



W.P.No.13315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 04.10.2023

Order Pronounced on : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

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D.Muralikumar

.. Petitioner

Versus

- 1.Union of India represented by
The Secretary to the Government of India
Ministry of Defence
South Block, DHQ (PO)
New Delhi-110 011.
- 2.The Controller General of Defence Accounts
Ulan Bator Road,
Palam, Delhi Cantt.-110 010.
- 3.The Controller of Defence Accounts
618, Anna Salai,
Teynampet, Chennai-600 018.
- 4.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Additional City Civil Court Building,
Chennai-600 104.

.. Respondents



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Prayer: Writ Petition is filed under Section 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 4th respondent Tribunal in connection with the order dated 24.01.2023 passed in OA.No.310/000979/2019 and quash the same and consequently issue a direction to the 2nd and 3rd respondent to consider the petitioner for appointment on compassionate grounds, against any post either in the office of 3rd respondent or any other office under the control of the 2nd respondent, or in any other office under the Government of India; and pass such further or other order as this Hon'ble Court may deem fit in the circumstances of the case and thus render justice.

For petitioner : Mr.P.Ulaganathan

For R1 to R3 : Mr.S.Makesh

Central Government Senior Counsel

For R4 : Tribunal

ORDER

P. Dhanabal, J

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 4th respondent Tribunal in connection with the order dated 24.01.2023 passed in OA.No.310/000979/2019 and quash the same and consequently issue a



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direction to the 2nd and 3rd respondents to consider the petitioner for appointment on compassionate grounds, against any post either in the office of 3rd respondent or any other office under the control of the 2nd respondent, or in any other office under the Government of India.

2. The case of the petitioner is that his father namely K.Durairaju, who was working as a clerk A/s No.8306030 in the office of the 3rd respondent died on 02.06.2001. The death was duly intimated to the respondents' office. Thereafter, the petitioner has requested for compassionate appointment due to his family's indigent condition and the same was replied by the 3rd respondent through a letter dated 14.06.2001, expressing sympathy and informing various benefits that they are entitled to on the demise of his father. Further in the above said letter, it was stated that the petitioner/his sister is also entitled for compassionate appointment. Accordingly a letter dated 04.03.2002, was sent seeking compassionate appointment. On 09.04.2002, the office of the 3rd respondent rejected the request of the petitioner, on the sole ground that there was no vacancy available in the organization for appointment on compassionate grounds. On 25.04.2006, the 4th respondent justified the refusal of compassionate appointment on the ground that there was no vacancy. Again, the petitioner made a request for compassionate appointment through



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letter dated 31.06.2006, for which, the 4th respondent replied by reiterating that the request cannot be considered for want of vacancy and compassionate appointment cannot be granted after a lapse of reasonable period of time.

3. It is the further case of the petitioner that the petitioner after the death of his father, worked in Arya Vaidya Pharmacy, Coimbatore Limited from the year 2013-2018. In the year 2018, when he quit the job, some amount was settled from the Provident Fund and Gratuity because of which, his annual income in the year 2017-2018 was oddly Rs.3,03,730/-. Thereafter, the petitioner joined in an auditor firm in March 2018, for a monthly salary of Rs.16,000/-. Again on 21.02.2018, he made a representation to the President of India, seeking compassionate appointment that was also duly rejected by the 4th respondent vide letter dated 09.07.2018 on the same ground that the request is after a lapse of 16 years. Aggrieved by the above said order dated 09.07.2018 of the 3rd respondent, the petitioner filed an Original Application in OA.No.310/01095/2018, and the same was allowed on 16.08.2018, setting aside the order of rejection by directing the respondents to make an assessment of the financial condition on objective criteria as laid down in the scheme, place the matter before the relevant committee for its recommendations and then pass a reasoned and speaking order within a period of three months.



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4. Pursuant to the order of the Central Administrative Tribunal, the 3rd respondent called for certain information from the petitioner through letter dated 20.12.2018 and the required information was furnished by the petitioner through letter dated 03.01.2019. Thereafter, the 3rd respondent vide his order dated 29.05.2019, rejected the request of the petitioner for compassionate appointment as there exist no indigent circumstances warranting grant of compassionate appointment as brought out in the welfare Officer's report and the recommendations of the Committee of Officers. The petitioner came to know that the Committee met on 01.04.2019, and awarded 36 marks. According to petitioner, the computation of marks is erroneous and it does not follow the norms prescribed in the order dated 09.03.2001. The 3rd respondent had rejected the request for compassionate appointment without application of mind and no particulars were furnished to the petitioner whether the 5% ceiling of vacancies meant for compassionate appointment had been exceeded either in the office of the 3rd respondent or under the control of 2nd respondent. Challenging the order dated 29.05.2019 of the 3rd respondent, petitioner filed Original Application in OA No.310/000979/2019 before the Tribunal on the ground that the order dated 29.05.2019 that was impugned before the Tribunal does not indicate that the committee prepared any such list based on relative



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merit. However, without considering the above such aspects, the Tribunal dismissed the Original Application of the petitioner. Hence, the order passed by the CAT in OA.No.310/000979/2019 dated 24.01.2023 is liable to be set aside.

