

GAHC020000832024

2025:GAU-NL:373



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/29/2024

SHRI M. PAPAN KHIAMNIUNGAN
NOKHU VILLAGE
P.O. NOKLAK
TUENSANG DISTRICT
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 6 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
P AND AR DEPT
NAGALAND KOHIMA

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
HOME DEPT.
NAGALAND KOHIMA

4:THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

5:DEPUTY INSPECTOR GENERAL OF POLICE (HQ)
NAGALAND KOHIMA

6:THE COMMANDANT
5TH NAP BATTALION
PHEK NAGALAND

7:SHRI. JOSEPH HESSO
INSPECTOR GENERAL OF POLICE (HQ)
NAGALAND KOHIM

Advocate for the Petitioner : I. IMTI LONGCHAR, JOHN WALLING,KAMONGLA
LONGKUMER,OBANGNENLA LONGCHAR,VIKHONO KISO,SUPONGWATI WALLING

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocates for the petitioner : Mr. I. Imti Longchar, Advocate

Advocate for the respondents : Mr. M Longkumer, Govt.Advocate
Mr. I. Jamir, Advocate

Date of hearing : 08.11.2024

Date of judgment : 13.08.2025

JUDGEMENT AND ORDER (CAV)

Heard Mr. I. Imti Longchar, learned counsel for the petitioner. Also heard Mr. M. Longkumer, learned Junior Government Advocate, Nagaland for the respondents no. 1 to 6 and Mr. I. Jamir, learned counsel for the respondent no.7.

2. This writ petition has been filed by the petitioner seeking appointment as a constable on compassionate grounds. The facts presented before this Court are that the elder brother of the present petitioner, namely, Sengnya Khim @ Senya Khim, who

was working as a Constable No.53943 under "F Coy 5th Nagaland Armed Police, Phek, met with an accident while on duty and succumbed to his injuries on 10.11.2009 in the hospital. Pursuant to his demise, the petitioner, being the younger brother of the deceased, applied on 05.12.2009 for appointment on compassionate grounds as Constable (GD) to the Commandant, Superintendent of Police, however, no action was taken by the respondent authorities on his application. Being aggrieved, he filed WP(C) No. 88(K)/2016, which was disposed of by a Coordinate Bench of this Court on 01.06.2016 with a direction to appoint the petitioner in accordance with the Office Memorandum dated 13.03.2002. The same, however, was not complied with prompting the petitioner to approach this Court again by filing WP(C) No.15(K)/2017 which came to be disposed of on 14.03.2017. By the subsequent order, a direction was issued to the respondents to appoint the petitioner as and when his turn comes in terms of the seniority. However, by the impugned letter dated 03.11.2022, the Deputy Inspector General of Police (HQ), Nagaland, i.e. the respondent no. 5, informed the petitioner's counsel that the petitioner's case could not be considered. Aggrieved thereby, the present writ petition has been filed.

3. The respondents no. 1 to 6 have filed their affidavit-in-opposition contesting the case of the petitioner. It is stated therein that by OM Dated 13.02.2022, the scheme of compassionate appointment for dependents of the deceased Government Servants was partially modified by the OM dated 16.01.2012, whereby the brother/sister of the Government servant was excluded from being eligible to be appointed on being compassionate grounds. The said OM dated 16.01.2012 was again superseded by the OM dated 17.09.2015, whereby the only the spouse/son/daughter of the deceased employee was eligible for appointment on compassionate ground. Accordingly, the petitioner being the brother of the deceased Constable No. 53943 under "F Coy 5th Nagaland Armed Police, Phek was not eligible to be considered under the Scheme of 2015.

4. The Respondent No. 7, the Inspector General of Police (HQ), Nagaland, Kohima, also contested the case by filing an affidavit wherein he denied the allegations made

against him, including the claim that there was any malafide intention in the non-consideration of the writ petitioner's claims.

