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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 16052/2006**AJAY KUMAR**

..... Petitioner

Through: Mr. V.K. Goel, Advocate
(M:9818104560)

versus

**INDRAPRASTHA POWER GENERATION &
ANR.**

..... Respondents

Through: Mr. S. Wasim A. Quadri, Sr.
Adv. with Mr. R.K. Vats, Mr.
Tamim Qadri, Mr. Saeed Qadri,
Advocates
(M:9711609709,email:saeed.qa
dri@gmail.com)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****03.07.2023****MINI PUSHKARNA, J.**

1. The present writ petition has been filed with prayer for directions to the respondents to appoint the petitioner on compassionate basis to the post of Junior Engineer (Electrical) in the Pay Scale of Rs.5500-9875/- on Regular basis, with retrospective effect from the date of his compassionate appointment on clerical job on work charge basis, i.e., 07.03.2002 or from 04.06.2003, on which date, the petitioner was regularised as Assistant Grade III on clerical job.
2. The brief facts of the case are that the father of the petitioner, late Sh. Barkhu was working as Daftari in the office of Executive



Engineer, District Yamuna Vihar in the Erstwhile Delhi Vidyut Board (DVB). The father of the petitioner expired on 15.09.2001 during the course of employment.

3. A scheme dated 01.06.1999 was formulated for appointment on compassionate and humanitarian grounds for employment of the dependents in case of death of an employee during service. On the basis of the said scheme, the petitioner was given compassionate appointment in clerical grade on work charge basis as Assistant Grade III, as per Office Order dated 07.03.2002. Subsequently, the petitioner was regularised to the said post of Assistant Grade III vide Office Order dated 12.06.2003, w.e.f. 04.06.2003.

4. It is the case on behalf of the petitioner that he is a technically qualified person, as he possesses diploma in Electrical Engineering from Pusa Polytechnic Institute, which is a 3 year course. As per the employment scheme, the petitioner is entitled for appointment for the post of Junior Engineer, keeping in view his qualification, as the post of Junior Engineer is a direct recruitment post for diploma in Electrical Engineering. Moreover, the petitioner also possesses relevant experience as prior to appointment on compassionate ground, the petitioner worked on contract basis with the DVB as Electrical Supervisor in Planning Department, Jhandewalan from 09.02.1999 to 08.08.1999 and thereafter from 24.08.2000 to 27.10.2000 and then from 03.04.2001 to 30.09.2001. Prior to this, the petitioner had worked from 08.08.1994 to 31.01.1999 in a private concern as an Electrical Supervisor.



5. The petitioner represented to the respondent to consider his case for appointment as Junior Engineer, but his request was not considered. Thus, the present writ petition has been filed.

6. On behalf of the petitioner it is contended that on unbundling of the DVB on 01.07.2002, respondent No.1 and 2 came into existence, being the Generating Companies (GENCO). The scheme for appointment on compassionate ground as existing in the DVB, was adopted by the respondents. All assets, liabilities, contracts, suits, legal proceedings, service conditions of employees etc. were transferred to the new entities. It is submitted that the petitioner despite being a qualified engineer has been given a clerical job and that he is entitled to the post of Junior Engineer as per the scheme of compassionate appointment.

7. It is further submitted that one Sh. Manoj Gupta and Sh. Harsh Gulati were appointed as Junior Engineers on compassionate ground vide orders dated 21.01.2002 and 17.04.2002 respectively. On unbundling of DVB in the year 2002, they were posted in the Distribution Companies (DISCOM).

8. It is submitted that the petitioner is still working on clerical grade. Thus, it is contended that there is no justified reason for not appointing the petitioner to the post of Junior Engineer, when other similarly placed persons have been so appointed during the corresponding period. The petitioner fulfils all the required qualification as well as experience and belongs to Reserved Category. He is entitled for Direct Recruitment to the post of Junior Engineer (Electrical) as per the Rules. Further, the post of Junior Engineer falls



under Category 'C' as per the Revised Recruitment and Promotion Regulations in force at that time. Office Order dated 13.11.2009 issued by respondent No.2 clearly shows that the post of Junior Engineer is a Group 'C' post.

