

Sanjay Kumar Vs. the Secretary, Govt. of India and ors.

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Court : Delhi

Decided On : Oct-28-2014

Judge : Kailash Gambhir

Appellant : Sanjay Kumar

Respondent : The Secretary, Govt. of India and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 2133/2013
SANJAY KUMAR Through Petitioner Mr. Pratap Singh, Adv. versus THE
SECRETARY, GOVT. OF INDIA & ORS. Respondents Through Mr. Vikas
Mahajan, CGSC for R1 to 5. CORAM: HON'BLE MR. JUSTICE KAILASH
GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 28.10.2014 KAILASH GAMBHIR, J.

(ORAL) 1. In the instant petition filed under Articles 226/227, the petitioner seeks quashing of the order dated 23rd July, 2012, whereby his request for appointment to the post of Peon/Mazdoor on compassionate grounds was declined, due to the non-availability of sufficient vacancies. The petitioner also seeks directions to the respondents to appoint him to the post of Peon/Mazdoor on compassionate grounds consequent to the demise of his father Balbir Singh who had died while in service on the post of Peon with respondent No.5.

2. The case of the petitioner in a nutshell is that his father Balbir Singh had expired on 3rd November, 2008 while in service on the post of Peon. The deceased employee is survived by his wife and two sons, and the petitioner herein is one of his sons. The petitioner had submitted an application on 9th March, 2009 seeking appointment on compassionate grounds. Despite the fact that the Board of Officers considered the petitioner suitable for appointment to the post of Peon, however did not give any appointment to the petitioner and finally vide letter dated 23rd July, 2012, the petitioner was denied the appointment on compassionate grounds due to the non-availability of sufficient vacancies within five percent even after giving a 3rd and final consideration to the case of the petitioner.

3. The grievance of the petitioner is that the respondents did not consider his case for appointment and overlooking his poor financial conditions went on to appoint other persons on similar grounds.

4. Mr. Pratap Singh, learned counsel for the petitioner raised a contention that, the respondents to show a lack of arbitrariness on their parts must disclose the complete particulars and also the financial background of the other candidates who were preferred over the petitioner and were granted compassionate appointments against five percent vacancies in Group C and D posts so that the petitioner is able to carry out the necessary evaluation of his financial condition vis-a-vis the selected candidates.

5. Opposing the present petition, Mr. Vikas Mahajan, the learned counsel for the respondents submits that the case of the petitioner was considered against the vacancies meant for Headquarter, Chief Engineer (Delhi Zone), pertaining to three different years but the marks secured by the petitioner were lesser than the marks secured by the other fifteen selected candidates.

6. The learned counsel for the respondents also took a stand that the case of the petitioner was considered in all three years and after filling up the fifteen vacancies, no other vacancy was available to be offered to the petitioner for appointment to the post of Peon on compassionate grounds. The learned counsel also submits that the appointment on compassionate grounds is not a matter of right and the only right which was available to the petitioner was the consideration

of his case along with the other eligible cases and no grievance can be raised by the petitioner as his case was duly considered by the respondents against vacancies for all the three years, and it is the petitioners misfortune that other candidates were found to be more deserving by the Board of Officers. The learned counsel thus submits that the petitioner has no case to seek his appointment to the post of Peon on compassionate grounds.

7. We have heard the learned counsel for the parties and given our thoughtful consideration to the arguments advanced by them.

8. To grant appointment on compassionate grounds is an exception to the general rule and the rule being that all appointments in the public services should be made strictly on the basis of open invitation of applications and comparative merit of the candidates. Neither the Government nor the Public Authorities can devise any other procedure or defy the laid down criteria under the rules for giving employment in public service. The appointment to any post on compassionate grounds is an exception to the general rule and this was carved out primarily to enable the dependent members of the family to tide over their financial crises so that after the death of the employee, the dependent members of the family do not live in penury and destitution without there being any means of livelihood. But again the cases of such dependent members seeking employment on compassionate grounds are to be accommodated against 5% reserved vacancies and where again the more deserving candidate will get precedence over the least deserving candidates. The criteria no doubt have to be based on financial resources available to the dependent family members.

9. The facts of the present case are that for the Delhi Zone there were fifteen vacancies in all for three years period and the case of the petitioner was considered against these vacancies but on comparative merit of financial stringency he had secured 71 marks, much lower than the last three candidates who were given appointment on compassionate grounds for the respective vacancy years. As per the respondents, for the vacancies 2009-2010, Smt. Manjit Kaur had secured 85 marks, for the year 2010-2011 Shri Surender Singh had secured 81 marks and for 2011-2012, Shri Sandeep Kumar had secured 78 marks.

10. The Apex Court while dealing with the issue of appointment on compassionate grounds in the case of Union of India & Anr v. Shashank Goswami & Anr (2012)11 SCC307 held as under:

There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In the case of MGB Gramin v. Chakravarti Singh AIR 2013 SC3365 the Supreme Court held as under:

Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able

to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years. In *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994) 4 SCC138 this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under: The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned... The only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis. (Emphasis added).

12. In the background of the facts, the petitioner did not succeed in securing the appointment on compassionate grounds because there were more deserving cases in comparison to the case of the petitioner and this can be borne out from the marks secured by the other selected candidates, who were appointed against the vacancies for three years for the Delhi Zone.

13. It is not the case of the petitioner that his case was not considered against the vacancies which were released for three years nor it is the grievance of the petitioner that he was denied appointment due to any malice, bias or ill motive of the officers. We were informed that the Board of Officers who undertake this exercise are all senior officers comprising of the Director (Personnel) from various zones and the Board was headed by the senior officer of the rank of Principal

Director(HQ) CEWC.

14. We find no ground to interfere with the decision taken by the Board of Officers in giving appointment to the more deserving candidates on their comparative merits against the vacancies for three years period. We also find no reason to question their wisdom and competence in selecting the fifteen deserving candidates in the absence of any allegation of bias, mala fide or ill motive on the part of the Board of Officers.

15. There is no merit in the present petition. The petition is hereby dismissed.
KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

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