5. Learned counsel for the petitioner in support of his contention has referred to the judgment of the Apex Court rendered in *State of Madhya Pradesh and Others vs. Ashish Awasthi* reported in (2022) 2 SCC 157 and the judgment passed by the Coordinate Bench of this Court in **WP(C) No.141/2020 dated 12.11.2024**. Learned counsel for the respondents in turn have pressed into service the judgment of the Apex Court rendered in ***NC Santhosh vs. State of Karnataka and Others*** reported in (2020) 7 SCC 617 and submitted that it is the scheme of the Office Memorandum which is in force on the date of consideration shall be applicable for deciding the claim of a person, seeking appointment on compassionate ground. The reference is also made to the judgment of the Apex Court rendered in the State of ***Himachal Pradesh and Others. vs. Abhishek Kumar*** reported in (2024) 5 SCC 280.

6. Learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The judgments pressed into service have also been carefully noted.

7. A careful perusal of the Judgment and Order dated 01.06.2016 passed in WP(C) No.88(K)/2016 by the Kohima Bench, Gauhati High Court, shows that a coordinate Bench had disposed of the said writ petition filed by the petitioner at the motion stage with a direction to the respondents no. 4 & 5 to consider the application dated 05.12.2009 filed by the petitioner praying for compassionate appointment strictly in terms of the OM dated 13.02.2002 within a period of 3 (three) months from the date of receipt of a certified copy of this order. The said order is extracted below:

“ The petitioner's elder brother late constable Sengnya Khim @ Senya Khim died in harness on 10.11.2009 who was also the sole bread earner in the family. With the untimely demise of his elder brother, the petitioner's family faced great hardship. He therefore made an application for appointment on compassionate ground before the respondent No.5 i.e. the

commandant, 5th NAP Battalion, Phek, Nagaland. The sole grievance of the petitioner before this Court is that his application dated 05-12-2009 has not been considered by the respondents.

It is also submitted that while the petitioner made the application for appointment on compassionate ground, the O.M. dated 13-02-2002 was in force and therefore he is eligible for appointment on compassionate ground under the said O.M. The petitioner has also stated in paragraph-7 of the present writ petition that the petitioner has been pursuing his case all along and thereafter another legal notice was also served to the respondent No.4 i.e. the Director General of Police, Nagaland, Kohima on 04-02-2015 and therefore there is now inordinate delay or laches on the part of the petitioner.

Considering the limited prayer involved in this writ petition, this writ petition is disposed of at the motion stage with a direction to the respondent No.4 & 5 to consider the application dated 05-12-2009 filed by the petitioner praying for appointment on compassionate ground strictly in terms of the O.M. dated 13-02-2002 within a period of 3(three) months from the date of receipt of a certified copy of this order.

With the above observation and directions, this writ petition is disposed of.

8. Thereafter, the petitioner again approached this Court by filing WP(C) No.15(K)/2017, which also came to be disposed of vide judgment and order dated 14.03.2017 with the following order:

“Late Constable Sengnya Khim @Senya Khim who was the elder brother of the petitioner died in harness on 10/11/2009. He was the sole earner in the family and with his untimely demise, the petitioner's family underwent grant hardship. Therefore, the petitioner made an application for appointment on compassionate ground before the respondent No.5/Commandant, 5th NAP Battalion Phek, Nagaland. As the case of the petitioner was not considered, he filed W.P. (C)No.88(K)/2016 before this Court. The said writ petition was disposed of by order dated 1/6/2015 directing the Director General of Police, Nagaland Kohima and the commandant, 5th NAP Battalion Phek to consider the application of the

petitioner for appointment on compassionate ground in terms of the Office memorandum dated 13/2/2002 issued by the Department of Personnel & Administrative Reforms, Nagaland within a period of 3(three) months from the date of receipt of a certified copy of the order.

The present writ petition has been filed by the petitioner on the ground that despite direction given by this Court in W.P.(C) No.88(K)/2016, no steps have been taken by the respondents for consideration of the petitioner for appointment on compassionate ground.

Considering the facts and circumstances of the case, Ms.Livika, learned Government Advocate was directed to take instructions on 7/3/2017.

Today, when the matter is called up, the learned Government Advocate has produced a communication dated 10/3/2016 wherein the list of 5th NAP personnel who died on active service w.e.f. 13/2/2002 to 31/12/2016 are listed. From amongst the list of 94 personnel, the name of the petitioner's late brother appears at Sl./No.39 and his year of death is indicated as 2009.

