

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 800/2002

New Delhi, this the 29th day of January, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Bhupendra Kumar
S/o Late Constable Nanwa Singh
No.1102/ND.

...Applicant

(By Advocate Sh. S.C.Soren)

V E R S U S

Commissioner of Police
M.S.O.Building
I.P.Estate, New Delhi.

...Respondents

(By Advocate Mrs. Jasmine Ahmed)

O R D E R

By Hon'ble Sh. Shanker Raju, Member (J)

Applicant impugns respondents' order dated 12-11-2001 wherein request for compassionate appointment has been rejected. Directions have been sought to quash this order and to consider the applicant for compassionate appointment.

2. Applicant is son of deceased Nanwa Singh who while working as Constable died on 4-12-1992 after rendering a service of about 27 years in Delhi Police. Earlier request made for compassionate appointment of Mukesh Kumar, second son of deceased was processed and he was offered the post of Constable (Exe) on compassionate grounds but on verification of antecedents, he was found to have been involved in two criminal cases as well found colour blind on medical examination. His request was turned down and his appointment was cancelled. After three years, widow of the deceased made a request to consider the applicant for compassionate appointment which though

initially recommended but ultimately by the Screening Committee was rejected. Applicant preferred OA 2317/2000 and by an order dated 1-8-2001 having regard to the decision of the Apex Court in Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors. (2000 (4) SCALE 670), respondents have been directed to re-consider the request.

3. By an order dated 12-11-2001 request of the applicant was rejected. Accordingly CP 24/2002 was filed by the applicant which was rejected on 17-1-2002 giving liberty to the applicant to assail the impugned order in an independent OA.

4. Learned counsel of the applicant Sh. S.C.Soren contended that the rejection of the request of the applicant for compassionate appointment is nothing but reiteration of the earlier order which has been set aside by this Court. It is contended that although the family was found indigent and Mukesh Kumar was approved for appointment with no change of circumstances, family is still indigent and having considered the request in 1998, the question of availability of 5 % of vacancies cannot be sustained as in 2002, respondents have notified 2359 posts of male Constables (Exe) and as per the quota of 5 % atleast 115 posts are still available for compassionate appointment.

5. It is stated that in so far as land and house is concerned, the same have been unauthorizedly occupied by land grabbers and the applicant has not been getting any fruits of his property. With such a

meagre family pension, the family is in dire need of financial assistance and as per the policy of Govt. laid down in OM issued in 1998, case of the applicant is in all four covered by the Scheme.

6. It is further stated that there was no delay in offering of compassionate appointment as the respondents themselves considered the request of the applicant in 1998 on his attaining majority and since then the case is under consideration. He assails the grounds taken to reject his representation by stating that these are the improvements made upon in the earlier orders, which cannot be countenanced.

7. On the other hand, respondents' counsel Mrs. Jasmine Ahmed placing reliance on a decision of the Apex Court in Jagdish Prasad Vs. State of Bihar (1996 (1) SLR 7) contended that the case of the applicant has been duly considered as per the directions of this Court and as the family has managed to survive for such a long period, the same has not been found in dire need of financial assistance or indigent keeping in view the property owned by the family and lesser liability as well as the instructions of DOPT that after 5 years, the claim cannot be considered for compassionate appointment. The claim of the applicant which cannot be considered, as an indefeasible right has been duly considered and rejected does not suffer any legal infirmity.

8. I have carefully considered the rival contentions of the parties and perused the material on record. As per Rule 5 (b) of Delhi police

(Appointment and Recruitment) Rules, 1980 subject to other conditions, sons and daughters of the deceased police personnel have to be given preference for appointment not exceeding 5 % of the total number of vacancies in a year for compassionate appointment. Family of the applicant was found to be indigent, accordingly one of the sons of the deceased was offered compassionate appointment but as he suppressed the fact of criminal case and was colour blind, his appointment was cancelled. Applicant who was the second son of the deceased immediately on attainment of age of majority applied for compassionate appointment as there has been no change in the financial conditions of the family and the agricultural land has been in possession of others was considered for compassionate appointment and by an order dated 15-4-99, his case has been recommended but subsequently his case has been rejected and closed by an order dated 24-6-99.

