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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: October 06, 2023

+ W.P.(C) 12700/2023

KRISHAN KUMAR

..... Petitioner

Through: Mr. Sumit Sinha, Advocate.

versus

OFFICE OF THE COMMISSIONER OF POLICE Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J.(ORAL)

1. The challenge in this writ petition is to an order dated July 31, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA No. 2124/2021, whereby the Tribunal has dismissed the OA filed by the petitioner herein by stating in paragraphs 11 and 12 as under:

"11. I have gone through the records of the case thoroughly and heard the argument carefully. In the instant case the Screening Committee has considered all factors as per the guidelines issued by the DOP&T vide their OM dated 16.01.2013. I agree with the averments made by the learned counsel for the respondents that claim for compassionate appointment is not a vested right by the legal heirs of the deceased government employee who dies while



in government service. The immediate financial hardship of the family is the most important factor determining the claim of compassionate appointment. In the instant case, the application for compassionate appointment submitted by the applicant 9 years after the death of the deceased government employee. In view of this, the financial hardship of the family immediately after the death of the deceased government employee is ruled out. Moreover the Screening Committee is in the best position to have comparative view of deserving and less deserving candidates. The applicant has failed to produce any evidence showing any arbitrariness, malafide and biasedness on the part of the Screening Committee while dealing with the case of the present applicant. Moreover, the applicant has failed to produce any evidence or records showing that the candidates who are less deserving than the present applicant have been offered compassionate appointment.

12. In view of the position explained above, the present Original Application lacks merits and hence it is dismissed.

No order as to the costs.”

2. The father of the petitioner had expired in the year 2009. He had applied for a compassionate appointment in the year 2009, but, on the asking of the respondent, he got a succession certificate from the Competent Court. The petitioner's case is, he had applied for the same and the same was given by the order of the Competent Court in the year 2014. The said order was under appeal before the Appellate Court till 2017.
3. The justification of the petitioner for approaching the Tribunal in the year 2021 was for the reasons stated above.
4. We are not in agreement with the submissions made by the learned counsel for the petitioner, for the simple reason that the OA was filed in the year 2021 that is after four years from 2017. In any case, it is the conceded



case of the petitioner that pursuant to the death of the earning member of the family, who was working in the Delhi Police, the family has got terminal benefits of Rs. 9,03,520/- and the mother of the petitioner is also getting family pension.

5. Suffice to state, the purpose for seeking compassionate appointment is to tie over a situation which has arisen because of death of the earning member of the family. The fact that the employee had died in the year 2009 and the OA has been filed in the year 2021, it was too late for the petitioner to seek such an appointment.

6. We agree with the conclusion drawn by the Tribunal rejecting the OA. In regard to the aforesaid, we may refer to the judgment of the Supreme Court in the case of **Umesh Kumar Nagpal vs. State of Haryana, 1994 (4) SCC 138**, wherein the Supreme Court in paragraphs 2 and 6, held 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 merit. No other mode of appointment nor any other consideration is permissible. 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 dependant 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.

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6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for



such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

7. Even in the recent judgment of the Supreme Court in the case of ***State of Himachal Pradesh and Another vs. Shashi Kumar, 2019 (3) SCC 653***, in paragraphs 35, 36 and 37, it has been held as under:

“35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had required that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In *Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]*, this Court has emphasised that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Para (8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death



fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J&K v. Sajad Ahmed Mir [State of J&K v. Sajad Ahmed Mir, (2006) 5 SCC 766, para 11 : 2006 SCC (L&S) 1195] and Local Admn. Deptt. v. M. Selvanayagam [Local Admn. Deptt. v. M. Selvanayagam, (2011) 13 SCC 42, paras 11, 12 & 13 : (2012) 1 SCC (L&S) 717].

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.”

8. In view of the position of law, the petition is without merit and the same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 06, 2023/R