

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A No.060/00570/2017

...
Date of decision- 13.12.2017
...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

...

Rahul Bhardwaj, S/o Late Sh. Vijay Kumar (DSP), aged 32 years, R/o
House No. 361, Sector 21, Panchkula. (Group C).

...APPLICANT

BY ADVOCATE: Sh. Rohit Seth.

VERSUS

1. Union of India,
Through the Secretary, Government of India,
Ministry of Home Affairs, Nirman Bhawan,
New Delhi-110011.
2. Chandigarh Administration
Through its Advisor to the Administrator,
Union Territory Chandigarh, U.T. Secretariat,
Sector 9, Chandigarh.
3. Chandigarh Administration,
Through the Home Secretary, Union of Territory,
Chandigarh, Union Territory Secretariat,
Sector 9, Chandigarh.
4. The Inspector General of Police, U.T, Chandigarh,
Chandigarh Police Headquarters,
Sector 9, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. T.S. Hundal, proxy for Mr. Ram Lal Gupta,
counsel for respondent no. 1.
Sh. Mukesh Kaushik, counsel for respondents no. 2
to 4.

ORDER

SANJEEV KAUSHIK, MEMBER (J):-

The eligibility of applicant for appointment under compassionate scheme is not in dispute. The assail is to the defensibility of order dated 29.04.2017 (Annexure A-1) on the ground of discrimination under Article 14 of the Constitution of India rejecting his claim for appointment on compassionate ground to the post of ASI.

2. The broad essential facts which needs to be adumbrate for decision of present Original Application are that father of the applicant, who was working as Deputy Superintendent of Police (in short "DSP"), Chandigarh, suffered a massive heart attack. He unfortunately died on 22.01.2014 leaving behind legal heirs as named in para 1 of the O.A. Immediately on next date i.e. on 23/24.01.2014, mother of the applicant requested the respondent-department to consider the case of the applicant for appointment on compassionate ground on the post of Assistant Sub Inspector. The respondents are following the scheme for compassionate appointment issued by Government of India on the subject and also follow the Standing Order No. 31/2006. They have constituted Departmental Common Committee (for short `DCC') for this purpose.

3. For the first time case of the applicant was considered by the DCC in their meeting held on 11.02.2014. They recommended the case of the applicant for appointment to the post of ASI being a special case and requested the competent authority to grant relaxation so that he can be offered appointment. In furtherance to recommendations, vide communication dated 13.02.2014 issued by office of respondent

no. 4 after getting approval from Advisor to Administrator, U.T Chandigarh, forwarded the case of the applicant to Government of India vide letter dated 20.03.2014. In response thereto, Government of India clarified vide letter dated 17.12.2014 that post of ASI falls under Group C. It is the case of the applicant that one Mr. Parminder Singh s/o late Inspector Sucha Singh who was similarly situated like applicant, had also applied for compassionate appointment to the post of ASI. He was offered appointment vide letter dated 26.12.2014 whereas in case of applicant despite clarification issued by Government of India and recommendations made by DCC with the approval of Chandigarh Administration, appointment letter was not issued. Instead of offering the post of ASI, respondent no. 4 vide letter dated 31.07.2014 forwarded his case to respondent no. 3 vide letter dated 21.1.2016 for grant of relaxation which was replied by respondent no. 3 that relaxation has be given at their end being the competent authority. He further instructed respondent no. 4 to do the needful on his part immediately.

4. Respondent no. 3 offered the post of Constable to the applicant instead of ASI with a rider to join immediately vide order dated 29.04.2016. In reply thereto, the applicant represented the respondents and requested them to implement the recommendations made by DCC which was approved by the competent authority and offer him appointment to the post of ASI. When he did not hear anything from respondent-department then he approached this Tribunal by filing O.A No. 060/00784/2016 challenging the order dated 29.04.2016. The said O.A was disposed of vide order dated 28.02.2017 with a direction to the respondents to take a view on pending representation dated 14.08.2016 with regard to request of the

applicant for appointment as ASI and not as Constable, within a period of two months. It is in furtherance thereto, vide impugned order dated 29.04.2017 (Annexure A-1), the respondents rejected his claim. Hence the present O.A.