5. No counter was filed by the respondents.

6. The learned counsel appearing for the petitioner would contend that the petitioner's father namely K.Dorairaju, was working in the Controller of Defence Accounts Office, Teynampet, Chennai as clerk A/s No.8306030. While he was on duty, he died on 02.06.2001. Thereafter, the petitioner had submitted the representation seeking for appointment on compassionate ground and the same was returned. Subsequently, the 3rd respondent had rejected his request through letter dated 09.04.2002, on the ground that there was no vacancy. The 4th respondent also justified the refusal of compassionate appointment by order dated 25.04.2006, relying the judgment of the Apex Court in Himachal Road Transport Corporation Vs. Dinesh Kumar dated 07.05.96 and Hindustan Aeronautics Limited Vs. Smt. Radhika dated 09.10.96. Thereafter, the petitioner, once again, gave a representation dated 31.06.2006, and the same was also rejected by the 3rd respondent. On 21.02.2018, the petitioner sent a representation to the President of India and



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the same was forwarded to the 3rd respondent and then, again the claim was rejected through letter dated 09.07.2018, for the reason that such request is made after a lapse of 16 years. Thereafter, the petitioner filed the Original Application in O.A.No.310/01095/2018, and the same was allowed in favour of the petitioner by directing the 3rd respondent to ascertain the financial status of the petitioner and then to pass orders. However, the 3rd respondent once again rejected the request of the applicant through order dated 29.05.2019, on the ground that there exist no indigent circumstances warranting grant of compassionate appointment as brought out in the welfare Officer's report and the recommendations of the Committee of Officers. Challenging the same, he filed another Original Application in O.A.No.310/000979/2019 and the same was dismissed on the ground that the petitioner is not a indigent person and there exist no indigent condition in as much as the applicant besides being educationally qualified and also decently employed and drawing a monthly salary of Rs.16,000/- per month. Infact the petitioner was working in private employment from the year 2013 to 2018 and then he resigned his job and thereby the gratuity amount was settled to him and that amount alone was shown in the income tax returns. Thereafter, the petitioner was earning a sum of Rs.16,000/- per month and thereby, there is no sufficient income and he comes under the category of indigent person.



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Therefore, the petitioner is entitled for compassionate appointment.

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7. Learned counsel appearing for the respondents would contend that the petitioner's request was rejected in the year 2002 itself on the ground that there was no vacancy. Thereafter, again the petitioner submitted the representation in the year 2006 and the same was also rejected by the 3rd respondent and the rejection order was also served to the petitioner. Thereafter, the petitioner's sister submitted an application in the year 2016 and the same was also rejected on the ground that the application is submitted belatedly and cannot be entertained. Again, the petitioner sent a representation to the President of India dated 21.02.2018, and the same was also considered by the 3rd respondent and rejected the request of the petitioner on the ground that it is belatedly submitted. Thereafter, the petitioner filed Original Application in OA.No.310/01095/2018, before the Central Administrative Tribunal and the same was allowed in favour of the petitioner by directing the respondents to make assessment of the financial condition on objective criteria as laid down in the scheme and place the matter before the relevant committee for its recommendations and then pass a reasoned and speaking order within a period of three months. Based on the direction, the respondents constituted a committee and also examined the financial condition of the petitioner and as



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per the report, the petitioner is earning a sum of Rs.16,000/- per month and further his income for the year 2017-2018 was Rs.3,03,730/- and the same was revealed from the report of the Welfare Officer. The report of Welfare Officer was placed before the Committee after examining all the aspects, the authority concerned rejected the claim of the petitioner, on the ground that there exist no indigent circumstances warranting grant of compassionate appointment as brought out in the welfare Officer's report and the recommendations were made to the Committee of Officers. Therefore, the petitioner is not entitled to compassionate appointment.

8. Learned counsel appearing for the respondents would further contend that already in the year 2002, 2006 and 2016, three times, the request of the petitioner were rejected and without challenging those orders, the petitioner has sent a representation to the President of India in the year 2018 and thereafter, the respondents have passed order by rejecting the claim and the same was challenged before the Central Administrative Tribunal. Thereafter, based on the order of Central Administrative Tribunal, the Welfare Officer enquired the financial status of the petitioner and the report was placed before the committee. The committee after scrutinizing all the records, rejected the application by holding that the petitioner is having sufficient means and there



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exist no indigent circumstances to consider the claim for compassionate appointment. The said order was challenged before the Central Administrative Tribunal in OA.No.310/000979/2019 and after taking into consideration of all the aspects, the Tribunal has correctly dismissed the application. Hence, this petition is liable to be dismissed.

