



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3345 OF 2020

Shri Nitin S/o Late Sunil Patil
Aged about 33 years, Occ: unemployed,
R/o Plot No.122, Dhammakirti Nagar,
Dattawadi, Amravati Road,
Nagpur-440 023.

...PETITIONER

...VERSUS...

1. Union of India,
Through the Secretary,
Ministry of Defense,
D (Fy-II), Sena Bhawan,
New Delhi 110 011.
2. The Director General Ordinance
Factory/ Chairman, Ordnance Factory
Board, 10-A, Shaheed K. Bose Road,
Kolkata 700 001.
3. The General Manager,
Ordnance Factory, Ambazari,
Nagpur.

... RESPONDENTS

Shri I.A. Fidvi, Adv. h/f Shri M.M. Sudame, Advocate for petitioner.
Shri Nandesh Deshpande, Deputy Solicitor General of India for
respondents.

CORAM :- AVINASH G. GHAROTE AND M.W. CHANDWANI, JJ.

ARGUMENTS WERE HEARD ON :- 18.08.2023.

JUDGMENT PRONOUNCED ON :- 31.10.2023.

JUDGMENT (PER : M.W. CHANDWANI, J.):

. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

2. Whether time spent on processing the application for medically boarding out by an employee is to be excluded while computing the age of medically boarding out as contemplated in the policy for appointment on compassionate grounds, is the question raised in the present petition.

3. The facts, in nutshell, stated that – the father of the petitioner was appointed with the respondents in the Ordinance Factory, Ambazari, Nagpur as a 'Group D' employee on the post of fitter Auto Electric (semi-skilled) (After Sixth Pay, upgraded to 'Group C'). Thereafter, he was promoted to the post of Chargeman (T) (Mech.) in 'Group C' (After Sixth Pay, upgraded to 'Group B'). The father of the petitioner was suffering from Cancer and several ailments, therefore, he applied for medically boarding out before the respondent's Medical Board. However, by way of an amendment in this petition, it has been incorporated in the memo of petition that vide application dated 27.11.2014 intimated that he was suffering from paralysis and had requested to be medically boarding out. Accordingly, his application was processed and was allowed to be medically boarding out on 29.12.2014 when he completed age of 55 years and 20 days. On 11.02.2015, the petitioner applied for appointment with the respondents on compassionate ground. As per policy of the respondents, the respondent no.3 vide its letter dated 31.12.2015

informed the petitioner that since, his father was medically boarded out after 55 years, therefore his application for appointment on compassionate ground cannot be considered. Thereafter, from time to time the petitioner made repeated correspondence with the respondents, but, of no use. Ultimately, on 21.09.2018, he filed Original Application No.2201 of 2018 before the Central Administrative Tribunal, Mumbai Bench, Circuit Bench at Nagpur (for short, 'Tribunal'), which came to be dismissed on 26.09.2019. Feeling aggrieved by the said impugned order passed by the Tribunal, the present writ petition came to be filed.

4. The respondents appeared and filed their response to the petition *inter alia* contending that on the receipt of the application submitted by the father of the petitioner, the same was processed and the petitioner's father was medically boarded out and availed pension with effect from 29.12.2014 at the age of 55 years 20 days, therefore, as per the policy, the petitioner is not entitled to get appointment on the compassionate ground. It is contended that as per clause 2(A)(c) of the Scheme for Compassionate Appointment, a dependent family member of a Government Servant who is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 shall be entitled for compassionate appointment only if the employee is retired before attaining the age of 55 years.

5. Learned counsel for the petitioner would contend that the father of the petitioner had already applied on 27.11.2014 for medically boarding out from service, before attaining the age of 55 years. Infact, the father of the petitioner completed age of 55 years on 08.12.2014. The application was made prior to 08.12.2014 before completing the age of 55 years. Just because there was delay on the part of respondents in processing the application, the petitioner cannot be blamed. The respondent by its order dated 27.12.2014 declared the father of the petitioner medically unfit on attaining the age of 55 years and 20 days, therefore, according to him, the delay was on the part of respondents and this aspect has not been considered by the learned Tribunal. Therefore, he seeks to set aside the order of the learned Tribunal.