9. On the other hand, it is submitted on behalf of the respondents that the petitioner's claim for appointment to the post of Junior Engineer (Electrical) on compassionate ground is beyond and outside the ambit of the Scheme of Compassionate Appointment. The scheme provides for list of 15 categories of posts identified for compassionate appointment. The post of Junior Engineer was not among the post identified by the Scheme for compassionate appointment, and as such was not available for making compassionate appointments. Accordingly, petitioner's claim for appointment to the post of Junior Engineer being *ex facie* beyond the ambit of the Scheme, is liable for rejection.

10. It is further submitted that on the date of making application by the petitioner for compassionate appointment on 04.01.2002, the post of Junior Engineer was Group 'B' post and not Group 'C' post, as alleged. As per the Scheme, compassionate appointments could be made only to the Group 'C' or Group 'D' posts against the Direct Recruitment quota. The erstwhile DVB vide Resolution dated 22.11.2001 had unanimously resolved to approve the classification of the post of Junior Engineer as Group 'B' post. The said Resolution was notified vide Office Order dated 04.12.2001. The petitioner made application for compassionate appointment under the Scheme on 04.01.2002, i.e., subsequent to the Resolution dated 22.11.2001 and its



notification vide Office Order dated 04.12.2001.

11. It is further submitted that no reliance can be placed on the Revised Recruitment and Promotion Regulations for the post of Junior Engineer, as the said Regulations are dated prior to the date of Resolution dated 22.11.2001, whereby the category of the post of Junior Engineer was modified as Group 'B' post and notified vide Office Order dated 04.12.2001.

12. It is further submitted that negative equality is not permissible. Any appointment to the post of Junior Engineer on compassionate ground made illegally, would not entitle petitioner to claim appointment under the said Scheme. It is further submitted that the alleged appointments of Sh. Manoj Gupta and Sh. Harish Gulati were made by the erstwhile DVB prior to its unbundling w.e.f. 01.07.2002. Further, the said employees are not working under the respondents after the unbundling of DVB.

13. Ld. Counsel for the respondent has relied upon the following judgments:

- I. State Bank of India & Anr. Vs. Raj Kumar, (2010) 11 SCC 661***
- II. Umesh Kumar Nagpal Vs. State of Haryana & Ors, (1994) 4 SCC 138***
- III. Union Bank of India & Ors. Vs. M.T. Latheesh, (2006) 7 SCC 350***

14. Considering the aforesaid submissions, it is manifest that the petitioner is seeking compassionate appointment to the post of Junior Engineer (Electrical), instead of the clerical grade to which the



petitioner has been given appointment on compassionate basis. The petitioner has raised the said claim on the basis that the petitioner is technically qualified possessing diploma in Electrical Engineering.

15. Reference to the Scheme of Compassionate Appointment dated 01.06.1999 as prevailing in the erstwhile DVB, makes it apparent that under the said Scheme, compassionate appointment could be made on vacancies falling under the Direct Recruitment quota in any Group 'C' or Group 'D' post. As per the submissions made on behalf of the respondent and the documents on record, it is evident that the post of Junior Engineer was classified as a Group 'B' post at the material time when the petitioner made application for appointment on compassionate basis. Therefore, as per the prevalent Scheme, appointment on compassionate basis could be made only to Group 'C' or Group 'D' post. The post of Junior Engineer being a Group 'B' post was outside the ambit of the Scheme of Compassionate Appointment. Even otherwise, perusal of the Scheme of Compassionate Appointment clearly exhibits that the post of Junior Engineer was not among the posts that were identified by the Scheme of Compassionate Appointment. Therefore, it is clear that the post of Junior Engineer was not available for making any compassionate appointment.

16. No claim for compassionate appointment can be made to a post outside of the Scheme for such compassionate appointment. No vested right flows in favour of any person for appointment on compassionate grounds *de hors* the Scheme. Thus, Supreme Court in the case of *State*



Bank of India and Anr. Vs. Raj Kumar¹, held as follows:

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

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13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

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¹(2010) 11 SCC 661



17. Moreover, Supreme Court has deprecated the practice of appointment to a post higher than Class III or Class IV on compassionate basis. The entire objective of granting compassionate employment is to enable the family of the deceased to sustain despite the sudden crisis. The purpose is not to give a member of such family a post comparable with the post held by the deceased. The post is not offered to provide any prestigious rank to the dependent, but to make ensure that the family overcomes financial adversity owing to demise of the earning member of the family. The Supreme Court has gone to the extent of holding that if the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. Thus, in the case of ***Umesh Kumar Nagpal Vs. State of Haryana and Others***², it has been held as follows:

