

Shri Rajesh Kumar Vs. Delhi Govt. and anr.

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Court : Delhi

Decided On : Apr-07-2005

Reported in : 119(2005)DLT547

Judge : Mukundakam Sharma and; Rekha Sharma, JJ.

Appeal No. : WP(C) No. 9518/2003

Appellant : Shri Rajesh Kumar

Respondent : Delhi Govt. and anr.

Advocate for Def. : George Paracken, Adv.

Advocate for Pet/Ap. : T.C. Rathore, Adv

Disposition : Petition dismissed

Judgement :

Mukundakam Sharma, J.

1. This writ petition is directed against the judgment and order passed by the Central Administrative Tribunal on 25th August, 2003 dismissing the original application filed by the petitioner wherein the petitioner prayed for a direction to the respondent for his compassionate appointment.

2. The father of the petitioner herein died on 4th June, 2002 in harness and at the time of his death, he was working with the Directorate of Education as Upper Division Clerk (UDC). On the death of the father of the petitioner, the terminal benefits were paid to the family. A sum of Rs. 5,45,816/- was received by his family as terminal benefits. The wife of the deceased is also receiving a family pension of Rs. 2,350/- plus dearness allowance. After about six months of the death of the father, the elder son of the deceased filed an application praying for his compassionate appointment. The said request of the petitioner was considered by the respondent. But the same was rejected by the respondents by their order dated 10th April, 2003 on the ground that he was not suitable for compassionate appointment due to the reasons that the family received a sum of Rs. 5,45,816/- towards terminal benefits and that the family of the deceased is receiving a family pension of Rs.2,350/- plus Dearness allowance and that the family already owns residential house and, therefore, the case of the petitioner is not a genuine and deserving case for a compassionate appointment. The said decision of the respondent was challenged by the petitioner before the Central Administrative Tribunal. The Tribunal considered the financial condition of the family of the petitioner and also the records of the case and, thereafter on appreciation thereof, it was held that there is no penury circumstances which would entitle the petitioner for job on compassionate grounds. It was also held by the learned Tribunal that the grounds on which the request of the petitioner was rejected by the respondent was not challenged before the Tribunal and since the retiral benefits and terminal benefits are being received by the family, therefore, the case would not come within the purview of a deserving case and accordingly, the same was rejected by the Tribunal.

3. Counsel appearing for the petitioner has submitted before us that the aforesaid amount which have been received by the family of the deceased was on account of terminal benefits and therefore, the decision of the respondent that it is not a deserving case was arbitrary and unreasonable.

4. We have also heard the learned counsel appearing for the respondent who has submitted before us that only 5% posts are reserved for such appointments on compassionate ground and in that regard, a list is prepared which is reviewed

every year in terms of the policy of the respondent which is communicated under Office Memorandum dated 5th May, 2003. It is evident from the contents of the said Memorandum which provided that if compassionate appointment to genuine and deserving cases as per the guidelines contained in the Memorandum issued by the respondent is not possible in the first year, due to non-availability of regular vacancy, the Committee would review the said case to arrive at a decision as to whether the particular case needs extension for one more year. It was also communicated in the said Office Memorandum that after three years, if compassionate appointment is not possible to be given to the respondent his case would be finally closed and would not be considered again. therefore, it is established there from that the Committee is to consider and to find out which is the most genuine and deserving case amongst the persons who apply for and request for job on compassionate grounds and, thereafter, a list is prepared of the deserving and genuine cases which list is again reviewed every year up to a maximum period of three years. The father of the petitioner died on 4th June, 2002. Three years period there from is going to expire within a very short period. The case of the petitioner is found to be by the competent authority as not genuine and deserving. The said position is spelt out from the order of the respondents which was communicated by the order dated 10th April, 2003. The petitioner has not made out a case of discrimination showing that any other person similarly situated with the petitioner has been so appointed as against 5% quota reserved for compassionate appointment.

5. We have also been shown by the counsel appearing for the respondent the scheme for compassionate appointment. In para 51, it is stated that only such a family member would be eligible for appointment on compassionate ground, where there is no financial assistance provided to them.

6. Our attention was also drawn to the decision of the Supreme Court in National Hydroelectric Power Corporation v. Nanak Chand reported in 2005 (1) ALL I S L J 281, wherein it was also held by the Supreme Court that it should not be seen that the appointment on compassionate ground is not a source of recruitment, but merely by moving an application regarding the appointment being made for obtaining invitations of applications on merits. It was also held that the basic

intention of such appointment would be that as far as the death of the employee is concerned, his family is not deprived of from the means of livelihood and to enable the family to get over certain financial crisis. It was held in the said decision in the following manner :-

'In matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature o an exception to the general provision does not unduly interfere with the right of those other persons who are eligible for appointment to see appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.'

7. In the present case, it cannot be said that there is any financial crisis as a long period of three years has expired, from the date of death of the deceased.

8. In that view of the matter, we find no merit in this writ petition and the same is dismissed.