

CWP-19646-2019

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-19646-2019 (O&M)
Date of decision: 24.03.2022**

Rakesh Dhawan

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr.Gaurav Chopra, Senior Advocate,
with Mr. Jasjit Singh Saini, Advocate,
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

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MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 03.01.2019, whereby case of petitioner for compassionate appointment was rejected by respondent No.1; further prayer is to reconsider his claim in terms of instructions dated 21.11.2002 issued by the, Department of Personnel, Government of Punjab.

2. Facts are not in dispute.

Mother of petitioner, namely, Smt. Sheela Rani, hereinafter referred as “deceased government employee” died in harness while working as Inspector with Punjab Police on 19.03.2012. Considering himself dependent of the deceased government employee, petitioner submitted an application dated 01.03.2013 for appointment to the post of Sub Inspector/Inspector

CWP-19646-2019

under Priority List Instructions (PLI) with the Punjab Police. Upon verification, his case was sent to Screening Committee for consideration by Senior Superintendent of Police, Faridkot vide letter dated 13.02.2014. Thereafter, respondent No.1 vide communication dated 28.03.2014 forwarded the same for further necessary action at the end of respondent No.2. In response thereto, respondent No.2, vide letter dated 03.04.2014 informed the SSP, Faridkot that as per instructions dated 21.11.2002, the case of petitioner can be considered for appointment against Group 'C' post.

When above fact came to the knowledge of petitioner, he immediately reiterated his claim for consideration to the post of Sub Inspector.

3. In the interregnum, father of petitioner, namely, Ram Parkash, filed CWP No.3698-2014 (**Ram Parkash Vs. State of Punjab and another**), for seeking promotion of "deceased government employee" from Inspector to the post of Deputy Superintendent of Police; from the date her immediate junior; namely, Kashmir Kaur was promoted. Since the outcome of above writ petition was likely to have material bearing for the entitlement of petitioner on compassionate ground, therefore, his case was kept pending by respondent No.2 till the final decision of the writ petition. Respondent No.1 finding the claim of "deceased government employee" as genuine, granted her retrospective promotion on the post of Dy.S.P. w.e.f. 24.06.2011 vide order dated 20.04.2017. In

CWP-19646-2019

view of the above development, the writ petition filed by Ram Parkash was dismissed as having been rendered infructuous on 26.04.2017.

4. Respondent No.2 vide letter dated 28.06.2017 sent the case of petitioner to respondent No.1 for grant of age relaxation of 06 years, 09 months & 07 days for consideration on compassionate ground for the post of Sub Inspector.

In view of the above, respondent No.1, vide letter dated 18.07.2017 sought certain clarifications from respondent No.2, including the delay in consideration of the matter. In response thereto, respondent No.2 vide letter dated 18.09.2017, *inter-alia* responded:-

“Inspector Sheela Rani No.1288/ Faridkot had died on 19.3.2012. Rakesh Dhawan son of deceased employee had submitted an application on 1.3.2013 for appointment as Sub- Inspector on compassionate grounds. A CWP 3698 of 2014 had filed in the Punjab and Haryana High Court for promoting the employee as DSP. As such, the case of the Applicant for appointment on compassionate grounds was kept in abeyance to await the decision of the Hon’ble High Court because in case the employee was promoted as DSP, the case of the Applicant for appointment as Sub- Inspector would have been considered as per the Government Instructions and in case the employee was not promoted, the case of the applicant would have to be considered for appointment to the post of Clerk/Constable.”

The SSP, Faridkot, vide letter dated 27.07.2018, forwarded the details of petitioner as well as his family members,

CWP-19646-2019

along with assets and liabilities/ movable & immovable properties to the office of respondent No.2 for taking further action. It is necessary to mention here that certain other details of petitioner were also sent by SSP, Faridkot, from time to time, which were *germane* to his case.

5. Ultimately, respondent No.1 vide impugned order dated 03.01.2019 rejected the claim of the petitioner while referring the provisions of Para 8 (a) of the instructions dated 21.11.2002. Although, petitioner has attached the translated copy of above rejection order as Annexure P-11, but unfortunately, the translation thereof is not correct. However, the actual true translation of the relevant part would be as under:-

“The proposal sent through letter under reference regarding the subject matter has been considered. As per the provisions contained in para 8 (a) of instructions dated 21.11.2002 issued by Department of Personnel, the case of Sh.Rakesh Dhawan for granting relaxation in upper age limit to the post of SI in the Department is not covered. Therefore, the proposal is hereby rejected.”

6. Aggrieved against the impugned order, petitioner filed mercy petition dated 06.03.2019 before respondent No.1, but till date no final decision has been taken; hence, present writ petition.

7. **CONTENTIONS:**

On behalf of petitioner.

It is contended by learned Senior counsel that as per Para 8 (a) of the instructions dated 21.11.2002, petitioner is entitled for age relaxation of 06 years, 09 months & 07 days in view of the

CWP-19646-2019

fact that in similar circumstances, respondents themselves have already granted relaxation of more than 07 years to one Jasbinder Singh vide order dated 30.05.2014 (P-14). Yet in another case of one Balraj Singh, the age relaxation of more than 05 years was granted by respondent No.1 vide order dated 30.08.2013(P-15). He further contended that case of petitioner has been rejected while passing the impugned order without assigning any reason(s) merely by mentioning Para 8 (a) of the instructions (*ibid*), but the same is absolutely non-speaking. Also contended that application was submitted by the petitioner well in time; but the respondents have unnecessarily delayed the matter, thus they cannot take the benefit of their own wrong. Further contended that one Jaspal Singh, whose father died in harness while working as Deputy Superintendent of Police, was also appointed as Inspector, Punjab Police under PLI category vide order dated 27.06.2009 (P-16), but the respondents are opposing his claim merely on account of the fact that his mother was promoted as Dy.SP with retrospective effect. Lastly contended that action of the respondents is wholly arbitrary and discriminatory; thus, violative of Articles 14 and 16 of the Constitution.

