

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 22, 2023

+ W.P.(C) 32/2018

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. Jaswinder Singh, Adv.

versus

UMESH KUMAR

..... Respondent

Through: Ms. Rhea Verma and
Mr. Rajul Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition filed by the petitioners Union of India and Ors. is to the impugned orders dated May 23, 2017 and August 21, 2017 passed in OA 367/2017 and in RA 186/2017 by the Central Administrative, Principal Bench, New Delhi ('Tribunal', for short).

2. Vide order dated May 23, 2017, the Tribunal has allowed the Original Application filed by the respondent and directed the petitioners herein to act on the recommendations made by the Board of Officers in September 2009 and grant compassionate appointment to the respondent against the post of Safaiwala / Mazdoor / Chowkidar within three months.

3. Vide order dated August 21, 2017, the Tribunal dismissed the Review Application filed by the petitioners herein.
4. The claim of the respondent before the Tribunal was for grant of compassionate appointment which was rejected by the petitioners vide order dated August 29, 2012.
5. The facts as noted from the record are, the respondent is the son of Late Bishan Lal, Safaiwala, who died on February 26, 2008 while in service of petitioner No. 4. The request of the respondent was considered by the Board of Officers as constituted by the respondent No.3. The Board of Officers in the proceedings held in September, 2009 recommended the grant of compassionate appointment to the respondent.
6. Suffice to state, the recommendations state that the respondent is suitable for compassionate appointment in Group-D for the post of Safaiwala.
7. It is noted that the petitioners vide their letter dated March 7, 2011 informed the respondent that his name is being considered for compassionate appointment for the post of Safaiwala / Chowkidar and sought his willingness to any of the two posts. The said letter also contained a table which indicated that there were five vacant posts of Safaiwala. The respondent submitted his willingness.
8. The grievance of the respondent before the Tribunal was that instead of acting on the specific recommendations of the Board of Officers to grant compassionate appointment on the post of Mazdoor / Safaiwala / Chowkidar, the petitioners vide its

communication dated April 28, 2012 has rejected the claim of the respondent for compassionate appointment and also informed that his case will not be considered again for compassionate appointment during the next year.

9. The case of the petitioners before the Tribunal was that the deceased official's family consisted of his widow, three sons, including the respondent and a daughter. The respondent is already married and his family is not in penurious condition as assessed by the Screening Committee / Board of Officers.

10. It was further stated that his case has been considered by the Screening Committee at the Command Headquarters along with other cases. The respondent secured 66 marks *viz-a-viz* parameters prescribed for determination of eligibility for compassionate appointments in terms of indigent condition of the family. The cut-off marks of the last selected candidate was 78 and hence he has not been granted the appointment on compassionate grounds. Reference in this regard has been made to the instructions of the Department of Personnel and Training dated May 5, 2003 wherein it is stated that the maximum time a person's name can be kept for consideration, for offering compassionate appointment will be three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of first and second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

11. The stand of the petitioners was also that the offering of appointment on compassionate ground as a matter of right irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible and also, cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future.

12. It was also stated that the stand of the petitioners before the Tribunal is, compassionate appointment is meant for providing immediate succor to the indigent family. Whereas in the case in hand, respondent's father died nine years back and it is too late in the day to grant, such an appointment.

13. The Tribunal while allowing the OA has in paragraphs 8 to 12 of the impugned Judgment has held as under:

“8. The factum of recommendation of the candidature of the applicant for compassionate appointment by the Board of Officers in September 2009, has not been denied by the respondents. The Board of Officers had clearly recommended the appointment of the applicant against one of 5 vacant posts of Mazdoor/ Safaiwala/ Chowkidar.

9. During the course of hearing, in reply to a query put by the Tribunal, Mr. Singh, learned counsel for respondents informed that the appointing authority in respect of compassionate appointment to Group 'D' post is Chief Engineer Bareilly Zone (respondent No.2). He further confirmed that only one Board of Officers is constituted for the Zone to consider such cases.

10. The O.M. of DoPT dated 05.05.2003, cited by the respondents in the impugned Annexure AA letter dated 29.08.2012, wherein time limit of 3 years was prescribed for considering the cases for compassionate appointment, has since been withdrawn by the DoPT vide O.M. F.No.14014/3/2011-Estt. (D) dated 26.07.2012. The

relevant portion of the same is extracted below:-

“3. Subsequently vide this Department’s O.M. No.1404/19/2002-Estt. 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon’ble High Court Allahabad Judgment dated 07.05.2010 in Civil Misc. Writ Petition No.13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003.

