

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

**CWP No. 25344 of 2015
Reserved on: 09.03.2022
Date of Decision: 22.03.2022**

Varinder Kumar PuriPetitioner(s)

vs.

Union of India and othersRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Rahul Rampal, Advocate,
for the petitioner.

Mr. Namit Kumar, Advocate,
for the respondents-UOI.

(The proceedings are being conducted through
video conferencing, as per instructions).

G.S. SANDHAWALIA, J.

The present writ petition filed under Articles 226 and 227 of the Constitution of India is directed against the order dated 24.09.2015 (Annexure P-6) vide which, the Central Administrative Tribunal, Chandigarh Bench (in short 'the Tribunal') has dismissed the original application in which the petitioner was seeking claim of compassionate appointment. Resultantly, the challenge to the order dated 29.04.2011 whereby, the rejection conveyed to him by the respondents for appointment to the post of Postal Assistant was upheld on the ground that the Circle Relaxation Committee had examined all the aspects and the financial position, assets and liabilities of the family and keeping in view the limited vacancies and points earned, his case has been rejected.

Counsel for the petitioner has vehemently argued that the

respondents as such had to apply the criteria which was in force at the time the father of the petitioner had died on 27.12.2008 and, therefore, has contended that he is liable to be appointed. It has accordingly been argued that the policy dated 20.01.2010, which was not prevalent at the time of death of the father of the applicant, was applicable prospectively and at that time of death, the policy of 10.09.1998 was in place. It is accordingly submitted that in such circumstances, the judgment of the Division Bench as such in ***Bhupinder Batra vs. UOI and others, 2012 (1) SCT 268***, had also set aside the rejection on the ground that the claim should be considered in the light of the earlier policy dated 09.10.1998 since the employee had died in that case on 31.07.2002.

Counsel for the Union of India, on the other hand, has justified the said decision and submitted that the death was dated 27.12.2008 and the rejection had been conveyed on 29.04.2011 (Annexure P-1). The original application had been filed after a period of almost 4 years i.e. in the year 2015 and keeping in view the law laid down in ***Umesh Kumar Nagpal vs. State of Haryana & others, (1994) 4 SCC 138***, once there was delay and laches, the purpose as such of compassionate appointment was no longer fulfilled since it was for the purposes of exigencies at the time of the death of the government servant, the writ petition was liable to be dismissed. He has placed reliance upon the judgment of the Apex Court in ***State of Himachal Pradesh and another vs. Shashi Kumar, 2019 (1) SCT 707***, that once there was delay in initiating the litigation, the writ petition was liable to be dismissed. Similarly, reliance has been placed upon ***Yunus (Baboobhai) A Hamid Padvekar vs. State of Maharashtra through its Secretary and others, (2009) 3 SCC 281***, that the extra ordinary writ

jurisdiction is not to be invoked in cases of negligence on the part of the applicant to agitate for his grievances. Similarly, the judgment in ***Chairman, U.P. Jal Nigam and another vs. Jaswant Singh and another, 2007 (1) SCT 224***, has also been referred to on the same principle.

A perusal of the paper book would go on to show that the father of the writ petitioner had been employed on 13.01.1999 and expired on 27.12.2008 and he had around 10 years of service. The prayer for compassionate appointment was moved on 21.06.2011 (Annexure P-2) i.e. 2-1/2 years after the death of the employee. The legal notice as such was served on 01.10.2014 (Annexure P-3), which was replied to on 07.11.2014 (Annexure P-4) wherein, it was mentioned that 26 number of cases including his case was considered against the earmarked vacancies. As per the policy dated 09.10.1998, only the real deserving cases had been recommended keeping in view the prescribed ceiling. The policy dated 20.01.2010 whereby points to various attributes based at 100 point scale were to be allocated to which candidate had applied and the petitioner had secured 53 points and attained 16th position out of the 26 cases. The petitioner had secured 53 points from the various attributes and was part of the 15 other cases whose cases had been rejected and not recommended for appointment. The selected candidates earned points ranging from 60 to 84 and, therefore, the said claim was contested which led to the filing of the original applications while placing reliance upon the judgment in *Bhupinder Batra's case (supra)*.

