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

\+ W.P.(C) 11494/2021

ASHISH .....Petitioner

Through: Ms. Rosy Sharma, Advocate.

versus

CANARA BANK .....Respondent

Through: Mr. Puneet Taneja, Senior Advocate with Mr. Manmohan Singh Narula, Mr. Amit Yadav and Mr. Anil Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **16.12.2024**

1. This writ petition has been preferred on behalf of the Petitioner laying a challenge to communication dated 07.11.2020 whereby Petitioner was informed that his request for compassionate appointment could not be acceded to as there were no mitigating factors/conditions which deserve immediate assistance for relief by compassionate appointment. Direction is sought to the Respondent to grant compassionate appointment to the Petitioner on a suitable post depending on his qualification and eligibility.

2. Facts to the extent necessary and relevant are that the deceased father of the Petitioner, namely Mr. S.K. Magwane joined service of the Respondent bank as a House Keeper-cum-Peon on 11.06.1993 and was lastly employed at the Rohini Branch of the Bank. On 15.05.2019, while at work, he developed a breathing problem and was taken to a hospital, but was declared brought dead. Being the son of Late Mr. S.K. Magwane, Petitioner made an application on 06.02.2020 for compassionate appointment in terms of the policy of the Bank. By a communication dated 07.11.2020, Petitioner

was informed of the rejection of his application by the competent authority, in response to which he sent a legal notice dated 19.01.2021, but his request was again declined on 05.02.2021 and Petitioner approached this Court.

3. Learned counsel for the Petitioner submits that the impugned communication does not contain any reason why the application of the Petitioner was rejected for compassionate appointment. Bank has a policy for compassionate appointment and it is not spelt out which of the parameters in the policy are not fulfilled by the Petitioner. It is urged that while compassionate appointment may not be a matter of right, but fair consideration is a vested right. Bank has made no effort to ascertain the financial status of the family after the death of Petitioner's father. Petitioner is pursuing his Bachelors Degree and is unemployed. With a meagre amount of pension, it is difficult to make the two ends meet as the mother of the Petitioner suffers from several medical ailments and the grandfather is also paralysed.

4. Mr. Puneet Taneja, learned Senior Counsel for the Respondent, on the other hand supports the impugned decision rejecting the application of the Petitioner primarily on the ground that several benefits have been released to the widow of Late Mr. S.K. Magwane, such as provident fund, gratuity, family pension arrears, Death Relief amount and in this context draws the attention of the Court to the counter-affidavit filed. It is also argued that while there is no dispute that Petitioner is the son of Late Mr. S.K. Magwane, his dependency is questionable.

5. Heard learned counsel for the Petitioner and learned Senior counsel for the Respondent.

6. There is merit in the contention of the Petitioner that there is no

reason given in the impugned communication dated 07.11.2020, save and except, stating that as there are no mitigating factors/conditions to be considered which deserve immediate assistance for relief by providing compassionate appointment and therefore, competent authority has not considered Petitioner's application for compassionate appointment favourably. There is no dispute that Bank has a Scheme for compassionate appointment effective from 05.08.2014 and dependent family member has been defined to include a wholly dependent son. Clause 6 of the Scheme provides eligibility and one of the conditions is that the family is indigent and deserves immediate assistance. The second and only other condition is that the applicant should be eligible and suitable for the post in all respects under the relevant Recruitment Rules. From the impugned communication, it is evident that none of these factors were apparently considered as there is no finding that the family's penury status is not deserving of grant of compassionate appointment to the Petitioner and/or Petitioner does not meet the eligibility conditions in terms of the relevant Recruitment Rules. The Supreme Court has time and again held that an order dealing with rights of parties must be a reasoned and speaking order so that it is known what factors weighed with the concerned authority while taking an adverse decision.

7. It is true that it is not a matter of right to claim compassionate appointment but once there is a policy/scheme providing for compassionate appointment and an application is made, the applicant does have a right to a fair consideration. The only reason that is discernible for rejecting the application of the Petitioner as emerging from the counter-affidavit is that the Bank has released certain benefits, such as family pension, provident

fund etc. in favour of the mother of the Petitioner. First and foremost, this reason cannot be taken into consideration as this is not a reason to be found in the impugned communication. In ***Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405,*** the Supreme Court held that reasons must be found in the order and cannot be imported from the pleadings filed by the parties before the Court. Secondly, the proposition sought to be made by Mr. Taneja that compassionate appointment can be denied on the ground that some benefits, such as family pension has been paid to the widow cannot be accepted in law and this position is no longer *res integra*. In this context, I may allude to the judgment of the Supreme Court in ***Canara Bank and Another v. M. Mahesh Kumar, (2015) 7 SCC 412***, where the Supreme Court held as follows:

> *"19. Insofar as the contention of the appellant Bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of the 1993 Scheme says that in case the dependant of the deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the Bank would keep the appointment open till the minor attains majority.*
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> *20. In Balbir Kaur v. SAIL [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] , while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in para 13, this Court held as under : (SCC p. 503)*
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> > *"13. ... But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the*

breadearner can only be absorbed by some lump sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

21. Referring to SAIL case [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] , the High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the Bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.

22. Considering the scope of the scheme "Dying in Harness Scheme 1993" then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference."

8. To counter this submission, Mr. Taneja relies upon the decision of the Supreme Court in ***State Bank of India and Others v. Jaspal Kaur, (2007) 9 SCC 571***, however, I am unable to read the judgment as laying down a proposition that only because terminal benefits of a deceased employee have been released to the dependent family members, an application for compassionate appointment ought to be rejected. Certainly, in the judgment there is an emphasis on the requirement of considering the penury status of the family while considering a request for compassionate appointment and this legal proposition is beyond any debate.

9. In my view, the Respondent has not considered the application of the Petitioner on the touchstone of the parameters laid down in their policy for compassionate appointment, i.e., penury status of the family and the

eligibility of the Petitioner as per Recruitment Rules for the post in question and the impugned communication is completely non-speaking and unreasoned. The decision of the competent authority rejecting the application of the Petitioner deserves to be re-considered in light of the policy and the settled law on compassionate appointments, but without taking into account, the benefits disbursed to the mother of the Petitioner, which she has received not out of any benevolence of the Bank but as a matter of right for the services rendered by her deceased husband, who died in harness. Counsel for the Petitioner has also pointed out that the Senior Manager of the Bank had recommended in favour of the Petitioner looking into the circumstances of the family and even this recommendation has been ignored by the competent authority.

10. Accordingly, this writ petition is disposed of with a direction to the Respondent to re-consider the application of the Petitioner for compassionate appointment and take a decision within eight weeks from the date of receipt of this order. The decision shall be taken in light of the scheme for compassionate appointment, recommendation of the Senior Manager of the Bank and the judgment of the Supreme Court in ***M. Mahesh Kumar (supra)***. Needless to state that if the decision is in favour of the Petitioner, his case will be processed for compassionate appointment forthwith. If the decision is otherwise, a reasoned and speaking order will be passed, which shall be communicated to the Petitioner within one week from the date of the decision and Petitioner will be at liberty to take recourse to legal remedies, if so advised.

JYOTI SINGH, J

DECEMBER 16, 2024
B.S. Rohella