5. The respondents resisted the claim of the applicant by filing written statement wherein they did not dispute the factual accuracy. However they submitted that the applicant cannot claim the post of ASI as a matter of right and they stick to their decision passed in shape of impugned order.

6. The applicant also filed rejoinder wherein apart from contradicting the averment made in written statement, the applicant has annexed Annexure A-23 and reiterated what has been stated in the O.A.

7. We have heard Mr. Rohit Seth, learned counsel for the applicant, Mr. T.S. Hundal, learned proxy counsel for respondent no. 1 and Mr. Mukesh Kaushik, learned counsel for respondent no. 2 to 4 at considerable length.

8. Mr. Seth learned counsel for the applicant vehemently argued that impugned action of the respondents in offering the post of Constable instead of ASI is illegal, arbitrary, and discriminatory and thus, violative of Article 14 of the Constitution of India. To substantiate his arguments, he submitted that once DCC had recommended the case of the applicant two times being a special case for appointment to the post of ASI which has further been approved by the competent authority and also by the Advisor to Administrator, then the

respondents cannot deviate themselves from their decision to offer appointment to the post of ASI. He further urged that discrimination on the part of respondent no. 4 is writ large as two cases i.e one of Mr. Parminder Singh and other of the applicant were considered at the same time and were recommended by the DCC being special case for appointment to the post of ASI whereas respondent no. 4 offered appointment to the post of ASI to Mr. Parminder Singh and in case of applicant, he has been offered appointment to the post of Constable without there being any reason, therefore, their action being discriminatory, is liable to be set aside.

9. He further urged that same authority cannot review its earlier order which has already been approved by the Advisor to Administrator of Chandigarh Administration and even by the Government of India without any valid reason. Merely the fact that father of Mr. Parminder Singh while performing the duty does not give them right to give step mother treatment to the applicant, thus, he submitted that impugned decision by respondent no. 4 is arbitrary and smacks favouritism, and the same is liable to be set aside. To buttress his plea regarding discrimination, he placed reliance upon the judgment passed by the Hon'ble Jharkhand High Court in case **Anil Kumar Vs. The State of Jharkhand and Ors.**, (L.P.A No. 334 of 2011 decided on 01.02..2012) and **Bhupendra Nath Mistry Vs. State of Jharkhand & Ors.** (WP (S) No. 6295/2008 decided on 04.08.2009) and also in case of **Surya kant kadam Vs. State of Karnataka & Ors.** decided by Hon'ble Supreme Court (Civil Appeal No. 7213-7214/1997 decided on 16.01.2001).

10. Mr. Kaushik, learned counsel for contesting respondents no. 2 to 4 has reiterated what has been stated in the written statement.

11. I have given my thoughtful consideration to the entire matter and have perused the record with the able assistance of the learned counsel for the parties. I have also perused the original file of the applicant as well as of Mr. Parminder Singh S/o Late Sucha Singh whose case was considered along with the applicant and was offered appointment as ASI on compassionate ground.

12. The solitary argument raised at the hands of the applicant is of discrimination while offering appointment on compassionate ground which resulted into violation of Articles 14 & 16 of the Constitution of India.

13. Before considering the controversy involved in this O.A, I would like to note herein what is discrimination. The doctrine of equality before law or equal protection of law and principle of equality of opportunity as contained in Articles 14 & 16 of the Constitution is applicable to all citizens in the matter of public employment and in relation to all matters right from appointment and available at all stages during the service period is continued. It is well settled proposition and principle of law that the doctrine of equality aimed to achieve the object of providing justice and eliminating discrimination amongst equals in respect of matter relating to employment. It has been discussed that the principle of equality is attracted when the equals i.e. persons of the same group or classifications are treated as unequal. It is also equally settled that every such case is to be

adjudged in accordance with the facts and circumstances of each case. The hostile and unreasonable discrimination in the matter relating to service is violative under Articles 14 and 16 of the Constitution of India. The unreasonable classification carrying out discrimination is unconstitutional and liable to be struck down.

