 2013 and has now stopped working because of ailments. The petitioner has two daughters and a son, and all of them are studying.

17. The petitioner submits that he and his wife have taken loans to acquire

the properties and for construction and, therefore, face financial penury.

18. Having considered the said affidavit and noticing the properties and assets owned by the petitioner, we do not see any ground for compassionate appointment being made out. The prayer and claim is unjustified. Government jobs are not inheritable. Compassionate appointments are not the normal rule. The dependents must compete with open candidates, if they want a government job. The petition has no merit and is dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 15, 2017
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