Ms. Livika, learned Government Advocate submits that from the list of 94 NAP personnel, compassionate appointment has been made against Sl.No.1 to 22 in terms of seniority and that the case of the petitioner would be considered as and when his turn come strictly in terms of the seniority as projected in the communication dated 10/3/2016.

In that view of the matter, this writ petition is disposed of directing the respondents to strictly follow the seniority as indicated in the communication dated 10/3/2016 and thereafter consider the case of the petitioner as and when his turn comes.

With the above observation and direction, this writ petition is disposed of."

9. By the first order which was passed on 01.06.2016 in WP(C) No.88(K)/2016, there was a specific direction by this Court to consider the case of the petitioner strictly in terms of the OM dated 13.02.2022. That order not having been complied

with, the petitioner again approached this Court by filing WP(C) No.15(K)/ 2017 which was disposed of by order dated 14.03.2017 recording the submissions of the learned Government Advocate that in the list of 5th Nagaland Armed Police Personnel, who died on active service with effect from 13.02.2002 to 31.12.2016 comprising of a list of 94 personnel, the name of the petitioner's late brother appeared at Serial No.39 and his year of death is indicated as 2009. The Court also recorded the submission of the learned Government Advocate that from the list of 94 Nagaland Armed Police Personnel, compassionate appointment has been made against the serial no.1 to 22 in terms of the seniority and that the case of the petitioner would be considered as and when his turn come strictly in terms of the seniority as projected in the communication dated 10.03.2016.

10. There is no dispute that against these orders i.e. order dated 01.06.2016 passed in WP(C) No.88(K)/2016 and order dated 14.03.2017 passed in WP(C) No.15(K)/2017, no appeal or review has been filed by the respondent authorities. The explanation now sought to be placed before the Court is that in terms of the judgment of the Apex Court rendered in the matter of NC **Santhosh** (supra), the consideration of the applicant for a claim of compassionate appointment will be on the basis of the policy prevalent on the date of consideration. There is no quarrel on the proposition and law laid in NC **Santhosh** (supra) case which is also followed in **Abhishek Kumar** (supra). In **Secretary to the Government Department of Education (Primary) and Others vs. Bheemesh @ Bheemappa** reported in (2021) 20 SCC 707, the Apex Court considered all the judgments earlier rendered in respect of compassionate appointment by the Apex Court. Paragraph 13 referred **Bheemesh** (supra) is quoted herein below:

“13. The interpretation adopted by this Court varied depending upon the nature of the amendment. This can be seen by presenting the decisions referred to by the learned Senior Counsel for the respondent in a tabular column as follows:

Citation	Scheme in force on the date of death of the government servant	Modified scheme which came into force after death	Decision of this Court
SBI vs. Jaspal Kaur (2007) 9 SCC 571 (a two Member Bench)	The scheme of the year 1996, which made the financial condition of the family as the main criterion, was in force, on the date of death of the employee in the year 1999.	The 1996 scheme was subsequently modified by policy issued in 2005, which laid down few parameters for determining penury. One of the parameters was to see if the income of the family had been reduced to less than 60% of the salary drawn by the employee at the time of death. Therefore, the wife of the deceased employee claimed the consideration of the application on the basis of parameters laid down in the policy of the year 2005.	Rejecting the claim of the wife of the deceased employee, this Court held that the application of the dependent made in the year 2000, after the death of the employee in the year 1999, cannot be decided on the basis of a Scheme which came into force in the year 2005.
SBI vs. Raj Kuma (2010) 11 SCC 661 (a two-Member Bench)	The employee died on 1.10.2004 and the applications for compassionate appointment were made on 6.6.2005 and 14.6.2005. On the date of death and on the date of the applications, a Scheme known as Compassionate appointment Scheme was in force.	But with effect from 4.8.2005 a new scheme for payment of ex gratia lump sum was introduced in the place of the old Scheme. The new Scheme contained a provision to the effect that all applications pending under the old Scheme will be dealt with only in accordance with the new Scheme.	This Court held that the application could be considered only under the new Scheme, as it contained a specific provision relating to pending applications.