14. Facts as enumerated above speaks themselves, thus, cannot be disputed. Office of respondent no. 3 has constituted DCC for the first time on 11.02.2014 when the case of the applicant for appointment to the post of ASI was considered on compassionate ground. After noticing the unblemished record of father of the applicant and his outstanding performance of duty, the Committee made its recommendations in favour of the applicant for appointment to the post ASI being a special case and has also requested the competent authority to take up the matter with Government of India through Chandigarh Administration for grant of special relaxation in age as well as to appoint him as ASI.

15. It is not out of place to record here that under the wrong notion, the (DCC) have also sought relaxation for appointment as ASI considering it to be Group "B" post without realizing that the post falls under 'C' category. In furtherance to recommendation of DCC, IG, U.T Chandigarh who is competent authority has written a letter dated 13.02.2014 to Home Secretary, Chandigarh Administration for taking up the matter with Government being a special case. On 20.03. 2014, the office of respondent no. 3 i.e. Home Secretary, with the approval of Advisor to Administrator took up the matter with Joint Secretary, Government of India, Ministry of Home Affairs, New Delhi. Being

relevant, paras 4 and 5 of the letter dated 20.03.2014 reads as under:-

" 4. The Committee has examined the request of Smt. Dolly Bhardwaj wife of Late Dy. SP in the light of provisions containing in " Scheme on Compassionate Appointments under Central Government" and after considering penurious conditions of the family recommend that the family deserve immediate assistance for relief from present destitution. The son of the deceased officer fulfils the eligibility condition for appointment as Constable in Chandigarh Police and thus can be recommended for appointment as Constable immediately. However, the family has requested for compassionate appointment as ASI (Group B). For ASI, he fulfils the eligibility condition of educational qualification and physical measurement. However, maximum age as per the police Rules is 25 years and in his case five years relaxation in age would be required. Apart from age, as per the Central Government Scheme, compassionate appointment is permissible only against Group 'C' and 'D' whereas the post of ASI is Group B. The scheme does not permit compassionate appointment in Group B or Group A. As such the Committee recommends that matter be taken up with the Government of India through the Chandigarh Administration for special relaxation in this case to appoint the son of late Dy. SP for the post of ASI (Group B) considering peculiar circumstances:-

- (i) Relaxation in rules to appoint the dependent son of DSP Vijay Kumar as ASI (Group B) instead of Constable (Group C).
- (ii) Five years relaxation in maximum age in the above case for appointment of son of DSP Vijay Kumar as ASI.

5. It is, therefore, request that matter may be taken up with the Govt. of India, for granting relaxation as per(i) and (ii) above, to appoint Sh. Rahul Bhardwaj the dependent son of Late Sh. Vijay Kumar Dy. SP as ASI."

Perusal of extracted part of letter makes it clear that reference to Government of India was forwarded after approval of Advisor to Administrator, U.T. Chandigarh.

16. Pending approval, it has been clarified that post of ASI falls under the Group C as per notification issued by the Government of Punjab as adopted by Chandigarh Administration, therefore there is no need to clarify. However, respondent no.3 received clarification from Government of India, Ministry of Home Affairs vide letter dated 17.12.2014 (Annexure A-9) that the post of ASI falls under the

category of Group C. Therefore, again DCC meeting was held on 05.06.2015 (Annexure A-10) to consider the case of the applicant and have decided to offer him appointment to the post of ASI being a special case. Relevant para 11 of the proceeding of DCC held on 05.06.2015 reads as under:-

" 11. After going through the detailed facts, as above, as well as the provisions as contained in the Compassionate Appointment Scheme of the GOI, the committee is of the unanimous view that Sh. Rahul Bhardwaj who fulfils all the conditions except. Age be appointed as ASI in Chandigarh Police on compassionate grounds, as a special case, on the pattern of Pujab Police where a dependent member of deceased GO (Group A) is considered for the post of ASI. The existing Standing Order where it is provided that the compassionate appointments would be allowed only in the rank of Constable would stand modified to the extent that in case of GO(Group A) Chandigarh Police officers, the wards will be eligible for consideration for the post of ASI also subject to availability of 5% quota of vacancies, etc. Further relaxation in age in this case is also recommended which may be approved by W/IGP."