6. On the other hand, learned Deputy Solicitor General of India, Shri Nandesh Deshpande, vehemently submitted that the policy stipulates the entitlement of the dependents of an employee only in case employee is retired before completing the age of 55 years and the policy is to be strictly interpreted. He submitted that the father of the petitioner was aware about this policy. He was supposed to apply at least a month before knowing that the procedure is required to be followed for medically boarding out by forming medical board,

examination of employee and preparation of reports. He supported the order of the Tribunal and sought rejection of the petition.

7. Indisputably, the date of birth of the father of the petitioner is 09.12.1959. He completed the age of 55 years on 08.12.2014. The application for medically board out is made on 27.11.2014, i.e. 11 days prior to attaining the age of 55 years. It is also not in dispute that the father of the petitioner retired after attaining 55 years and 20 days. Now the moot question before us is that the time taken in processing the application for medically boarding out is excluded while considering the age of 55 years mentioned in the policy.

8. For appreciating the arguments of the learned counsel for the respective parties it will be worthwhile to mention here the relevant rule of the policy, which is reproduced hereunder:

“2. To Whom Applicable

To a dependent family member –

(A) of a Government servant who –

(a) dies while in service (including death by suicide); or

(b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group ‘D’ Government servants); or

(c) is retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group ‘D’ Government servants); or”

9. It appears from the above rule and scheme, benefits of compassionate appointment is available to dependent family member of a Government Servant, who retires from service on medically boarding out before attaining the age of 55 years since the father of the petitioner was belonging to Group 'B' category. Under the scheme, it is retirement from service on medically boarding out which has to be considered and not from the date of application filed by the employee for retirement on the medical invalidation. It is to be noted here that the appointment on compassionate ground is departure from the general rule of the appointment as guaranteed Article 15 and 16 of the Constitution of India. Therefore, the scheme of appointment on compassionate ground is to be interpreted strictly. As the policy in question stands clear and unambiguous it therefore does not require interpretation other than normal and usual meaning, otherwise it will defeat the very purpose of the scheme. It is not the case that the processing of an application is deliberately delayed by the respondents to deny the benefit of the Government servant. It appears that the application was made on 27.11.2014, it was processed by the Medical Board District and State level committee and Government, therefore time taken in processing is reasonable. The application for medically boarding out is made by the father of the petitioner just 11 days prior to completion of his age of 55 years. Obviously, a Government Servant cannot expect entire process of

scrutiny, medical examination/recommendation and consideration at various level should be completed within 11 days.

10. The very question also fell for consideration before the Supreme Court in decision of *V. Sivamurthy Vs. State of Andhra Pradesh and others [(2018) 13 SCC 730]*. In paragraph 35 of the said decision, the Supreme Court deprecated the practice of interfering in the policy decisions and has held as under:

“35. The issue is not what is most advantageous to the government servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the Government servant should be adopted. The question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference merely because the court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a government servant may lose the benefit of the scheme, is no ground to relax the terms

of the scheme. If in a particular case the processing of an application is deliberately delayed to deny the benefit to the government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to process the application (through medical Board, local/State level Committee and the government) is reasonable, the government servant cannot contend that relief should be extended, even if the left over period is less than five years. Let us give an example. If an application for compassionate appointment on the ground of medical invalidation is given five years and one week before the date of superannuation, obviously the Government servant cannot expect the entire process of scrutiny, medication examination, recommendation and consideration at three levels should be completed in one week. He cannot contend that when he had made the application the left over period was more than five years and therefore his dependant is entitled to appointment. As stated above these are matters of policy and courts will not interfere with the terms of a policy, unless it is opposed to any constitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness.”

11. In view of above, the period for processing the application for medically boarding out by the employee cannot be excluded while computing the age as 55 years. Since, the father of the petitioner medically boarded out after age of 55 years, the petitioner will not be entitled to be appointed on compassionate ground in terms of policy

of the respondents. Accordingly, we do not find any merit in the writ petition. Accordingly, it is dismissed. No order as to costs. Rule stands discharged.

(M.W. CHANDWANI, J)

(A.G.GHAROTE, J.)

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