

02.12.2024
(M/L-3)
Ct. No.4
(B.K.N.)

W.P.C.T. 216 of 2024

**Rana Mukherjee
Vs.
Union of India & Ors.**

Mr. Soumava Mukherjee,
Ms. Shreejita Sen
...for the Petitioner

Mr. Animesh Mukherjee,
Mr. Rameshwar Sinha
...for the Respondents

1. Heard learned counsel for the petitioner and the learned counsel for the Union of India.
2. The petitioner's father was working in the Geological Survey of India (G.S.I.) and became medically incapacitated. On such medical ground he was retired with effect from 17th September, 2001. As per the provisions contained in Rule 38 of the C.C.S. Pension Rules, 1972 the father sought the petitioner's appointment on compassionate ground. The same was rejected on 8th May, 2003. The rejection was assailed in O.A. 659 of 2003 which was also dismissed on 10th April, 2007.
3. Since the authorities had taken into consideration the fact that the petitioner's father was above the maximum age limit of 55 years.

4. The High Court, in the writ proceedings arising out of W.P.C.T No. 585 of 2007 vide order dated 10th August, 2016 directed that the petitioner's claim be considered for compassionate appointment by relaxing the maximum age limit of the petitioner. The Writ Court took notice of the fact that the petitioner was suffering from some physical disability; and also since the delay in consideration of the petitioner's case has occurred on account of pendency of the matter in Court. The Court was thus of the view that age bar shall not be raised against the petitioner.
5. Even after passing of the High Court order the authorities were not taking any steps. The petitioner thereafter moved a contempt application.
6. During the contempt proceedings, the authorities had considered the petitioner's claim by an order dated 8th April, 2022. The petitioner was, therefore, allowed liberty to assail this fresh consideration of the petitioner's claim for compassionate appointment.
7. The letter dated 8th April, 2022 whereby the petitioner's claim was considered was assailed before the Tribunal in O.A. 120 of 2023. The O.A. was dismissed by taking into consideration the fact that the petitioner's claim for compassionate

appointment was placed before the compassionate appointment committee on five consecutive occasions. Starting from the year 2006-2007 onwards. The petitioner's claim was thus assessed with reference to the merits of his claim along with all other applicants. They were allotted points on several parameters. Having regard to the limited number of vacancies for appointment against compassionate grounds the inter se merit of the competing candidates under the compassionate quota was considered.

8. After such inter se consideration of merits of the competing candidates under the compassionate quota on five consecutive occasions from 2006-2007 onwards it was found that the petitioner was much below the marks awarded to the candidates who had been awarded the benefit of compassionate appointment.
9. When his candidature was considered in the 2016-2017 by the Compassionate Appointment Committee (CAC) the petitioner was awarded 65 marks whereas the last recommended candidate had secured 82 marks. In 2017-2018 he secured 66 against the cut off marks 74. In the year 2018 he secured 69 against the cut off of 74, and in 2019 he secured 65 against cut off of 73. In his last consideration he secured 66 marks against

the requisite cut off marks of 77. The last candidate recommended in all the five years when the petitioner's claim was considered, was having higher marks/points than the petitioner. This aspect of the matter is not disputed.

10. The petitioner's contention, however, is that the award of marks on the various parameters was to the detriment of the petitioner. It is the petitioner's specific case that the others who have been awarded the benefit of compassionate appointment by giving them higher marks were awarded undue marks under the various parameters; whereas the petitioner was awarded less marks than what was due to him.

11. It is his submission that the petitioner was entitled to marks as specified in Annexure P/20 of the supplementary affidavit. Had the petitioner been given marks as claimed in Annexure P/20 he would have been given the compassionate appointment in place of the other two persons whose marks he has compared with in the table annexed at Annexure P/20 of the supplementary affidavit.

12. We find that the comparative assessment of marks as specified in Annexure P/20 was not placed before the Tribunal. The petitioner's counsel, however, submits that the various replies under

R.T.I. containing marks position was before the Tribunal. The Tribunal ought to have considered the same.

13. We are not in agreement to such submission on behalf of the petitioner for the reason that in the O.A. filed by the petitioner no such specific case has been made out with reference to the two persons with whom the petitioner has sought to raise a comparison in Annexure P/20.
14. We also find that the other two persons with whom he is competing in the matter of grant of marks on the various parameters are not parties to the proceedings either before the Tribunal or before this Court.
15. On this ground alone the petitioner's contention that this Court ought to look into the marks awarded to the petitioner and the other two persons and make a comparative assessment as contemplated under Annexure P/20 is unacceptable.
16. Having said that we would further add that the scope of judicial review in such matters is by now settled by law. The Court is not required to go into re-assessment of the marks and carry out a comparative assessment of inter se merit of candidates competing for grant of compassionate appointment. The scope of judicial review under

Article 226 of the Constitution of India is by now a settled law. While exercising the jurisdiction of judicial review, normally the Court is not expected to sit as an appellate authority over the decision of the administrative authority. The limited scope of judicial review is to sit in judgment only on the correctness of the decision-making process and not on correctness of the decision itself. Court in exercise of powers of judicial review is normally not expected to indulge in reassessment of the comparative merits of the candidates. Interference in such matters of selection/appointment is normally restricted to decisions vitiated by bias, malafides and breach of the procedure governing the selection. In this connection we refer to decision of the Apex Court in the case of ***Mohd. Mustafa –Vs.- the Union of India and Others*** reported in ***(2022) 1 SCC 294***.

17. In the present case the issue is only whether the claim has been considered as per the procedure specified. To that effect we find no infirmity. In exercise of writ jurisdiction We are not inclined to go into the self serving comparative assessment of marks as specified in Annexure P/20 for the reason indicated above; and also because the other two persons with whom the petitioner is

claiming comparative assessment have not been made parties to the proceedings.

18. The writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)