17. Instead of giving him relaxation, respondent no. 4 vide communication dated 03.08.2015 (Annexure A-11) wrote letter to respondent no. 3 i.e. Home Secretary, Chandigarh Administration for grant of age relaxation which was replied by respondent no. 3 vide letter dated 02.06.2016 stating that you (IG) being competent authority can grant relaxation yourself. The contents of letter dated 02.06.2016 reads as under:-

" Subject:- Appointment on compassionate grounds- request of family of late Sh. Vijay Kumar, DSP of Chandigarh Police.

Reference:- Your memo No. 601/UT/E-11, dated 29.04.2016.

It is informed that the standing Orders issued by the Inspector General of Police are for internal administration of Police Department and as such have no relevance in this case and in any case cannot over-rule/be against any orders of U.T Administration/Govt. of India.

2. It is also informed that his Administration have clearly clarified that Assistant Sub Inspector Post is a Group C post and it can be decided at your own level without referring to the Home Department. However, it is further informed that it is not understood why your department has not been able to settle the issue once for all as the police department has already recommended for the appointment of Sh. Rahul Bhardwaj, S/o

Late Sh. Vijay Kumar, DSP as Assistant Sub Inspector. Accordingly, you are requested to settle the issue at your own level, under intimation to this Administration."

18. Totally contrary to the recommendations made by the DCC which has also the approval of Advisor to Administrator U.T Chandigarh, by taking somersault the office of respondent no. 4 instead of giving relaxation in age to the applicant offered him the post of Constable vide letter dated 12.08.2016 with a rider to join before 15.08.2016 otherwise the same shall stand lapsed, against which the applicant submitted detailed representation. When it was not decided, then he approached this Tribunal by filing O.A No. 060/00784/2016 which was disposed of with a direction to decide his claim.

19. I have given my thoughtful consideration to the entire matter and I am in agreement with the submission made at the hands of the applicant that impugned order cannot be allowed to sustain in the eye of law being discriminatory which is writ large. As noticed above, the case of the applicant, like that of Mr. Parminder Singh for appointment on compassionate ground, was considered by DCC to the post of ASI being a special case. The recommendation of DCC was not only approved by the competent authority, but also by the Advisor to Administrator while referring his case being a special case to Government of India. While issuing appointment letter, the respondents in an arbitrary manner, that too without any valid and justified reason, offered appointment to the post of ASI to Parminder Singh and offered post of Constable to the applicant.

20. The original file also does not suggest any reason for not offering the post of ASI to the applicant once the competent authority

had accepted the recommendations of DCC for appointment to the post ASI, then he cannot be allowed to take 'U' turn without there being any reason. Reasons spelt out cannot be allowed to stand because it creates class within class. More so, when DCC recommendations had already been approved by Advisor to Administrator for appointment to the post of ASI to the applicant then respondent no. 4 cannot be allowed to take somersault and turned around and brush aside their own decision, therefore, impugned order cannot be allowed to sustain.

21. My view is also fortified by the observation made by the Lordship in case of **Surya Kant Kadam Vs. State of Karnataka & Ors.** (supra) wherein it was held that action of the respondents is in violation of Article 14 of the Constitution of India and discriminatory in nature and directions were issued to offer appointment to the post of Sub Inspector of Excise. Similar view has been taken by the Hon'ble Jharkhand High Court in case of **Anil Kumar vs. State of Jharkhand & Ors.** (supra) and in case of **Bhupendra Nath Mistry Vs. State of Jharkhand & Ors.** (supra). Not only this, jurisdictional High Court, in case of **Harwinder Singh Vs. State of Punjab & Ors.** (CWP No. 21444/2010 decided on 30.01.2013) has considered the identical issue and has set aside the arbitrary action of the respondents in offering him appointment on compassionate ground as Constable instead of offering him appointment to the post of ASI for which his case was approved being fully eligible. While quashing the impugned order therein, the Hon'ble High Court has recorded that action of the respondents is not only discriminatory but also violative of Articles 14 & 16 of the Constitution of India. Similar view was also held in the

case of **Harsimran Singh Vs. State of Punjab & Ors.** (CWP No. 19031/2011 decided on 25.03.2013).

22. In view of the above, the impugned order is set aside being violative of Article 14 and 16 of the Constitution of India. The O.A is allowed. The respondents are directed to offer appointment to the post of ASI to the applicant forthwith.

23. No other point raised. Original file returned.

24. No order as to costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 13.12.2017

`jk'

