

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No.117)

CWP No. 14568 of 2023

Date of decision : 17.07.2023

Rajesh Chopra

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Balraj Singh Rathee, Advocate for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

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DEEPAK SIBAL, J. (Oral)

(1) Through the present petition the petitioner challenges order dated 25.04.2023 through which the respondents have rejected his claim for being appointed as Assistant Revenue Clerk (for short - ARC) on compassionate grounds with a further prayer for issuance of directions to the State to appoint him as an ARC.

(2) The petitioner's father Ram Kishan served the State as a Zildar. On 15.12.2003 he died in harness. On 15.09.2005 the petitioner's mother filed an affidavit with the State through which she sought the petitioner's appointment under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short - the 2003 Rules). The petitioner's case was considered and on 25.07.2006 he was offered appointment as a Clerk. He declined the said offer and requested

for appointment as an ARC. Since no post of ARC was available, he was then offered the post of Canal Patwari on which post he joined on 14.02.2007. However, even after joining as a Canal Patwari, the petitioner continued to seek appointment as an ARC. When his representations went unanswered, he approached this Court through *CWP No.3652 of 2022 – Rajesh Chopra Vs. State of Haryana and others*, which petition of his was dismissed on 24.02.2022. However, liberty was granted to him to pursue his representations. In terms of the liberty granted by this Court, the petitioner again represented to the State which representation of his was rejected on the ground that as and when he was offered appointment as Clerk and later as a Canal Patwari, no post of ARC was available and that in any case, under Rule 14(a) of the 2003 Rules, once the petitioner had joined as Canal Patwari, no request for change of post could be entertained. It is in these circumstances that the petitioner has knocked the doors of this Court through the instant petition seeking therein the aforesaid reliefs.

(3) Learned counsel for the petitioner contends that on 15.12.2003 the petitioner's father, who was serving as Zileadar, died in harness; on his father's death, in terms of Rule 7 (c) of 2003 Rules, the petitioner should have been offered a post which was one step lower than the post being held by his father at the time of his death; however, the petitioner was offered appointment to the post of Canal Patwari which is five steps lower; all that the petitioner seeks is appointment as an ARC for which he was not only eligible but had also been recommended for by the department; there was discrimination on the part of the State as one Rohit Sharma was appointed on compassionate basis as a Beldar; prior to Rohit Sharma's appointment as

a Beldar his claim for appointment as a Clerk had been rejected on the ground that he was not eligible to hold the post of Clerk; he filed a petition before this Court being *CWP No. 15191 of 2005 - Rohit Sharma Vs. The State of Haryana and others*, which petition of his was disposed of with a direction to the respondents to decide his representation and since by the time of consideration of his representation the said Rohit Sharma had acquired the qualification for being appointed as a Clerk, in spite of the bar under Rule 14 (a) of the 2003 Rules, he was appointed by the State as a Clerk.

(4) Learned counsel for the parties have been heard at length and with their able assistance the record of the case has also been perused.

(5) The object behind the grant of compassionate employment is to enable the deceased employee's family to overcome the sudden crises that they encounter on the demise of its only bread-earner. The whole idea behind such appointment is that if at that stage no source of livelihood is provided to the family of the deceased employee it may be difficult for them to survive. Thus, compassionate appointment should be made as soon as possible after the deceased employee's demise and that delay in making such appointment would frustrate the very objective behind it.

(6) The petitioner's father died in harness. At the time of his death he was serving as a Zildar. On his death the petitioner's case for appointment, on compassionate basis, was considered and on 25.07.2006, he was offered appointment as a Clerk. He refused to join on such post. Thereafter, on his request, his case was reconsidered and he was then offered appointment as a Canal Patwari. After receiving the requisite training, he

joined as a Canal Patwari on 14.02.2007. For the last over 16 years the petitioner is serving as a Canal Patwari. At this stage, to appoint him, on compassionate basis, to a higher post in the hierarchy or to a post which carries a higher pay scale would not be in line with the object behind compassionate appointment as such appointment is only to enable the family of the deceased employee to tide over the “sudden” crises caused due to the death in harness of the family’s only bread-earner.

(7) Even otherwise, under the Punjab Public Works Department (Irrigation Branch) Patwaris State Service, Class III Rules, 1955, the posts of Zileदार, Assistant Revenue Clerk and Canal Patwari are all classified as Group ‘C’ posts. At the time of his death the petitioner’s father was serving as a Zileदार which is a Group ‘C’ post. On his demise the petitioner was initially offered appointment as a Clerk which offer he refused to accept. Later, on his request, the matter was reconsidered and he was then offered the post of Canal Patwari (another Group ‘C’ post) on which he joined, though under protest as he wanted to be appointed as an ARC. At the time when the offer to appoint him as a Canal Patwari was made no post of ARC was available. The action of the State to offer and appoint the petitioner as a Canal Patwari which was a post within the same grouping as the post held by his father at the time of his death is found to be in furtherance with the objectives behind compassionate appointment. Rather, the petitioner’s case is the clear example of the needy becoming greedy.

(8) The reliance placed by learned counsel for the petitioner on Rule 7(c) of the 2003 Rules is misconceived. Rule 7 (c) reads as under :-

“7 (c) The appointment being offered shall be at least one step lower than that of the post of the deceased

Government employee, except in cases where the deceased employee was working at the lowest level in the category :

Provided that while giving the post under these rules only the substantive/officiating post on which the deceased Government employee was working is to be considered and not the pay scale of the deceased.”

(9) As per the afore quoted Rule, compassionate appointment to a dependent of a deceased Government employee is to be offered on a post which is “at least” one step lower than the post held by the deceased Government employee at the time of his death. Thus, the Rule merely provides that compassionate appointment is not to be given on an equivalent or higher post than the post being held by the deceased employee and that the post to be offered should be at least one step lower. Meaning thereby, that such offer can be with regard to a post which is more than one step lower than the post held by the deceased employee.

(10) Learned counsel for the petitioner further submits that one Rohit Sharma’s father was serving as a Junior Engineer. He died in harness and on his death Rohit Sharma was initially offered the post of Beldar, which is a Class-IV post and on re-consideration of his case he was offered and appointed as a Clerk (a Class-III post). Therefore, to deny the petitioner’s appointment as an ARC on the ground that he had already joined as a Canal Patwari is discriminatory.

(11) Rule 14(a) of the 2003 Rules reads as under:-

“Once an appointment has been offered to the dependent of a deceased Government employee, no request for change of post shall be entertained with respect to any other post or

department under any circumstances. In case the offer is not acceptable to him/ her, no further claim shall be entertained.”

(12) As per afore quoted Rule once an employee has been appointed on compassionate grounds then his request for change of post is not to be entertained. The Rule is unambiguous. The petitioner also does not challenge the same. Therefore, once the petitioner joined as a Canal Patwari, even if under protest, his request for change of post cannot be accepted especially as on date when the petitioner has already served as a Canal Patwari for 16 years. Even otherwise, even if in Rohit Sharma's case the State has gone against the afore quoted Rule the petitioner cannot claim parity as there can be no negative equality claimed or granted. Two wrongs do not make a right.

(13) In the light of the afore discussion the present petition merits rejection.

(14) Dismissed.

17.07.2023
sunil yadav/gk

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No