<p>MGB Gramin Bank vs. Charawarti Singh (2014) 13 SCC 583 (a two-Member Bench)</p>	<p>The employee died on 19.04.2006 and the application for appointment made on 12.05.2006. A Scheme for appointment on compassionate grounds was in force on that date.</p>	<p>However, a new Scheme dated 12.06.2006 came into force on 06.10.2006, providing only for ex-gratia payment instead of compassionate appointment.</p>	<p>This Court took the view that the new Scheme alone would apply as it contained a specific provision which mandated all pending applications to be considered under the new Scheme.</p>
<p>Canara Bank vs. M. Mahesh Kumar (2015) 7 SCC 412 (a two-Member Bench)</p>	<p>The employee died on 10.10.1998 and the application for appointment on compassionate grounds, was made under the Scheme of the year 1993. It was rejected on 30.06.1999. The 1993 Scheme was known as "Dying in Harness Scheme."</p>	<p>The 1993 Scheme was substituted by a Scheme for payment of ex gratia in the year 2005. But by the time the 2005 Scheme was issued, the claimant had already approached the High Court of Kerala by way of writ petition and succeeded before the learned Single Judge vide a Judgment dated 30.05.2003. The judgment was upheld by the Division Bench in the year 2006 and the matter landed up before this Court thereafter. IN other words, the Scheme of the year 2005 came into force: (i) after the rejection o the application for compassionate appointment under the old scheme; and (ii) after the order of rejection was set aside by the Single Judge of the Judge of the High Court.</p>	<p>This Court dismissed the appeals filed by the Bank on account of two important distinguishing features, namely, (i) that the application for appointment on compassionate grounds were rejected in the year 1999 and the rejection order was set aside by the High Court in the year 2003 much before the compassionate appointment Scheme was substituted by an ex gratia Scheme in yea 2005; and (ii) that in the year 2014, the original scheme for appointment on compassionate grounds stood revived, when the civil appeals were decided.</p>

<p>Indian Bank vs. Promila</p> <p>(2020) 2 SCC 729</p> <p>(a two-Member Bench)</p>	<p>The employee died on 15.1.2004 and the application for appointment was made by his minor son on 24.01.2004. On these dates, a circular bearing No.56/79 dated 04.04.1979 which contained a Scheme for appointment on compassionate grounds was in force. But the Scheme provided for appointment, only for those who do not opt for payment of gratuity for the full term of service of employee who died in harness.</p>	<p>A new Scheme was brought into force 24.07.2004 after the death of the employee. Under this Scheme an ex gratia compensation was provided for, subject to certain conditions. After the coming into force of the new Scheme, the claimant was directed by the bank to submit a fresh application under the new Scheme. The claimant did not apply under the new Scheme, as he was interested only in compassionate appointment and not monetary benefit.</p>	<p>In the light of the decision in Canara Bank vs. M. Mahesh Kumar, this Court held that the case of the claimant cannot be examined in the context of the subsequent Scheme and that since the family had taken full gratuity under the old scheme, they were not entitled to seek compassionate appointment even under the old Scheme.</p>
<p>NC Santhosh vs. State of Karnataka</p> <p>(2020) 7 SCC 617</p> <p>(a three-Member Bench)</p>	<p>Under the existing Scheme referable to Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1999, a minor dependant of a deceased government employee may apply within one year from the date of attaining majority.</p>	<p>But by virtue of an amendment to the proviso to Rule 5, a minor dependant should apply within one year from the date of death of the government servant and must have attained the age of 18 years on the date of making the application. Applying the amended provisions, the appointment of persons already made on compassionate.</p>	<p>After taking note of a reference made in SBI vs. Sheo Shankar Tewari to a larger Bench, a three-Member Bench of this Court held in NC Santhosh that the norms prevailing on the date of consideration of the application should be the basis for consideration of the claim for compassionate appointment. The Bench further held that the dependant of a government employee, in the absence of any vested right accruing on the date of death of the government</p>

			employee, can only demand consideration of his application and hence he is disentitled to seek the application of the norms prevailing on the date of death of the government servant.

After detailed analysis of the earlier precedent, the Apex Court held that *“keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.*

If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we

have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions.”

