

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20087 of 2016

=====

1. Sanjiv Kumar S/o Rambabu Sharma Resident of Village-Raghopur, P.O.-Bihta,
District-Patna, (Bihar) 801103

.... Petitioner/s

Versus

1. The Union of India through the Home Secretary, Ministry of Home, Govt. of India, New Delhi
2. The Commandant, 147 BN. C.R.P.F., Kashipur, Silchar, Assam-788001
3. The D.G.P, (Adm.) CRPF, CGO Complex, Lodhi Road, New Delhi-110003
4. The DIGP, GC CRPF, Mokamaghat, Patna, Bihar-803303
5. The IGP, North East Sector Office, CRPF, Shillong, Meghalaya-793006
6. The DIGP, CRPF, GC, Silchar, P.O. Udarbondh, District-Cachar-788030

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pawan Kumar Singh, Adv.
For the Respondent/s : Ms. Kanak Verma, CGC
Mr. S.D.Sanjay, AD SG

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-04-2018

Heard Mr. Binod Kumar, learned counsel for the petitioner and
Ms. Kanak Verma, learned Central Government counsel for the Union
of India.

The petitioner is aggrieved by the order dated 16.1.2016 of the
Commandant, 147 Battalion, C.R.P.F. whereby the petitioner has been
unsuited for appointment on compassionate ground because he is
married.

I have heard learned counsel for the parties and I have perused
the records and I can only observe that peculiar are the ways in which
the Government departments are functioning. Perusal of the order



impugned would manifest that the father of the petitioner died in harness while serving the respondent- Force from the post of Hawaldar on 17.4.2009. An application was filed by the mother of the petitioner recommending his case for appointment. It was acted upon and the selection process was carried out in November, 2011 and the petitioner was found less in height by 6 cm as well as overage. He was declared medically unfit as well. The petitioner preferred an appeal against such findings and the petitioner was declared medically fit.

The Review Medical Board gave its finding on 11.4.2013 and declared the petitioner medically fit. It is the stand of the respondents that while this was happening that a Circular was issued on 30.5.2013 i.e after the petitioner was declared fit by the Medical Board which debarred a married son from compassionate appointment as a dependant. Obviously, such classification hitting at the root of Article 14 that a clarification was soon issued on 25.2.2015 acknowledging a married son as a dependant and eligible for compassionate appointment provided, he fulfilled other requirements. According to the respondents, since the clarification dated 25.2.2015 was prospective in nature that the case of the petitioner was not considered and hence this writ petition.

As I have observed, at the outset, peculiar are the ways of the respondents for even when they acknowledge that much prior to the



issuance of the Circular dated 30.5.2013 which debarred a married son from compassionate appointment, the petitioner had been declared fit by the Medical Board and thus was entitled for consideration of his case on merits yet by shutting their eyes to this relevant aspect of the matter they have relied the circular to shut the doors for the petitioner even though the subsequent circular dated 25.2.2015 cures the defect in the earlier Circular dated 30.5.2013 which was not in tune with the legal prescriptions and the equality guaranteed under Article, 14 and 16 of the Constitution of India.

I would do no better but to refer to a judgment of the Supreme Court reported in **(2015) 7 SCC 412 (Canara Bank & Anr. Versus M. Manish Kumar)** for holding that it is only the Circular which is in force on the date when death in harness takes place followed by application for appointment on compassionate grounds, which would govern a case and not a circular subsequently issued. Such is the observation made by the Court at paragraph 17 of the judgment.

Since the medical unfitness of the petitioner was overruled by the Review Medical Board on 11.4.2013 i.e much prior to the illegal circular dated 30.5.2013 which debarred a married son, obviously the said Circular issued subsequently could not have been applied to him and his right to consideration is confirmed by the clarification dated 25.2.2015 which removes whatsoever confusion that may be.



For the reasons so discussed, the communication dated 16.01.2016 of the Commandant is held per se illegal and violative of Article 14 in taking away vested right of the petitioner and is accordingly quashed and set aside. Accordingly the respondents including respondent no.2, is directed to take the case of the petitioner for compassionate appointment to its logical conclusion in the light of the findings of the Review Medical Board and which exercise be completed within a period of 3 months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.04.2018
Transmission Date	NA