“2. ... 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

²(1994) 4 SCC 138



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.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

*4.The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant...
...*

5.If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

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18. Petitioner's claim for appointment to the post of Junior Engineer on the ground of alleged discrimination and violation of equality clause under Articles 14 and 16 of the Constitution of India is equally misconceived and legally untenable. Appointments to the post of Junior Engineer on compassionate ground could not have been validly made, since the post of Junior Engineer was beyond and outside of the ambit of the Scheme. Any such appointments, even if made to other persons in the past as alleged, were made illegally. The



same would not entitle the petitioner to claim appointment on compassionate basis to the post of Junior Engineer on the ground of alleged discrimination.

19. Holding that Article 14 of the Constitution of India cannot be extended to legalise illegal orders, though others had wrongly got the benefits of that order, Supreme Court in the case of ***Union Bank of India and Others Vs. M.T. Latheesh***³, held as follows:

“28. Learned counsel for the respondent contended that the Bank has made several compassionate appointments quite contrary to the Scheme and, therefore, the respondent should also be considered for such appointment on compassionate grounds. It is well settled that Article 14 cannot be extended to legalise illegal orders though others had wrongly got the benefits of that order on some stray incidents earlier.

29. This Court in Harpal Kaur Chahal v. Director, Punjab Instructions [1995 Supp (4) SCC 706 : 1996 SCC (L&S) 226 : (1996) 32 ATC 172] held that illegality once committed cannot be pleaded to legalise other illegal acts. This Court also held that “where the High Court, applying a wrong test found certain ineligible candidates to be eligible and upheld their appointment, ... such a judgment could not constitute a ground for [this Court] to extend the benefit thereof to other candidates appointed illegally”. (SCC p. 706)

30. In Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459 : AIR 1996 SC 1175] this Court held as under: (SCC p. 465, para 9) “[The] guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an

³(2006) 7 SCC 350



illegality or irregularity had been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of [the Supreme Court], that the same irregularity or illegality be committed by the State or an authority which can be held to be a State [or an authority of the Constitution], so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

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20. Likewise, Supreme Court in the case of ***Union of India & Others Vs M.K. Sarkar***⁴, has held that if someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. Thus, it was held as follows:-

“25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This

⁴ (2010) 2 SCC 59



Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others. (See Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] , Gursharan Singh v. NDMC [(1996) 2 SCC 459] , Faridabad CT Scan Centre v. D.G. Health Services [(1997) 7 SCC 752] , State of Haryana v. Ram Kumar Mann [(1997) 3 SCC 321 : 1997 SCC (L&S) 801] , State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] and Union of India v. International Trading Co. [(2003) 5 SCC 437])

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

21. Thus, it is clear that the concept of equality before law is a positive concept, and cannot be enforced in a negative manner. Further, it is clear that application for employment on compassionate



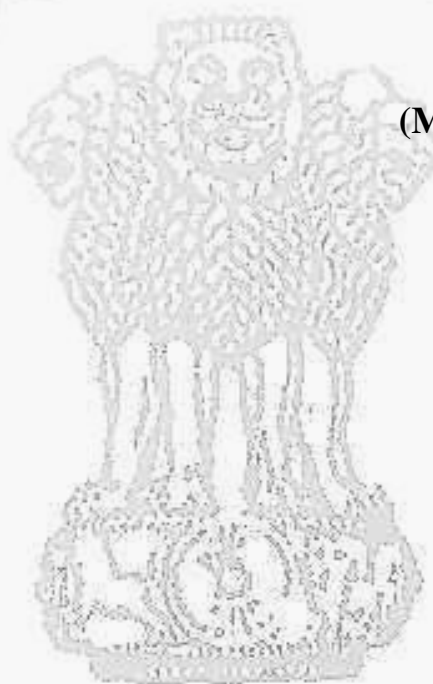
grounds can be considered only within the parameters of the Scheme for such compassionate appointment. No person can claim appointment on compassionate grounds to a particular post or in a particular class of post.

22. In view of the detailed discussion herein above, the present writ petition is found without any merits and is accordingly dismissed.

**(MINI PUSHKARNA)
JUDGE**

JULY 03, 2023

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