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

+ **W.P.(C) 8819/2018 with C.M. Nos. 33907,33909/2018**

UNION OF INDIA & ANR

..... Petitioner

Through: Mr. Praveen Kumar Jain with Ms.
Rashmi, Mr. Anup Singh Yadav,
Advocates.

versus

SUBODH RAM

..... Respondent

Through: Mr. Pradeep Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
30.10.2018

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1. The affidavit has been filed by the petitioner in terms of the last order dated 23.08.2018. Issue notice. Learned counsel for the respondent accepts notice. With the consent of the parties, we have heard the submissions of learned counsels and proceed to judgment.
2. The petitioner has preferred the present writ petition to assail the order dated 21.11.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3672/2015, preferred by the respondent – Subodh Ram. The Tribunal has directed the petitioner to revisit its decision dated 08.05.2017 taken by its Managing Committee not to make any compassionate appointments.
3. The father of the respondent was an employee of the Delhi Milk

Scheme (DMS) who expired on 16.11.2012 due to injury suffered by him while on duty. On 27.05.2013, the wife of the deceased requested for compassionate appointment for her son i.e. the petitioner herein. On 15.06.2015, the respondent's mother again made a representation to seek compassionate appointment. In response to the representation made by the respondent's mother, the DMS vide communication dated 20.06.2015 informed that the Managing Committee of the DMS has taken a decision on 08.05.2007 that there was no need to fill up vacant direct recruitment post on Compassionate Grounds in view of the fact that no recruitment against direct quota was being made. The petitioner assured the applicant that if in future DMS takes any decision to fill any post by direct recruitment on compassionate grounds, her case would be considered.

4. The Tribunal while issuing the aforesaid directions proceeds on the assumption that though vacancies exist in the direct recruitment quota, the Managing Committee of the petitioner DMS has *suo moto* decided not to grant 5 per cent reservation for recruitment of candidates on Compassionate ground. The Tribunal has held that the DMS cannot stop the recruitment on Compassionate ground on its own, and it is bound by the scheme framed by the Government.

5. The submission of the petitioner is that the DMS is in the process of winding up its business and, therefore, it was decided not to make any direct recruitment at all. Since no direct recruitment is being undertaken since 2007, even the recruitments on Compassionate ground are not being made. Learned counsel submits that the petitioner has not excluded only the Compassionate appointments - as assumed by the Tribunal. In this regard reference has been drawn to the additional affidavit filed by Mr. Deepak

Chaudhary, working as Deputy General Manager (Admn.), DMS, Ministry of Agriculture and Farmers Welfare, Government of India. In the said affidavit, the petitioner has stated:

“That the petitioner no. 2 herein i.e. Delhi Milk Scheme has not recruited anyone on Group ‘C’ post w.e.f. 08.05.2007 as the Management Committee in its 174th meeting dt. 08.05.2007 held under the Chairmanship of JS(C&DD), Department of Animal Husbandry, Dairying and Fisheries, Government of India, had taken the decision as under:

‘ The Management Committee observed that there is no need to fill up vacant direct recruitment post on compassionate ground, in view of fact that no recruitment against direct recruitment quota is being made at present’

6. The minutes of the 174th meeting dated 30.05.2007 in respect of the meeting held on 08.05.2007 under agenda item No.5 are relevant and reads as follows:

“Agenda Item No.5

Status of applications received from dependents of deceased employees of DMS for appointment on compassionate grounds.

The Management Committee observed that there is no need to fill up vacant direct recruitment post on compassionate grounds in view of fact that no recruitment against direct recruitment quota is being made at present.” (underlining supplied)

7. Learned counsel for the respondent, firstly, submits that in response to an RTI query raised by the respondent, it has been disclosed that one post of Deputy Manager (Quality Control) has been filled by DMS by direct recruitment. In our opinion, this does not advance the case of the respondent

since the post of Deputy Manager (Quality Control) is not a Group 'C' or Group 'D' post.

8. Learned counsel for the respondent has further argued that under the scheme for compassionate appointment, compassionate appointment need not necessarily be made in the same Department and the application of the respondent could have been considered by any other Department of the Government of India.

9. In response to this submission, learned counsel for the petitioner has drawn the attention of the Court to office memorandum dated 16.01.2013, issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India which is also the author of the scheme for grant of compassionate appointment. In this Office Memorandum, it is directed that looking to the circumstance that there are not sufficient vacancies available to fill posts against compassionate appointment, it was resolved that in future the Committee prescribed in paragraph 12 of the O.M. dated 09.10.1998 (by which the compassionate appointment scheme was formulated), the committee should recommend to appointment on compassionate grounds only in really deserving case, and only if vacancy for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/ department/ Office, that too within the ceiling of 5% of vacancies falling under DR quota in Group 'C' posts.

10. Learned counsel for the petitioner has pointed that the revised scheme for compassionate appointment issued vide office memorandum dated 16.01.2013 incorporates the said OM dated 26.06.2001 in clause 7 (e), which reads as follows:

“ The committee constituted for considering a request for appointment on compassionate grounds should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/department/ Office, that too within the ceiling of 5 % of vacancies falling under DR quota in Group ‘C’ posts. (OM No. 14014/18/2000-Estt. (D) dated 22.06.2001)”

11. The petitioner has pointed out that no direct recruitments are being made in the DMS. 79 applications for seeking compassionate appointments are pending and the application of the respondent is at serial No. 76.

12. Considering the aforesaid position, we are of the view that the Tribunal was not justified in requiring the petitioner to relook at its policy with regard to making of compassionate appointment. It is clear that the petitioner has not taken any decision to not to make only compassionate appointments. Its decision is to not to make any recruitment and, therefore, it goes without saying that the petitioner cannot be asked to make compassionate appointments when it is not making any appointments to Group ‘C’ posts.

13. The petition is accordingly allowed and the impugned order is set aside.

14. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 30, 2018

N.Khanna