

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.424 OF 2016

New Delhi, this the 14th day of November, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

Ajay,
aged about 19 years,
s/o late Sh.Ramesh, Head Constable,
R/o VPO Uldepur, Sonapat,
Haryana 131001
(By Advocate: Mr.M.K.Bhardwaj)
Vs.

.....

Applicant

1. The Commissioner of Police,
PHQ, I.P.Estate,
New Delhi.
2. The Additional Commissioner of Police,
PHQ, I.P.Estate,
New Delhi.
3. The Dy. Commissioner of Police,
Police Control Room, Model Town,
Delhi
(By Advocate: Ms.Sangita Rai)

.....

Respondents

.....
ORDER

I have carefully perused the pleadings of the parties and have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant, and Ms.Sangita Rai, the learned counsel appearing for the respondents.

2. Brief facts giving rise to the present O.A. are that the applicant's father Shri Ramesh was serving as a Head Constable in Delhi Police. He died on 7.8.2012, while in service, leaving behind his two sons and his mother (grandmother of the applicant). The applicant is his younger

son. His elder son, Shri Akshay Kumar is serving as a Leading Air Craft Man in the Indian Air Force. The mother of the applicant had died in the year 2003. The applicant is getting family pension till he attains the age of 25 years. Claiming that after the death of his father, the condition of the family became indigent, the applicant made application to the respondents for providing him appointment on the post of Constable (Executive) in Delhi Police on compassionate ground. Respondent no.3, vide his letter dated 24.2.2015, requested the Deputy Commissioner of Police, Recruitment Cell, NPL, Delhi, to get the physical measurement of the applicant done on priority basis and to send a report to him in the prescribed proforma showing the applicant's date of birth, educational qualification, height and chest, and passport size photographs affixed on the report. Respondent no.3, vide his letter dated 11.6.2015, forwarded the applicant's application, along with the requisite documents, to the Deputy Commissioner of Police, Establishment, Delhi, for considering the applicant's case for appointment on compassionate ground. The Police Establishment Board, in its meeting held on 19.10.2015 examined all the pending cases including that of the applicant and approved appointments on compassionate grounds in 129 cases, while rejecting the case of the applicant. The respondents, by letter dated 18.11.2015(Annexure A-1), informed the applicant as follows:

“The Police Establishment Board in its meeting held on 19.10.2015 has considered your request for appointment of himself in Delhi Police on compassionate ground applied for the post of Ct.(Exe.) and rejected the same due to “**Less**

deserving”, as the case is not covered under the criteria of DOPT instructions and Standing Order No.39/14.”

Hence, the applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- “(a) To quash the set aside the impugned Order No.33294/WF(P-II)/PCR dated 18.11.2015 (A-1) with directions to consider the applicant for appointment on compassionate grounds.
- (b) To declare the action of respondents in denying compassionate appointment to the applicant as Constable or any other post as illegal and arbitrary and issue appropriate directions to appoint the applicant on compassionate grounds with all consequential benefits including arrears of pay with interest.
- (c) To allow the OA with cost.
- (d) To pass such other and further orders which their Lordships of this Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

3. Resisting the O.A., the respondents have filed a counter reply.

The respondents have stated, *inter alia*, that while considering the cases for compassionate appointment, the Police Establishment Board follow the instructions issued by the Department of Personnel & Training and the Standing Order No.39/2010. They keep in mind the financial condition of the deceased family and other relevant factors, such as, the presence of earning member, size of the family, age of deceased at the time of death, age of children, and essential needs of the family. After considering the case of the applicant, along with others, on 19.10.2015, the Police Establishment Board found the case of the applicant as less deserving and rejected the same.

4. The applicant has filed a rejoinder reply, wherein, besides referring to and relying on the decision of the coordinate Bench of the Tribunal in **Gurmeet Kaur Vs. The Govt. of NCT of Delhi and others**, OA No.353 of 2015, decided on 27.9.2016, he has reiterated more or less the same averments and contentions as raised in his O.A.