On behalf of respondents

Learned State counsel while opposing the prayer of petitioner submitted that case of petitioner has already been duly considered; but the same was rejected in view of Para 8 (a) of the instructions dated 21.11.2002, being over-aged by 06 years, 09 months & 07 days. Further submitted that although mother of the

CWP-19646-2019

petitioner was promoted as Dy.SP with retrospective effect i.e. 24.06.2011; but actually she died in harness while working as Inspector; thus, he cannot claim the appointment on compassionate basis for the post of Sub Inspector.

8. Heard learned counsel for the parties and perused the paper-book.

9. Sole point for consideration of this Court would be as under:-

“Whether in the facts and circumstances of the present case, impugned order dated 03.01.2019 while rejecting the claim of petitioner for appointment to the post of Sub Inspector is legally sustainable?”

10. Before proceeding further, it is necessary to recapitulate the relevant provisions of the instructions dated 21.11.2002, which are extracted as under:-

“2. The State Government has decided to review the policy on compassionate grounds under the decision of the Hon’ble Supreme Court of India, in the case of Umesh Kumar Nagpal Vs. State of Haryana, referred as above. The Government has reconsidered all the above instructions issued from time to time on compassionate appointments and has decided to renew the policy to provide the benefit only to deserving cases as per directions of the Apex Court referred in Para 1 above.

Henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:

(1)

(2) A dependent member of the family of the deceased Government employee who dies in harness.

(3)

CWP-19646-2019

(4)

Note: 1. Dependent Family Member means:

(a)

(b) son (including adopted son); or

(c)

(d)

Note II:

Note III:

Note IV:

Note V:

5 to 7

8. Relaxations

(a) *Upper age limit could be relaxed wherever found to be necessary. In case of reserved categories of SC/BC, widows, the age relaxation may be allowed as per policy instructions issued from time to time. The lower age limit should, however, in no case be relaxed below 18 years of age in case of Group 'C' and below 16 years in case of Group 'D'. However, the Administrative Department may relax upper age limit by 5 years in deserving cases.*

Note:

(a) *Age eligibility shall be determined with reference to the date of application and not the date of appointment.*

(b) ...

(c) ...”

Perusal of Para 8 (a) of the above instructions clearly reveals that upper age limit could be relaxed, wherever found to be necessary. Thus, relaxation in age is to be granted by the competent authority depending upon the facts and circumstances of the each case; but it does not mean that respondents can proceed in the matter as per their sweet will.

CWP-19646-2019

11. It is quite evident that in case of one Jasbinder Singh, respondents granted age relaxation of 07 years, 03 months and 17 days vide order dated 30.05.2014 while appointing him on compassionate basis with Punjab Police.

Similarly in another case of Balraj Singh, age relaxation of 05 years, 07 months & 04 days was granted vide order dated 30.08.2013, and he was also appointed on compassionate ground.

In view of the above, there remains no doubt that respondents have already granted the benefit of age relaxation of more than 07 years for appointment on compassionate ground at their own level.

On the other hand, there is no reason at all coming forward for denying the similar treatment to the petitioner for grant of age relaxation of 06 years, 09 months & 07 days in terms of Para 8 (a) of the instructions (*ibid*).

12. No doubt, grant of age relaxation in terms of Para 8 (a), referred above, is the sole discretion of the respondents; but it does not mean that they can adopt the policy of pick and choose; rather the discretion is to be exercised in a fair and transparent manner, depending upon the facts and circumstances of the each case.

13. As discussed above, in the present case, respondents while rejecting the claim of petitioner did not assign any reason; much less to say the cogent reason; rather simply observed that "*as per the provisions contained in Para 8 (a) of the instructions dated 21.11.2002 issued by the Department of personnel, the case of*

CWP-19646-2019

Sh.Rakesh Dhawan for granting relaxation in upper age limit to the post of SI in the Department is not covered. Therefore, the proposal is hereby rejected.” Thus, the rejection order is absolutely laconic and as such there is no hesitation to observe that action of the respondent No.1 is without due application of mind.

14. Although, learned State counsel raised a plea that petitioner cannot claim any benefit of retrospective promotion granted to his mother on the post of Dy.SP w.e.f. 24.06.2011, but the same is not acceptable due to the reason that his case has been rejected only on the point of being over-aged. From bare reading of the impugned order, it is nowhere discernable that respondents declined the claim of petitioner on account of the fact that “deceased government employee” was working as an Inspector on the date of her death; rather this plea has come first time in their reply filed to the writ petition; thus the same is found to be totally misconceived.

15. In view of the above, this Court is of the considered opinion that impugned order is absolutely arbitrary and discriminatory; thus indefensible in law.

As a result thereof, there is no option except to allow the petition.

16. Consequently, the writ petition is allowed; impugned order dated 03.01.2019 (P-11) is set aside. Respondents are directed to re-consider the case of petitioner for appointment on compassionate ground in view of the observations made hereinabove.

Needful be done within a period of 06 (six) months from receipt of certified copy of this order.

CWP-19646-2019

Since the impugned order passed by the respondents is found to be arbitrary and discriminatory, therefore, they are burdened with costs of Rs.10,000/- to be paid to the petitioner.

24.03.2022
atulsethi/sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No