

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.219 of 2014

Orders reserved on : 19.09.2018

Orders pronounced on : 25.09.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Virender Vir Singh, age-31 years,
s/o Late Sh. Nanak Chand, Ex. S.I.,
r/o H. No.321, Moonga Nagar, Karawal Nagar Road,
Delhi-94.

....Applicant

(By Advocate : Shri Sachin Chauhan)

VERSUS

1. The Govt. of NCTD,
Th. Hon'ble Lt. Governor of Delhi,
Rajniwas Marg,
5, Shamnath Marg,
New Delhi.
2. The Commissioner of Police (AP),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. The Deputy Commissioner of Police (East District),
Through Commissioner of Police (AP),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
4. The Deputy Commissioner of Police (Special Branch),
Through Commissioner of Police (AP),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
5. The Addl. Dy. Commissioner of Police,
Establishment through Commissioner of Police (AP),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
6. The Deputy Commissioner of Police
Establishment,
Through Commissioner of Police (AP),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

.....Respondents

(By Advocate : Shri Bhanu Gupta for Shri Ankur Chhibber)

ORDER

By filing this OA, the applicant has sought the following reliefs:-

- “(i) To set aside the impugned orders at annexure A-1, A-2 and annexure A-3 and to further direct the respondents to appoint the applicant to the post of Head Constable (Min.) or any other post on compassionate grounds with all consequential benefits.
- (ii) To direct the respondent to bring all the records/documents/papers related to compassionate employment of applicant considered by Police Establishment Board.

Or/and

- (iii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.”

2. The grievance of the applicant is that vide order dated 21.6.2012, the respondents have rejected his case for grant of compassionate appointment on the ground that father of applicant has completed 60 years and rendered 40 years service and expired on 31.10.2011 and instructions of DOP&T and SO No.39/3009 are not applicable in the case of the applicant and further order dated nil issued on the representation of the applicant's mother dated 22.6.2012 for considering the case of the applicant for compassionate ground has been rejected by absolutely a non-speaking order and mechanical order, as also the order dated 11.7.2013, the request of the applicant for appointment to the post of Constable (Min.) in Delhi Police on compassionate ground was rejected on the ground of overage, which causing great prejudice to the applicant.

3.1 Pursuant to notice issued to the respondents they have filed their counter affidavit in which they stated that Nanak Chand - father of the applicant retired from the service after rendering 40 years, 2 months and 21 days as he was enlisted in Delhi Police as Constable (Exe.) on 2.8.1971 and reached upto the rank of Sub-Insp (Exe.). After the demise of her husband - Nanak Chand, his wife Smt. Kusum Lata had submitted an application on 15.12.2011 requesting for appointment on compassionate ground of his son, namely, Virender Vir Singh to the post of HC (Min)/Const (Exe.). After obtaining relevant information/documents, the case of the applicant was examined in the Headquarters and found that the deceased SI had already completed the maximum age of 60 years and so completed 40 years of his service. Moreover, the applicant has crossed the maximum age limit of 26 years for appointment to the post of Constable (Exe.) in Delhi Police on compassionate ground, being SC candidate on 29.11.2008, as his date of birth is 29.11.1982. Besides, the applicant had submitted his initial request for compassionate ground appointment on 9.12.2011 and at that time, the applicant has also completed the age of 29 years. After consideration of overall circumstances, the request of the applicant was turned down.

3.2 Later on wife of deceased employee made another request for appointment of her son on compassionate ground but the same was also rejected on the same grounds as stated above. Thereafter once again mother of the applicant submitted another application

for appointment of her son on compassionate ground. However, on humanitarian ground, the said request was included in the list of cases to be placed before the Police Establishment Board in its meeting for consideration, which was held on 11.6.2013 and took the final decision regarding appointment in Delhi Police on compassionate ground, including the case of the applicant. At that time, applicant's age was 30 years and 1 month whereas permissible age for the wards of the deceased police personnel to the said post on compassionate ground is 26 years for SC category and as such his case was not covered under criteria of DOP&T instructions and standing order no.39/2010 and the mother of the applicant had already been informed in this regard by the respondents.

3.3 They further stated that family pension and other pensionary benefits i.e. DCRG, Leave Encashment etc. were sanctioned in favour of Smt. Kusum Lata W/o late SI Nanak Chand. The details of the family members and details of pensionary benefits granted to Smt. Kusum Lata are as under:-

- | | | | | |
|----|--------------------|--------------|----------|-------------|
| 1. | Smt. Kusum Lata | 56 years | wife | Non-earning |
| 2. | Dev Raj Singh | 36 years | son | Pvt. Job |
| 3. | Virender Vir Singh | 31 yr. 3 Mon | Son | Pvt. Job |
| 4. | Sarita | 27 years | Daughter | Non-earning |

Besides one married daughter.

- | | | |
|----|---------------------------|---------------|
| 1. | Family Pension | Rs.9020 + RIP |
| 2. | Retirement/Death Gratuity | Rs.9,30,599/- |
| 3. | GPF | Rs.3,25,275/- |
| 4. | LI Policies | Rs.31,496/- |

5.	CGE Insurance	Rs.30,000/-
6.	Leave Encashment	Rs.2,85,030/-
7.	DPWS Funds	Rs.3,00,000/-
	Total	Rs.19,02,400/-

Moreover, there is a house measuring 100 sq. yd. valued approx Rs.25-30 lac at Moonga Nagar, Karawal Nagar Road, Delhi in the name of Smt. Kusum Lata, W/o Late deceased SI Nanak Chand.