4.1 In **Gurmeet Kaur Vs. The Govt. of NCT of Delhi and others** (supra), the applicant's husband, a Head Constable in Delhi Police, died on 28.05.2010, while in service, leaving behind his wife, son, and one unmarried daughter, and one widowed daughter with her three children. Considering the materials available on record, the Tribunal in OA No.2409/12 (disposed of vide order dated 11.10.2013) had directed the respondents to consider the applicant's case for appointment of her son on compassionate ground in the light of the observations made in the order dated 11.10.2013(ibid). In compliance with the Tribunal's order, the respondents considered the applicant's case, but rejected the same on the grounds of her case being less deserving and of non-availability of vacancy, etc... After considering the pleadings of the parties, and upon hearing the learned counsel for the parties, the coordinate Bench of the Tribunal allowed the O.A. and directed the respondents to appoint the applicant's son on compassionate ground, with the following observations/findings:

“8. It will be seen from the order of the Tribunal in OA No. 2409/2012, already cited above, that at that point of time itself, i.e. three years ago, all the facts were before the Tribunal, in fact, the further fact that the elder daughter and her three young

children are also dependent on the applicant due to the death of the husband of elder daughter was also before the Tribunal. Anyone familiar with realities of the Indian society would realize that the extra burden of looking after of the elder daughter and her three children has compounded the financial problem of the applicant. Moreover, reliance of the respondents on the younger daughter being an SI in Delhi Police, in my view, is misplaced. This daughter would get married and would soon have an independent family. What would be left in the family of the deceased government servant would be his wife (the applicant), son, elder daughter and her three children to be look after without an earning member. I do not suppose it can be anybody's claim that the applicant is less deserving. The other ground of the applicant's son being overage is rejected because this is only due to the fact that the respondents have been delaying this matter. On the date of the death of the concerned Govt. servant, he was very much within the 30 years limit."

5. It has been contended by the applicant that the Police Establishment Board or, for that matter, the respondents have rejected his case for compassionate appointment without application of mind to the materials available on record and the scheme of compassionate appointment. The Police Establishment Board have failed to take into consideration his educational expenditure and the fact that he is getting monthly pension of Rs.5130/- only till he attains the age of 25 years. His elder brother is living separately and is, thus, not maintaining the family. It has also been contended by the applicant that when the respondents themselves found him as eligible for being provided with appointment on compassionate appointment and got his physical measurement done, the rejection of his case as less deserving runs counter to the respondents' own decision.

6. The object of the Scheme for Compassionate Appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness, thereby leaving his family in penury and without any means of livelihood, to relieve his family from financial destitution, and to help it get over the emergency.

7. In **Umesh Kumar Nagpal v. State of Haryana** [1994 (4) SCC 138] the Hon'ble Supreme Court has held:

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The posts in class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds."

8. In **Haryana State Electricity Board v. Hakim Singh** [1997 (8) SCC 85], the Hon'ble Supreme Court has reiterated the object of compassionate appointment as follows:

"The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

9. In **Director of Education (Secondary) v. Pushpendra Kumar**

1998 (5) SCC 192], the Hon'ble Supreme Court has considered the nature and object of compassionate appointments, in particular, in case of death in harness cases, and has observed thus:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure 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, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions."

10. In **State of Haryana v. Ankur Gupta** [2003 (7) SCC 704], the

Hon'ble Supreme Court has observed thus:

"As was observed in **State of Haryana v. Rani Devi** (1996) 5 SCC 308, it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this 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. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.....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. But such 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 **Food Corporation of India v. Ram Kesh Yadav** [2007 (9)

SCC 531], the Hon'ble Supreme Court has observed:

"There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed *dehors* the policy. In **LIC v. Asha Ramchandra Ambekar** (1994) 2 SCC 718 this Court stressed the need to examine the terms of the rules/scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment."

12. A reading of the above decisions makes it clear that 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. As the appointment on compassionate ground cannot be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances, i.e., eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme.

13. Clause 6 of the Standing Order No.39/2010-Compassionate Appointment in Delhi Police – General Scheme reads thus:

“6. CASES WHERE THERE IS AN EARNING MEMBER

- (a) In deserving cases even where there is already an earning member in the family of the deceased employee, a dependent family member can be considered for appointment on compassionate ground with the prior approval of Commissioner of Police, Delhi.
- (b) Commissioner of Police, Delhi will take a decision in the matter keeping in view the number of dependents, assets and

liabilities left by such employee and the status of the earning member whether he is living with the family and is the support for other family members. In such types of cases, extreme caution has to be taken in ascertaining the economic distress of the applicant so that the facility is not misused.