11. The Apex Court further held that there is no principle of statutory interpretation, which permits a decision on the applicability of a rule, to be based on an indeterminate or variable factor. The Apex Court held that the Rule of interpretation, which produces different results, depending upon what individuals do and do not do, is inconceivable.

12. Having perused the judgments cited at the bar as well as the subsequent judgments rendered by the Apex Court, it is seen that there appears to be a conflict as to the yardstick that is to be adopted to decide the claims of compassionate appointments. One yardstick is to apply the scheme prevalent on the date of death of the employee and the other yardstick adopted in some other cases by the Apex Court is to apply the scheme prevalent on the date the application for compassionate appointment was considered. Because of this inherent conflict the issue was referred to be decided by the large bench in *State Bank of India SBI vs. Sheo Shankar Tewari* reported in (2019) 5 SCC 600. The matter is still pending before the larger bench. The Apex Court in **Bheemesh @ Bheemappa** (supra) was of the considered view that the interpretation as to the applicability of the modified scheme should depend only upon a determinate and fixed criteria such as the date of death and not on a indeterminate for a variable factor such as the date of filing the application or the date of considerations of the said application being filed.

13. Coming to the fact of the present case, it is noticed that there are already 2 (two) orders passed by the Coordinate Benche in earlier 2 (two) writ petitions filed by the petitioner. By order dated 01.06.2016 passed in WP(C) no.88(K)/2016, there was a specific direction to the respondents no. 4 & 5 to consider the application dated

05.12.2009 filed by the petitioner praying for appointment on compassionate ground strictly in terms of the OM dated 13.02.2002 within a period of 3 (three) months from the date of receipt of a certified copy of the order. This order was followed by another order passed by the said Coordinate Bench vide order dated 14.03.2017 passed in WP(C) No.15(K)/2017 where the said writ petition was disposed of by recording the submissions made by the learned Government Advocate that between the period of 13.02.2002 to 31.12.2016, a list of 94 personnel of Nagaland Armed Police Personnel, who died on active service within the said period, contained the name of the petitioner's late brother at serial no. 39 and his date of death indicated as 2009. The Court also recorded the submission of the learned Government Advocate that the case of the petitioner would be considered as and when his turn comes strictly in terms of the seniority projected in the communication dated 10.03.2016 which had given the list of 94 NAP personnel who died on active service. There is no explanation in the affidavit filed on behalf of the respondents as to why the direction contained in the order dated 01.06.2016 passed in WP(C) No. 88(K)/2016 was not carried out. There is no explanation as to why there is no review or appeal was filed against the said order. Accordingly, the said direction contained in the order dated 01.06.2016 in WP(C) No.88(K)/2016 had attained finality. The said direction ordered by the Writ Court would require the compliance unless a higher Court interferes with the said decision as per the procedure. The respondents cannot be permitted to sit over a direction issued by the Writ Court and consequently, take the advantage of the Scheme, which came to be subsequently amended. The clear direction in the order dated 01.06.2016 passed in WP(C) no.88(K)/2016 is that the case of the petitioner for appointment on compassionate ground has to be strictly considered in terms of the OM dated 13.02.2002 within a period of 3 (three) months. Under such circumstances, the respondents cannot be permitted to take the benefit of the subsequent amendments to the scheme without proper explanation as to why the directions contained in the order dated 01.06.2016 was not carried out. The order passed by the Writ Court, being in the nature of mandamus, must be duly complied with, and failure to do so without proper explanation may expose the respondents to proceedings for contumacious conduct. Relief granted to a litigant by a Writ Court cannot be made

infructuous by the refusal of the respondent authority to take necessary action in terms of the direction contained in the order. Under such circumstances and in the fact in the present case, the benefits sought to be taken by the respondents by referring to Apex Court judgments rendered in *NC Santhosh* (supra) will not come to the aid of the respondents. Accordingly, the claim of the petitioner has to be allowed. This Court reiterates the direction contained in the order dated 01.06.2016 passed in WP(C) No.88(K)/2016 directing the respondents to consider the claim of the petitioner in terms of the directions specified in the order dated 01.06.2016 in WP(C) No.88(K)/2016.

14. In terms of the above directions and observations, the writ petition stands allowed. No order as to cost.

JUDGE

Comparing Assistant