9. On approach to this Court in OA 2317/2000, as the rejection was for compassionate appointment was on the basis that no enquiry has been conducted as to the financial condition or the crises faced by the family in the light of the decision of the Apex Court in Balbir Kaur (Supra) where it has been held that the financial benefit given should not be the sole criteria to consider the case for compassionate appointment and as the respondents have taken in to consideration terminal benefits given to the family, orders have been set aside and the matter has been sent back to be considered in the light of the decision in Balbir Kaur's case (supra). Accordingly,

as the applicant's case has been considered and rejected, CP was dismissed with liberty to assail the impugned order.

10. In the order passed by the respondents, the claim of the applicant has been considered and rejected on the ground that despite cancellation of appointment of first son, family did not apply for compassionate appointment from 1995-98 and if the family was in dire need, the eldest son should have applied for the compassionate appointment inspite of waiting for the applicant to attain the majority. As the appointment is restricted to 5 % of vacancies under direct recruitment with regard to the financial benefits and the fact that the family owned a house, the same does not fall within the ambit of Rules or to be in dire need or in indigent circumstances. Moreover the family had managed to survive for 9 long years as such very object of compassionate appointment has been frustrated.

11. As held by the Apex Court in various pronouncements including LIC Vs. Mrs. Asha Ramchandran & Anr. (1994 (2) JT SC 183) and HSEB Vs. Krishna Devi (JT 2002 (3) SC 485), appointment on compassionate grounds cannot be claimed as a vested right. The right is only for consideration which is purely humanitarian. The only object of it is to provide immediate financial help to a family in crisis on account of sudden death of the earning member. In Jagdish's case (supra), Apex Court has ruled that delay in accord of compassionate appointment itself frustrate its object. In 1995 when the appointment of

first son was cancelled, nothing prevented the family from applying for the eldest son who was eligible but they kept waiting for applicant's attainment of majority and applied in 1998. This itself shows that the family was not in dire need of financial assistance and in this backdrop, the amount given as terminal benefits as well as the fact that they owned a house and agricultural land was found to be sufficient not to treat the family as indigent which could have bestowed the claim for compassionate appointment. Not only the terminal benefits have been taken in to consideration but the respondents have also kept in view the ceiling of 5 % of the direct recruitment vacancies to be utilised for compassionate appointment. Other cases which have been found more deserving have been given appointment and no discrimination is apparent violative of Article 14 & 16 of the Constitution of India. As the family has already survived for such a long time with the means accorded to them, the Scheme which has been framed for compassionate appointment is to relieve the family of any financial distress and to tide over the sudden financial crises is lacking in the present case. Moreover as per the Scheme which has been modified to the extent that waiting list is to be kept only for a year, applicant who was recommended in 1998 now cannot claim compassionate appointment.

12. Moreover apart from ceiling of 5 % in the vacancies made for compassionate appointment, the claim of the applicant that now the vacancies have been notified for direct recruitment quota by the respondents cannot be countenanced as these vacancies

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pertain to the year 2002 and cases matured and in waiting list for the current year would have to be accommodated. Moreover in the Scheme for compassionate appointment, delay in request for accord compassionate appointment after 5 years from the death of the Govt. servants is not to be entertained. Moreover as the compassionate appointment cannot be claimed as a right and the fact that the request of the applicant has been duly considered in the light of the decision of the Tribunal and rejected on the grounds which are in accordance with the decisions of the Apex Court and as per the policy, this OA does not warrant any interference.

13. I do not find any infirmity in the order passed by the respondents. In the result, OA is bereft of merit and is accordingly dismissed. No costs.


(SHANKER RAJU)
MEMBER (J)

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