- (c) In case of a unmarried police employee, his/her dependent brother or sister may be considered for this appointment. He/she will have to give undertaking to the effect that he/she will look after the other dependent members.”

Admittedly, the Police Establishment Board/respondents have considered the applicant's case for compassionate appointment in spite of there being an earning member in the family. Thus, it has to be seen as to whether or not the applicant's case has been duly considered by the Police Establishment Board/respondents in accordance with the scheme for compassionate appointment.

14. Clause 10 of the Standing Order No.39/2010 stipulates that the financial benefits received as per entitlement, etc., by the family of the deceased Government servants under various welfare schemes are to be kept in view while considering cases of compassionate appointment besides the individual's personal assets particularly immovable property. It should be kept in mind that a house in the village/home town or even in Delhi may not generate running income and as such possession of such property unless it has tenants providing enough rent regularly to sustain the individual etc. should not be a ground for rejection. The requests should not be rejected merely on the ground that the family has received the financial benefit under the various welfare schemes. While these benefits should be taken into

account, the financial condition of the family has to be assessed by taking into account its liabilities and all other factors, such as, the presence of an earning member, etc.

15. In the instant case, the Police Establishment Board/respondents have considered the applicant's case on the basis of the information/materials furnished by him along with his application seeking appointment on compassionate ground. Admittedly, the family left by the deceased Government servant, i.e., the father of the applicant, consists of his mother and two sons. The applicant's elder brother is serving in the Air Force. The applicant is also getting family pension with effect from the date following the date of death of his father. It has also been averred by the applicant that the family has got ancestral house, and has also some agricultural land, but no income is derived therefrom. The applicant has not produced before this Tribunal any material to substantiate his plea that his elder brother, who is serving in the Indian Air Force, has been living separately and has not been looking after him and his grandmother. From the letter dated 11.6.2015 (Annexure A-4) issued by respondent no.3 to the Deputy Commissioner of Police, Establishment, Delhi, it transpires that along with the applicant's application, four other requisite documents were enclosed therewith and were forwarded for consideration of the applicant's case. The report of the Special Branch, Delhi, about the number of family member earning/non-earning, married/unmarried children with their

age/occupation, source of income and financial condition of the family with clear details of moveable/immoveable property at home town of the deceased in prescribed proforma along with Character Antecedents of the applicant, was one of the said four requisite documents which were forwarded to the Deputy Commissioner of Police, Establishment, Delhi. Although copy of the letter dated 11.6.2015 has been filed by the applicant as Annexure A-4 to the O.A., the enclosures thereof have not been filed by the applicant, nor have the same been produced before the Tribunal to examine the correctness of the statements made by the applicant in the present proceedings. The Police Establishment Board/respondents, after taking into consideration all the information/materials furnished by the applicant and the Special Branch Delhi in the aforesaid report, have assessed the condition of the family of the deceased Government servant and have found the applicant's case as less deserving, and have, accordingly, the applicant's case. Considering the facts and circumstances of the case and the materials available on record of the present proceeding on the touchstone of the principles laid down by the Hon'ble Supreme Court in the cases referred to in the preceding paragraphs, this Tribunal is not in a position to hold that the conclusion arrived at and the decision taken by the respondents rejecting the applicant's case for compassionate appointment, as being less deserving, are perverse and liable to be interfered with.

16. The prior physical measurement of a dependent family member of the deceased Government servant seeking compassionate appointment on the post of Constable in Delhi Police being a prerequisite to consideration of his/her case by the Police Establishment Board/respondents, this Tribunal does not find any substance in the contention of the applicant that the respondents, after having found his case as deserving one for compassionate appointment, got his physical measurement test conducted and, therefore, the rejection of his case by the Police Establishment Board/respondents as 'less deserving' runs counter to their own decision.

17. The decision of the coordinate Bench of the Tribunal in **Gurmeet Kaur Vs. The Govt. of NCT of Delhi and others** (supra), relied on by the learned counsel appearing for the applicant, being distinguishable on facts, does not go to support the case of the applicant.

18. In the light of what has been discussed above, I have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by him.

19. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

AN