4. The cases of compassionate appointment may be regulated in terms of instructions issued vide O.M. dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment.”

11. In view of the ibid O.M. dated 26.07.2012 of DoPT, there is no impediment in the way of considering the applicant’s case for compassionate appointment even at this stage. As observed earlier in paragraph (11) above, the applicant’s case for compassionate appointment was specifically recommended by the Board of Officers in September 2009 and at that time vacancies in the post of Mazdoor / Safaiwala / Chowkidar were available. The respondents have miserably failed in explaining as to why the recommendations of the Board of Officers, qua the applicant, have not been acted upon. Needless to mention that the indigent condition of the family of the applicant was acknowledged and taken note of by the Board of Officers while recommending his appointment on compassionate grounds. Hence, it was not proper on the part of the respondents to subject the case of the applicant again and again, in the subsequent years, for fresh scrutiny and consideration by the Board of Officers / Screening Committee.

12. In the conspectus of discussions in the foregoing paragraphs, the O.A. is allowed. The respondents are directed to act on the Annexure AA recommendations of September, 2009 of the Board of Officers and grant compassionate appointment to the applicant against a post of Safaiwala / Mazdoor / Chowkidar within a period of three months from the date of receipt of a copy of this order.”

14. The petitioners had also filed a Review Petition seeking review of the order dated May 23, 2017. It was primarily on the ground that the Board of Officers proceeding held in September, 2009 referred in paragraph 2.3 of the order / judgment was a basic preliminary board only to process the application and documents of the respondent in OA through CWE Bareilly to HQ CE Bareilly Zone for inclusion of his name in the Zonal Board. The Zonal Board is the main Board and this process is followed in every such cases while processing documents to higher HQrs. However, in paragraph 11 of the Judgment the Tribunal has presumed the recommendation of this preliminary Board Proceedings in September, 2009 as a final board proceeding / recommendations and thus there is an apparent error on the face of the order / judgment. It was also the ground for review that paragraph 2.3 of the Order / Judgment of which review is sought there is a reference of five vacant posts of Safaiwala, in fact, indicates deficiency of GE (East) Bareilly and not clear vacancies released by competent authority for compassionate appointment, in as much as compassionate appointment is made against 5% of the total vacancies and that too when the same is released by the competent

authority.

15. It is stated that as per relevant rules and instructions, the vacancies are filled on receipt of local recruitment sanction from the competent authority for filling 5% quota of compassionate appointment. It was averred that the impugned order dated August 29, 2012 has been issued after taking into consideration all aspects of the case of the respondent by the Board in which his marks were 66 and the number of vacancies were 25 and his merit was 110 and the cut off marks of last candidate were 78. Therefore, there was no merit in the case of the respondent for grant of compassionate appointment.

16. Finally the Tribunal dismissed the Review Petition by referring to the Judgment of the Supreme Court in the case of *State of West Bengal and Ors. v. Kamal Sengupta and Anr. (2008) (3) AISLJ 209*.

17. The submission of Mr. Jaswinder Singh, learned counsel for the petitioners is by referring to the order dated August 29, 2012 passed by the petitioners on the application submitted by the respondent wherein in paragraph 5, reference has been made to the DoP&T instructions issued on May 5, 2003 and also the instructions issued by the Engineering-in-Chief dated November 30, 2011 which laid down time limit for making compassionate appointments. The said order also makes a reference to the total marks secured by the respondent as 66 as against the cut-off marks of the last candidate being, 78.

18. In other words, it was his submission that since there were

limited number of vacancies and the cut-off marks obtained by the respondent was much less than the cut-off marks secured by the last candidate, i.e., 78, the candidature of the respondent was rightly rejected.

19. According to him, the Tribunal had failed to appreciate that the Board of Officers proceedings held in September, 2009 was a basic preliminary board only to process the application and documents of applicant in OA through CWE Bareilly to HQ CE Bareilly Zone for inclusion of his name in the Zonal Board. The Zonal Board is the main Board and this process is followed in every case while processing documents to the headquarters for consideration. According to him, the Tribunal has presumed that the recommendation of the basic preliminary board proceedings in September, 2009 as final board proceedings/ recommendation, was an apparent error on the face of order/ judgment as finding of fact is contrary to the actual facts and original records which constitutes an error apparent on the face of record.

20. He stated that it is the petitioners in the review application who indicated that in the light of the DoPT circular, the case of the respondent could be reconsidered and re-examined based on the receipt of fresh application and financial status, but the Tribunal overlooking that order directed appointment of the respondent straightway. He submitted that the fresh evaluation of the respondent was imperative in view of the fact that his financial condition and other parameters may have changed and there may be more deserving cases than him. It was the endeavour of Mr.