9. This Court heard both sides and perused the materials available on record.

10. In this case, it is an admitted fact that the father of the petitioner viz., K.Durairaju, who was working under the employment of R3 and R4 died during the course of his employment. After his demise, the petitioner sent a representation to the 3rd respondent for compassionate appointment and the same was rejected on the ground that there was no vacancy in the year 2002. Thereafter again, in the year 2006, the petitioner has sent a representation and the same was also rejected by reiterating that there was no vacancy and the petitioner also availed the death benefits of the deceased. Again in the year 2016, the sister of the petitioner sent a representation and the same was also rejected on the ground that the application was submitted belatedly. Thereafter the petitioner sent a representation to the President of India dated 21.02.2018,



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and the same was also considered by the 3rd respondent and rejected it on the ground that it is belatedly submitted. Thereafter, the same was challenged before the Central Administrative Tribunal in O.A.No.310/01095/2018 and the Tribunal has allowed the application by directing the respondents to ascertain the financial condition of the petitioner and then pass orders. Thereafter, the respondents made enquiry through Welfare Officer with regard to the financial capacity of the petitioner and they filed a report. The said report was placed before the Committee and the Committee also examined the financial condition of the petitioner and then finally rejected the claim of the petitioner stating that the petitioner is earning a sum of Rs.16,000/- per month as salary and he is not an indigent person for considering his claim for compassionate appointment. The said order was challenged before the Central Administrative Tribunal in OA.No.310/000979/2019 and the same was also dismissed.

11. The main contention of the petitioner is that he already submitted a representation immediately after the demise of his father and thereby, there is no delay. The committee had justified the indigency and awarded only 36 marks and it is not in accordance with the procedure.

12. This Court has perused all the records and on perusal of records, it is seen that the respondents have mainly focused on the financial condition of the



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petitioner. The petitioner also filed income tax returns in the year 2017-2018, disclosing a sum of Rs.3,03,730/- as income. Further the petitioner himself admitted that he was earning a sum of Rs.16,000/- per month. Thereby, the 3rd respondent has held that there exist no indigent condition for considering compassionate appointment. Therefore, the above said order passed by the Committee is based on the records as well as the admission made by the petitioner. However, the petitioner has now resorted to deny his financial capacity. As far as the delay is concerned, already the 3rd respondent rejected his claim in the year 2002 itself. Again the petitioner, sent a representation in the year 2006, and the same was also rejected. The above said rejection orders have not been challenged in accordance with law. Thereafter, in the year 2016, the sister of the petitioner sent a representation for compassionate appointment and the same was also rejected on the ground of delay. The said order was also not challenged by the sister of the petitioner.

13. Again the petitioner, in the year 2018, sent a representation to the President of India and the same was also considered by the 3rd respondent and rejected on the ground that it is belatedly submitted. The same was challenged before the Central Administrative Tribunal and based on the order of the Central Administrative Tribunal, once again the respondents ascertain the



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financial condition of the petitioner, and after elaborate enquiry, came to the conclusion that the petitioner is having means and there is no indigent circumstances. The above said facts have been elaborately discussed by the Tribunal and the Tribunal has correctly held by considering the object of the scheme and conditions attached to the grant of compassionate appointment and held that the applicant does not fulfill any condition attached to the scheme, thereby dismissed the application. Further the Tribunal also in its order relied the judgments in para No.18 to 21 as follows:

“18. The Hon'ble High Court of Judicature at Madras in WP No. 3570 of 2014 (decided on 06.10.2017) has held as under:-

8. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.”

19. The Hon'ble Supreme Court of India in Director of Education (Secondary) and another Vs. Pushpendra Kumar and others (1998 SCC (L&S) 1302) have observed in para 8 that

"the provision for compassionate appointment makes a departure from the general provisions of making appointment by following prescribed procedure. It is in the nature of an exception to the general provisions. An



exception cannot subsume the main provision and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has therefore to be taken that a provision for grant of compassionate appointment, which is in the nature of an exception to the General provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee."

20. The observation of the Hon'ble Supreme Court in Chief Commissioner, Central Excise & Customs, Lucknow & Others Vs. Prabhat Singh will squarely applicable in this case, wherein it is held as follows:

"The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag or Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment, on compassionate grounds could deprive a really needy family requiring financial support and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

21. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Limited (TANGEDCO) in W.P.3882/2014 dated 06.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

"28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the



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*question of providing compassionate appointment to the
Writ Petitioner does not arise at all”*

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Thereafter, the Tribunal came to a fair conclusion that the Original Application is liable to be dismissed. The Tribunal has passed a detailed and reasoned order and thereby, there is no any infirmity found on the order passed by the learned Tribunal. Therefore, this Court has no warrant to interfere with the order passed by the Tribunal. Hence, this Writ Petition has no merits and it deserves to be dismissed. Accordingly, this Writ Petition is dismissed. No costs.

(D.K.K.J)

(P.D.B.J)

19.10.2023

Index: Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

mpa

Index : Yes / No

Internet : Yes/ No

Speaking Order/Non-speaking Order



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To

The Secretary to the Government of India
Ministry of Defence
South Block, DHQ (PO)
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D.KRISHNAKUMAR,J.

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