

2024:PHHC:095079-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10235 of 2019 (O&M)

Date of Decision: 24.07.2024

AJAY KUMAR SHARMA

..... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

.... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHYINDER KAUR**

Present: Mr. Anshul Jain, Advocate
for petitioner.

Ms. Puneeta Sethi, Sr. Panel counsel
for respondent-UIOI.

Mr. Yashdeep Shah, Advocate for
Dr. Deepak Jindal, Advocate
for respondents no.2 to 5.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside order dated 08.01.2019 (Annexure P-1), passed by learned Central Administrative Tribunal, Chandigarh Branch, Chandigarh (for short CAT) whereby OA No.060/01423/2017, filed by petitioner has been rejected. Petitioner filed the above OA for setting aside order dated 18.09.2017 (Annexure A-8), vide which his claim for appointment on compassionate basis was rejected.

2. It is the case of petitioner that his father namely Mr. Kamlesh Kumar Sharma working as Executive Engineer (Civil) BSNL Civil Division,

Ferozepur, passed away on 16.10.2006 while still in harness. Petitioner is stated to have applied immediately for appointment on compassionate basis with all requisite documents in the year 2006. However, when no information was received, petitioner's brother Rajiv Kamal Sharma sought information regarding status of the application for appointment under Right to Information Act, 2005 (for short RTI Act). As per the information supplied vide communication dated 29.05.2017 by General Manager (HR) Administration-cum-CPIO, it transpired that petitioner's case had been considered in the meeting of Circle High Power Committee under Chairmanship of CGMT, Punjab Circle, but was not recommended purportedly on the ground of petitioner securing a low score of 29 positive points against a minimum of 55 points required as per BSNL Corporate Guidelines. Legal notice was thereafter issued by petitioner on 11.08.2017 (Annexure A-7), which was duly replied to by respondent-BSNL on 18.09.2017 (Annexure A-8).

3. OA No.060/01423/2017 was then filed by petitioner with the plea that he was never conveyed any decision of the Circle High Power Committee regarding rejection of his case for appointment on compassionate basis. As soon as he received information, the OA was filed. Moreover, rejection of petitioner's claim is illegal and arbitrary inasmuch as petitioner belongs to the SC category, therefore, benefit thereof should have been afforded. Learned Tribunal on considering facts and circumstances of the case as well as documents on record did not find any merit in the claim raised by petitioner. It was held that first and foremost delay in availing the remedy was not explained. Moreover, the High Power Committee considered 42 persons for

appointment on compassionate basis. Out of a total of 42 cases including that of petitioner, cases of 18 persons who had scored 55 or more points, were recommended for appointment on compassionate basis. 11 OC candidates, 01 OBC candidate and 06 SC candidates were recommended for appointment by the High Power Committee to BSNL Corporate Office. Argument by the petitioner that SC category candidates were not favoured, was found to be unsubstantiated. Petitioner, it was noted earned only 29 points under the Weightage Point System whereas a minimum of 55 points were required to be eligible for consideration for appointment on compassionate basis. Aggrieved therefrom present writ petition has been filed.

4. Learned counsel for petitioner vehemently argues that learned Tribunal has grossly erred in law and on facts in dismissing OA No.060/01423/2017, filed by petitioner. Petitioner was never communicated the order declining appointment to him on compassionate basis and it is only when he sought information under RTI Act that petitioner came to know about rejection of his case. OA in question was filed immediately in the year 2017, therefore, it cannot be said that there was any delay in filing of OA. Learned counsel relies upon judgment of Hon'ble the Supreme Court in ***Supriya Suresh Patil @ Sow Supriya Pratik Kadam Vs. State of Maharashtra and others 2008(3) SCT 288***, to substantiate his case. It is thus prayed that this writ petition be allowed.

5. Learned counsel for respondents have opposed the writ petition and seek dismissal of the same.

6. We heard learned counsel for the parties and have perused the file.

7. It is a matter of record that claim for appointment on compassionate basis was raised by petitioner in the year 2006 but no action whatsoever was taken by him till filing of RTI by petitioner's brother and submission of legal notice dated 11.08.2017. Argument raised by learned counsel for petitioner that he was never communicated the rejection order, is of no avail to him because even if it is so accepted, it cannot be expected that a person would sit silent over the matter for such long years. Employment on compassionate basis is not a vested right. It cannot be claimed or offered after lapse of time or after the crisis is over. Gainful reference in this respect can also be made to judgment of Hon'ble the Supreme Court in State of *State of Jammu and Kashmir Vs. Sajid Ahmed Mir, AIR 2006 (SC)2743*, wherein it was held that grant of appointment on compassionate basis after lapse of considerable period of time after the death of a Government employee would not be in furtherance of the object of a scheme for compassionate appointment. Gainful reference in this respect can also be made to judgment of Hon'ble the Supreme Court in *The State of West Bengal Vs. Debabrata Tiwari and others 2023 AIR (SC) 1467*. Moreover, petitioner's case was considered and rejected as he did not secure necessary benchmark. Furthermore, it is to be noted that provision for appointment on compassionate basis is a clear departure from general provisions providing for appointment to a post. Such appointment is clearly not a source of recruitment. It is a settled position that appointment on compassionate basis is

not a vested right available to any person and neither is it a mode of alternate recruitment. The same is a measure adopted by an employer to help the family of the deceased employee to tide over an immediate crisis which may arise on death of such employee or overcome the state of penury which visits them on such death. The Hon'ble Supreme Court in *Umesh Kumar Nagpal Vs. State of Haryana and others, 1994(3) SCT 174* has held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rational nexus to the object sought to be achieved viz. relief against destitution. It is further observed that compassionate appointment can't be claimed when the crisis is over and neither can it be offered on an *ad hoc* basis. The Hon'ble Supreme Court in State of *Madhya Pradesh and others Vs. Amit Sriwas, 2020(10) SCC 496* has reiterated that there is no inherent right to appointment on compassionate basis. It is a right based on certain criteria and is to provide support to a needy family. Reliance by learned counsel for petitioner on *Supriya's* case (*supra*) is of no avail as it is clearly mentioned in para 4 thereof that the order was passed in exercise of jurisdiction under Article 142 of the Constitution of India for doing complete justice and hence, should not be treated as a precedent.

8. No other argument has been addressed.

9. Learned counsel for petitioner is unable to point out any illegality, infirmity or irregularity in the impugned order dated 08.01.2019, passed by learned CAT, which calls for interference.

10. Keeping in view the facts and circumstances as above, this writ
petition is dismissed with no order as to cost.
11. Pending miscellaneous application(s), if any, stand(s) disposed of
accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

24.07.2024

Sunil	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No