

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

O.A. No.673 OF 2016

This the 28TH Day of November, 2018

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

Parmveer
S/o Late Sh. Preetam Singh,
H.No.131, V & P.O. Rawta,
Najafgarh,
New Delhi-110073.

....Applicant

(By Advocate :Ms. Alpana Malik for Mr. Dinesh S Badiar)

VERSUS

Delhi Development Authority,
(D.D.A.)
Through Deputy Director,
PB-5, DDA,
Vikas Sadan, New Delhi.

.....Respondent

(By Advocate : Ms. Sriparna Chatterjee)

O R D E R (Oral)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “1. To call for the records of the case and quash/set aside the impugned order and letter dated 22.10.2014 and direct the respondents to issue letter of appointment to the applicant for an appropriate post.
2. To award costs in favor of the applicant and
3. To pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case.”

2. Brief facts of the case as stated by the applicant are that the applicant's father late Shri Preetam Singh was permanent employee in Delhi Development Authority (DDA) and was working as Khalasi. His father met with a serious heart-attack on 1.3.2006 and was admitted in Rao Tula Ram Hospital and died on the same day, leaving behind widow, two daughters, one of which is handicapped, and applicant (son).

2.1 The applicant's mother gave a representation to respondent and submitted all the relevant and necessary documents alongwith death certificate etc. to the respondent on 8.7.2009 which was acknowledged by the respondent on 3.12.2009. Thereafter the respondent issued letters to the applicant to submit details of Income, Death, Legal Heirs etc. on 15.2.2013 and 6.7.2013.

2.2 The respondent issued order dated 17.12.2013 rejected the same. Aggrieved by the said letter of rejection, the mother of the applicant filed an appeal before the appellate authority against the said order and the respondent vide letter dated 30.7.2014 observed that the facts of the case be considered and verified by Welfare Inspector and the concerned documents of the facts be taken on record personally and the applicant was directed to provide photocopies of certain documents as mentioned in the said letter. The applicant further stated that he had submitted all the required documents on 4.8.2014 to the respondents. The respondent

issued letter of receipt of documents which were submitted by the applicant on 4.8.2014.

2.3 According to the applicant, on 22.10.2014, the respondent without considering applicant's request and financial condition, straightway refused to do in an arbitrary manner.

2.4 Being aggrieved by the aforesaid rejection order dated 22.10.2014, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondent, respondents filed counter affidavit stated that the father of the applicant was working in the office of Executive Engineer (Elect.), Elect. CWG-III, DDA. He expired on 1.3.2006. After the death of his father, applicant requested for appointment on compassionate ground and submitted all the requisite documents vide his application dated 2.8.2010. The file of the applicant's case was forwarded to Director (Estt.) W/C to Personnel Branch-V on 2.11.2010. The scrutiny of the documents revealed that applicant applied for appointment on compassionate ground after a lapse of approx. 4 years. On completion of all codal formalities by the applicant, his case was placed before the Screening Committee in its meeting held in Aug./Sept.2013 and the said Committee keeping in view the facts and circumstances of the case rejected the request of the applicant on the grounds that (i) the family is not in distress condition and (ii) there is no liability. The

said decision was conveyed to the applicant vide letter dated 17.12.2013. Thereafter the mother of the applicant appeared in public hearing of Commissioner (P) on 5.2.2014 and on recommendations of Commissioner (P), the request of mother of the applicant was placed before the Appellate Committee in its meeting held on 26.9.2014 but the said Committee again rejected the request of the applicant and the said decision of the Committee was also conveyed to the applicant vide letter dated 22.10.2014.

4. Counsel for the applicant submitted that the impugned order suffers from the vice of arbitrariness as is violative of Article 14 of the Constitution of India.

4.1 Counsel for the applicant submitted that applicant fulfilled all the essential eligibility conditions and experience and submitted all the documents as per letter dated 30.8.2014.

5. Counsel for the respondents submitted that compassionate appointment not being a right but a special dispensation to the family of the deceased employee and the rule of the Scheme must be observed strictly and unerringly lest they interfere with the rights of others who may be more deserving. The appointment under the Scheme is governed by the theory of comparative indigence and that of immediacy. These theories in simpler words merely state that the appointment is being made through a process where a family may be indigent but another family may be more indigent. In

addition, the indigence should be immediate in nature and where the family has been able to survive for a long period, the claim is treated to be barred by the theory of immediacy.

6. Heard both the parties and perused the material available on records.

7. The legal position is well settled that 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 applications on merits. The underlying intention is 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 the sudden financial crisis faced by them on the demise of the sole earning member. In the case of ***Union of India & Anr. Vs. Shashank Goswami & Anr.*** reported as (2012) 11 SCC 307, the Apex Court has observed as under:-

"The claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a 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, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

8. The claim of compassionate appointment in this matter has been fairly considered by the respondents as per the existing policy guidelines. Once the respondents have fairly

considered the application made for compassionate appointment, it is not open to the Tribunal to question the decision of the respondents, except if they have not followed the rules laid down for compassionate appointment fairly. Applicant has challenged the impugned order only on the grounds that decision to reject the case of the applicant for grant of compassionate ground is arbitrary and violative of Article 14 of the Constitution of India and applicant fulfilled all the requisite conditions and submitted all the documents, which are not sustainable in the eyes of law in view of the aforesaid observations of this Court in preceding paragraph. Further in the case of **Nanak Chand v. Delhi Jal Board**, 2007(140)DLT 489, the Hon'ble High Court clearly held as under:-

“14. The mandate of the Supreme Court is very clear from the aforestated judgments that it is not for the High Court in exercise of its powers under Article 226 of the Constitution of India to interfere with the decision arrived at by the competent authority while considering the eligibility of an applicant for appointment on compassionate basis and all it can do is to see whether the decision of the competent authority is vitiated. Having scrutinized the cases in hand in the aforesaid background, this Court does not consider it appropriate to interfere with the findings of facts and the conclusion arrived at by the competent authority.”

9. In view of the above, this Court is unable to interfere with the impugned order. Accordingly, the present OA is dismissed being devoid of merit.

10. However, this Court is well aware that DoPT has issued a consolidated instructions with regard to compassionate appointments vide OM No.14014/02/2012-Estt.(D) dated 16.01.2013. The applicant can, if he so desires, again apply for compassionate appointment as per the instructions of the said OM. If any such application is moved by the applicant, the same shall be considered by the respondents committee for compassionate appointment in its next meeting in accordance with the aforesaid OM and the decision so taken shall be communicated to the applicant within 30 days from the date of the decision of the Screening Committee. No costs.

(Nita Chowdhury)
Member (A)

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