Singh to submit that the Tribunal in Para 2.3 has stated that there were five vacant posts of Safaiwala. However, five vacancies of Safaiwala indicates deficiency of GE (East), Bareilly and not clear vacancies released by competent authority for compassionate appointment inasmuch as compassionate appointment is made against 5% of total vacancies and that too when the same is released by competent authority. As per the relevant rules and instructions, vacancies are filled on receipt of local recruitment sanction from the competent authority for filling 5% quota of compassionate appointment. It escaped the notice of the Tribunal that the impugned order dated August 29, 2012 has been issued after taking all aspects of the respondent in the board in which his marks were 66 and number of vacancies were 25 and the respondent's merit was 110 and the cut-off marks of the last candidate was 78. Therefore, there is no merit in the case of the respondent in the OA for compassionate appointment.

21. That apart, he also stated that the position of the respondent being much below as compared to the last selectee and the number of vacancies being limited, there is no occasion for the petitioners herein to offer appointment to the respondent along with other candidates because of non-availability of vacancy. He submitted that the speaking order passed by the petitioners herein was justified in the facts of this case and the Tribunal could not have interfered with the decision which was the subject matter of the said order.

22. On the other hand, learned counsel for the respondent

would justify the impugned order of the Tribunal by stating once there is a recommendation in favour of the respondent, there is no reason for the petitioners to deny the appointment to the respondent as the recommendation surely signifies the circumstances of the family of the deceased employee which required immediate action to tide over the situation resulting in the death of an earning member in the family. She seeks the dismissal of the writ petition.

23. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal is justified in directing the petitioners to give compassionate appointment to the respondent herein. Most of the facts are not in dispute.

24. No doubt, there was a recommendation in favour of the respondent by a preliminary Board which processed the application and the documents of the respondent. The grant of compassionate appointment was to be considered by the Zonal Board at the Headquarters. According to Mr. Singh, the Zonal Board is the main Board and such a process is followed in every such case, i.e., recommendation made by a preliminary board to the Zonal Headquarters. According to him, it is the Zonal Headquarters which considers the applications of all the applicants and by determining the *inter-se* merit for grant of compassionate appointment from amongst the applicants who have applied for compassionate appointment gives compassionate appointment based on a marking system.

25. We may at the outset submit, the respondent has not challenged the process followed by the Zonal Board for making a compassionate appointment. Respondent has also not challenged the marks secured by him as 66. He has also not challenged the cut-off marks of 78 of the last selectee for appointment.

26. If that be so, there is a difference of almost 12 marks between the last selectee and the respondent. That apart, the merit of the respondent was 110. The respondent having not secured marks above 78 was not within the 25 candidates selected for compassionate appointment. It is a conceded case of the respondent that the only recommendation which was made in his favour by Board of Officers was by stating, he be granted compassionate appointment. Such a recommendation would not be in the nature of a final decision to be accepted by the Zonal Board. This we say so, the Zonal Board is not only considering the application of the respondent but also the applications of other candidates who have applied for a similar benefit. It is on an *inter-se* assessment based on marking criteria that a decision has been taken.

27. If that be so, the process evolved by the petitioners and the recommendations made by the Zonal Board cannot be faulted. There can be persons, who are below the last selected candidate but above the respondent, who have a prior right having secured more marks than the respondent for such an appointment. Clearly the direction of the Tribunal was by overlooking the aforesaid important aspects. It is despite the fact that the impugned order

which was challenged before the Tribunal dated August 29, 2012 states in clear terms, the process evolved by the petitioners and their decision as to why the respondent is not entitled to a compassionate appointment, which according to us, has been clearly overlooked. The process evolved is a well laid-out process; which is not under challenge. That apart, it is the case of the petitioners that there is no vacancy existing against the quota meant for making compassionate appointment which aspect has also been overlooked by the Tribunal. The appointment with which we are concerned, is pursuant to an application submitted by the respondent in the year 2009, and fourteen years have gone by and additionally, we find that the wife of the deceased and his family is receiving family pension. It has received terminal benefits of ₹3.89 Lakhs and income is being earned by members of the family including from a property. Keeping in view the totality of the facts, we are of the view, the Tribunal has clearly misdirected itself in giving a direction in the manner, it has given in the impugned order. The same is unsustainable. The impugned orders dated May 23, 2017 and August 21, 2017 of the Tribunal are liable to be set aside. It is ordered accordingly.

28. The writ petition is allowed and disposed of. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 22, 2023/jg