The Tribunal came to the opinion that the scheme of 1998 (Annexure P-5), as such, did not provide any guidance as to how claim of applicants for appointment on compassionate basis are to be considered qua

each other if the number of vacancies is limited. Resultantly, it came to the conclusion that the merits point system adopted as per the criteria followed and the instruction dated 20.01.2010 as reasonable. Accordingly, it was held that fair consideration as such had been done and the appointment could not be offered to him keeping in view the limited number of vacancies and since there were more aspirants in question. As per the reply, also filed on behalf of respondent Nos.1 to 3 in the present case, it has been mentioned that the application of the mother of the petitioner as such was forwarded on 04.06.2010. It is, thus, apparent that the instructions dated 20.01.2010 had already come into force at that point of time and there was no such representation immediately at the time of the death of the deceased employee. As per the writ petition also, the claim is that the representation was made only on 21.06.2011 (Annexure P-2). The scheme on the basis of relative merit points dated 20.01.2010 had come into place (Annexure R-1/1). As per the said policy, the system of allocation of points had been attributed and keeping in view the objective of the scheme, the degree of indulgence amongst the applicants was to be considered within the prescribed ceiling of 5% direct recruitment vacancies. The same was to be kept in mind and it is on that account, the case of the petitioner was duly considered under the said policy.

The rejection also is, thus, under the same policy and the petitioner cannot seek the benefit of the judgment in *Bhupinder Batra's case* (*supra*) in which case, the employee had died on 31.07.2002 and the claim for compassionate appointment had been submitted on 13.06.2003. The claim was rejected on 08.09.2008 on the basis of the policy dated 27.06.2007 which had come into force after his application and in such

circumstances, the Division Bench has held that the weightage system could not operate retrospectively and the applicant had put in his request for compassionate appointment in the year 2003 itself when the letter dated 27.06.2007 introducing the weightage point system had not seen the light of the day. Thus, directions were issued that his case should be considered afresh as per his application when subsequent policy had not been notified and, therefore, the said judgment is not applicable to the facts and circumstances of the case. The relevant portion in *Bhupinder Batra's case (supra)* reads thus:-

“11.....While considering his request for appointment on compassionate ground, the 1998 policy mandates a balanced and objective assessment of the financial condition of the family by taking into account its assets and liabilities. By virtue of the subsequent letter dated 27.06.2007 weightage point system has been introduced to assess the indigent condition of the family. The rejection of the claim of the petitioner for compassionate appointment by passing of the impugned order dated 08.09.2008 has been made on the premise that by applying the weightage point system the LAW FINDER Submitted By: Amardeep Singh Gill PDF downloaded from the online archives of Chawla Publications(P) Ltd. petitioner has been awarded 52 points and as such fell short of the bench mark of 55 marks which is the bench mark for being considered eligible for compassionate appointment. The letter dated 27.06.2007 introducing the weightage point system cannot operate retrospectively and be applied in the case of the petitioner whose father had died on 31.07.2002 and he having put in his request for compassionate appointment in the year 2003 itself, that

is at the point of time when the letter dated 27.06.2007 introducing weightage point system had not even seen the light of the day. As such it was incumbent for the respondent authority to have considered the claim of the petitioner for compassionate appointment in the light of the policy dated 09.10.1998 and without applying the weightage point system as contained in the letter dated 27.06.2007.”

Rather, in the present case, as noticed, there is delay and laches at two points of time. Initially, at the time of applying, which is after a year and a half as per the case of the respondents whereas, as per the case of the petitioner, it is in the year 2011. Thereafter also, once the rejection had been conveyed, which was on 29.04.2011 (Annexure P-1), the original application was only filed after a period of 4 years and, therefore, the petitioner as such was not diligent enough. The principles laid down in *Umesh Kumar Nagpal's case (supra)* are extremely clear that the appointments under the scheme of compassionate appointment are not appointments in the normal mode but are an exception and it is for the purpose to enable the penurious family of the deceased-employee to tide over the sudden financial crises and not to provide employment as a normal course. The relevant observations in *Umesh Kumar Nagpal's case (supra)* read as under:-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment

nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is

justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

It has been held by a three Judge Bench in ***State of Madhya Pradesh and others vs. Amit Shrivastava, (2020) 10 SCC 496***, that the right as such to provide for compassionate appointment is to only provide succour to a needy family. The aspect of providing the said benefit at this stage of 14 years down the line keeping in view the fact that the petitioner himself was not diligent, in the considered opinion of this Court, would be another ground as such not to exercise extra ordinary writ jurisdiction in the facts and circumstances.

Accordingly, finding no merit in the present writ petition, the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

22.03.2022

shivani

Whether reasoned/speaking

Whether reportable

(VIKAS SURI)
JUDGE

Yes/No

Yes/No

