

Anil Kumar Tamrakar. Vs. General Manager.

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Court : Madhya Pradesh Jabalpur

Decided On : Dec-15-2010

Judge : Sanjay Yadav, J.

Acts : [Constitution of India](#) - Article 226 ;

Appeal No. : Writ Petition No.3845/2009 (S).

Appellant : Anil Kumar Tamrakar.

Respondent : General Manager.

Advocate for Def. : Shri K.S. Wadhwa, Adv.

Advocate for Pet/Ap. : Ms. Jailakshmi Aiyer, Adv.

Judgement :

1. Petitioner by way of present petition filed under Article 226 of the [Constitution of India](#) seeks direction to respondents to appoint him on compassionate grounds in lieu of death of his father who died in harness on 4.7.2004. Father of the petitioner was in employment with respondents as Assistant Grade-I (Accounts) and while in service, he expired on 4.7.2004 leaving behind widow, two sons and two daughters. Petitioner, one of the sons claiming himself to be the dependent of his father submitted the application on 20.9.2004 for appointment on compassionate ground. He was interviewed in pursuance to letter dated 25.1.2006 and was recommended for appointment on compassionate ground vide letter dated 12.4.2006.

2. The case of the petitioner is that despite of being recommended for appointment on compassionate ground the respondents have not come forward to offer him such appointment. The alleged action of the respondents, it is urged, is arbitrary and illegal.

3. It is further contended that since the sole breadwinner of the petitioner's family has died in harness, incumbent it was upon the respondents to have immediately appointed the petitioner on compassionate grounds.

4. The respondents on being notice have filed return; wherein, while not disputing the fact that the petitioner was considered and recommended for appointment on compassionate grounds, but because of want of vacancy the appointment was not offered and the committee which was constituted to review the cases of compassionate appointment recommended for dropping the name of the petitioner from the list.

5. It is urged on behalf of respondents that they are governed by the instructions issued by the Government of India, Department of Personnel and Training, brought on record as Annexure R-1 dated 5.5.2003. It is contended that as per the said instructions, the period prescribed by the Government for filling up 5 % vacancies in direct recruitment quota at the entry level could be done only within a period of three years. It is urged that in pursuance to said instructions the headquarter of F.C.I issued a letter dated 24.2.2005 pertaining to compassionate appointment and the time limit offering compassionate appointment. It is urged that, the respondents are bound by the instructions and the directions by the Govt. of India as well as headquarter of the F.C.I. It is further contended that the petitioner who was pursuing his appointment on compassionate grounds was informed by letter dated 30.12.2006 (Annexure P-5) about the policy of the respondents regarding the time limit within which the matter can be considered. It is further urged that a review committee constituted to consider the matter of compassionate appointment convened its meeting on 28.9.2007 which reviewed the applications and out of 93 applications received 54 cases were found time barred. It is also contended that the committee reviewed the application of the petitioner and took a decision that, the same has become time barred and his

application has been rejected. It is further contended that after the death of father of the petitioner an amount of Rs.9,77,000/- has been disbursed to his family; as such it cannot be said that the petitioner and his family fell into a financial crisis. Considered the submissions put forth by learned counsel for the parties.

6. Trite it is that appointment on compassionate ground is not a vested right but only a privilege extended to family member of an employee who dies in harness to get over the sudden financial crisis. In this context regard can be had of the judgment in Punjab National Bank v. Ashwini Kumar Taneja (2004) 7 SCC 265; wherein, it was held

"4. . . It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

7. In the case at hand, admittedly the government instructions are applicable in respect of appointment on compassionate ground. One such instruction brought on record is circular No. 14014/19/2002-Establishment (D) dated 5.5.2003 (Annexure R-1), wherein, it is stipulated: "OFFICE MEMORANDUM

Subject:- Time-limit for making compassionate appointment.

The undersigned is directed to refer to Department of Personnel & Training OM No. 14014/6/94-Estt(D) dated October, 9 1998 and OM No. 14014/23/99-Estt (D) dated December 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5 % of direct recruitment quota. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases,

as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5 % quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again. The instructions contained in the above mentioned GMs stand modified to the extent mentioned above. The above decision may be brought to the notice if all concerned for information, guidance and necessary action."

8. In the case at hand though a recommendation was made in favour of the petitioner who was placed in the list of persons found eligible for compassionate appointment; however, for want of vacancies no appointment was offered to the petitioner within one year and as per clause (2) of the circular dated 5.5.2003, the review committee after reviewing the matter dropped his name from the list. Furthermore it is observed that after death of his father nearly Rs.9,77,000/- have been disbursed to the family of the deceased; as such, it cannot be said that the petitioner's family was in financial crisis. Moreover, the fact that the petitioner has tide over for a period of more than six years from the death of his father is a sufficient proof of the fact that the family is not in financial penury. In this context regard can be had of the judgment in Virendra Bahadur Singh v. Union of India and others [2004 (2) MPLJ 13] wherein the Division Bench of this Court observed:

"5. Even on merits, petitioner is not entitled to any relief. Deceased died on 17-2-1990 and the family has survived for more than 12 years. It is not pointed out how, in the face of statement by respondents, the family is still in financial distress.

Object of compassionate appointment is to enable the family to tide over the sudden crisis and relieving the family from financial distress due to the death of the sole bread earner of the family. Therefore, this type of appointment cannot be offered. As a matter of course, only deserving cases have to be found and offered compassionate appointments, more particularly when respondents have kept only 5% of the vacancies falling under direct recruitment quota in Group "C" and "D" posts for compassionate appointment. Decision of the Apex Court on which reliance is placed by the petitioner is of no assistance to advance the submission raised by him."

9. Having thus considered this Court does not find any error on the part of respondents in not appointing the petitioner on compassionate ground. The petition is accordingly dismissed. However, no costs.

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