3.4 They further stated that all the cases for appointment on compassionate ground has been considered by the Police Establishment Board headed by Commissioner of Police, Delhi in its meeting by taking into account the financial condition of the deceased family, liabilities and all other relevant factors such as the size of the family, age of the deceased at the time of death, age of children, age of the applicant as well as rules/instructions of Govt. of India framed on the subject and judgment of the Hon'ble Apex Court, vacancies available for the post at the time of meeting etc. and took the final decision. They further stated the father of the applicant expired on 23.10.2011 instead of 31.10.2011 as stated by the applicant.

3.5 The case of the applicant duly completed in all respect was included in the list of cases for decision by the Police Establishment Board in its meeting held on 11.6.2013 but his case could not be approved as neither the applicant's case covered under criteria of DOP&T instructions and Standing Order No.39/2010 nor the applicant had permissible age for the post of Constable (Exe.) in Delhi Police. The officials of Special Branch had

visited applicant's house only to verify the facts given by the applicant regarding socio-economic condition, earnings and non-earning members etc.

3.6 Lastly, they have stated that the instant OA deserves to be dismissed by this Tribunal.

4. Applicant has also filed his rejoinder reiterating the averments made in the OA and denying the contents of the counter affidavit filed by the respondents.

5. During the course of hearing, learned counsel for the applicant submitted that the impugned orders are not sustainable in the eyes of law as the applicant's case has not been considered fairly as per the laid down procedures and further on the basis of socio-economic report. Counsel further submitted that if as per the socio-economic report, the case of the applicant is found fit for appointment on compassionate ground then the same is to be extended to the applicant. However, respondents rejected the case of the applicant on arbitrary, flimsy and vague grounds.

5.1 Counsel further submitted that the applicant's case was rejected on the ground that he is overage, which is factually incorrect as the applicant is eligible for the post of Head Constable (Min.) and the age limit for this post is 32 years as per the rules.,

5.2 Counsel further submitted that having regard to socio-economic report, even if the applicant is overage, his case should have been considered for age relaxation. Non grant of relaxation amounts to violation of Articles 14 and 16 of the Constitution of

India as they have not applied their mind to Rule 30 of the Delhi Police (Appointment & Recruitment) Rules, 1980.

6. Counsel for the respondents on the contrary contended that although the father of the applicant had expired after attaining the age of superannuation, still the respondents have considered the case of the applicant along with other candidates but having regard to the provisions of the compassionate appointment scheme as well as Standing Order no.39/2010, the competent authority did not find the case of the applicant meritorious and more deserving one having regard to the socio-economic report as also as the fact that the applicant is overage.

7. Heard learned counsel for the parties and perused the material placed on record.

8. Law on the question of compassionate appointment is well settled by Hon'ble Supreme Court. It has repeatedly been held by the Hon'ble Supreme Court that compassionate appointment cannot be sought as a matter of right or as a line of succession. Since compassionate appointment can be given only upto 5% of the direct recruitment quota in a year, naturally compassionate appointment can be given only to few who are most deserving. It is seen that having regard to socio-economic report and the age of the applicant at the time when he applied for grant of appointment on compassionate ground, the competent authority did not consider the case of the applicant more deserving having regard to the fact that he is over-aged. Therefore, the respondents have rightly

rejected the case of the applicant for grant of appointment on compassionate ground.

9. It has also been settled by now that no direction can be given by the Tribunal to the respondents to appoint a person on compassionate grounds in the absence of a vacancy nor any directions can be given to create a post for this purpose. All that, Court can do is, to see whether the case of applicant has been considered properly or not. In case, Court comes to the conclusion that case of the applicant has not been considered in an objective manner or in accordance with the procedure laid down in the relevant Scheme, at best a direction can be given to reconsider the case in accordance with the Scheme.

10. In this case, this Court finds that the respondents despite the fact that father of the applicant expired after attaining the age of superannuation considered the case of the applicant along with other 52 candidates in terms of the provisions of the Compassionate Appointment Scheme of DOP&T and also Standing Order 39/2010. However, they found that at the time when the applicant applied for grant of appointment on compassionate ground his age was 30 years and one month which is beyond the permissible age limit for the wards of the deceased police personnel, as the age limit is 26 years for SC candidate for consideration to the post of Constable (Exe.) in Delhi Police and the applicant's mother was accordingly informed the same. So far as the contention of the applicant that he should have been granted age relaxation having regard to socio-economic report is concerned,

the same cannot be claimed as a matter of right and the same is to be decided by the competent authority having regard to the facts and circumstances of each case. Further the contention of the applicant that he is eligible for the post of Head Constable as per RRs is not acceptable as a candidate applying for grant of compassionate appointment cannot claim as a matter of right that his case should be considered against which post as it is the prerogative of the competent authority to see which post is to be taken into consideration for grant of appointment on compassionate ground having regard to the provisions relating to the Compassionate Appointment Scheme.

11. In the result, for the foregoing reasons, this Court is not inclined to interfere with the impugned orders and present OA being devoid of merit is dismissed accordingly. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/