

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

O.A No. 2445/2017

Reserved on : 19.07.2019

Pronounced on : 31.07.2019

Hon'ble Ms. Aradhana Johri, Member (A)

Akshay,
Aged about 20 years,
S/o. Late Sh. Ram Mahr, No. 2752/PCR,
R/o. Village & P.O. Sanpeda,
Tehsil Ganaur, District Sonepat,
Haryana. ...Applicant

(By Advocate : Ms. Sonika Gill for Mr. Anil Mittal)

Versus

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate,
New Delhi-110 002.
2. Deputy Commissioner of Police,
Police Control Room,
Model Town, Delhi. ...Respondents

(By Advocate : Mr. Vijay Kumar Pandita)

O R D E R

The applicant Mr. Akshay, whose father, late Mr. Ram Mehr was a constable in Delhi Police and was placed under suspension in 1994 but, subsequently, reinstated in 1999. He was subsequently dismissed for frequent unauthorised absence vide order dated 23.02.2000. His appeal against this order was also dismissed on 25.05.2001. A criminal case was registered against him vide F.I.R No. 99/94 under Section 419/511 IPC.

Subsequently, giving him the benefit of doubt the Trial Court acquitted him vide its order dated 31.07.2009. He expired on 04.10.2011 leaving behind his widow Krishna Devi, one minor son and three minor daughters. The widow applied for a job on compassionate grounds on 16.11.2011 which was rejected vide respondent's letter dated 30.11.2011. She gave representations on 08.05.2013 and 06.06.2014 for appointment on compassionate grounds which were rejected vide letter dated 10.09.2014. Thereafter, the applicant filed O.A No. 326/2017 which was dismissed as withdrawn. Subsequently, the applicant gave a representation dated 04.03.2017 that he be considered on compassionate grounds for a job with the respondents. This representation was rejected on 17.04.2017 vide letter No. 7551/WF(P-II)/PCR, on the ground that there was no provision in S.O. No. 39/2014 to grant compassionate appointment for dismissed police personnel.

2. The applicant has contended that since there is no earning member in the family after the death of Mr. Ram Mehr and he has the educational qualifications, therefore, he is eligible for the job and should be given appointment on compassionate grounds.

3. The respondents have denied the claims of the applicant. They have stated that whatever dues were

payable to the applicant's father as per rules, have already been paid. They have also stated that there was a criminal case against the applicant's father who was dismissed for habitual absence from duty. Therefore, as per Standing Order No.39/2009, the dependents cannot be considered for compassionate appointment. They have filed several rulings to bolster their case.

4. Heard Ms. Sonika Gill for Mr. Anil Mittal, learned counsel for applicant and Mr. Vijay Kumar Pandita, learned counsel for respondents.

5. It is admitted by both sides that the applicant's father was dismissed on 23.02.2000 and expired in 2011. Respondents have stated that compassionate appointment is not an alternate route to employment and should not be done in general conditions but in exceptional circumstances to relieve the economic distress by sudden demise in harness of government employee. In **Auditor General of India & Ors. Vs. G. Ananta Rajeswara Rao**, (1994) 1 SCC 192, the Hon'ble Supreme Court held the following :-

“5. A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for

misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earnings member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstances for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16 (2) is clearly attracted. (emphasis supplied)

6. In the above order, the Hon'ble Apex Court clearly states that appointments on compassionate grounds would be to assist the families of employees who die in harness, and to relieve economic distress by sudden demise. In the present O.A, the concerned employee, the father of the applicant did not die in harness but 11 years after his dismissal.

7. It has been held in **Umesh Kumar Nagpal Vs. State of Haryana & Ors.** JT 1994 (3) S.C. 525, that death of an employee in harness does not entitle the dependents to a job and financial condition of the family must be taken into

account. The Hon'ble Court made the following observations :-

"For these very reasons, the compassionate appointment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. It is to be noted that in the present O.A the applicant's father was dismissed in 2000 and expired 11 years later in 2011. It can be inferred that if there was a financial crisis, it would have been at its peak in 2000 when the applicant's father lost his job, rather than at the time when he expired 11 years later, unless he was already working elsewhere. In **Dhalla Ram Vs. Union of India & Ors.** (1997) 11 SCC 201, the Apex Court held that appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employees from destitution.

9. Attention has been drawn to the conditionality given in Standing Order No. 39/2014. The eligibility criteria reads as follows :-

"(4) Eligibility Criteria

Dependent family member of the following categories of Government servant shall be eligible for this scheme :-

(i) Who dies while in service (including death by suicide);

Or

(ii) Who is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'C', MTS) Government servants ;

Or

(iii) Who is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Services Regulations before attaining the age of 55 years (57 years for Group 'C', MTS) Government servants;

(iv) Who dies during the period of extension in regular service but not during re-employment.

Note : The benefit of compassionate ground appointment will not be available to the dependents of a Govt. servant, in case the Govt. servant was involved in criminal cases and other undesirable activities or was dismissed from service for his proven involvement in criminal cases & other undesirable activities. While considering such requests, the results of the police investigation should also be taken into account.”

10. From a perusal of these conditions it emerges that employees who die while in service, who are retired on medical grounds under different rules and those who die during the period of extension in regular service but not during the re-employment, are eligible. The foot note which says that the benefit of compassionate appointment will not be available to dependents of government servants in the case of their involvement in criminal case and other undesirable activities or who have been dismissed from service for proven or undesirable activities. This order further goes on to say that while considering such

circumstances, the result of police investigation should also be taken into account. Going by the language of this Standing Order, the intention is clear that dependents of dismissed employees would not be considered even though it mentions involvement in criminal cases and specifies that while considering such requests, the results of the police investigation should also be taken into account. Going by the spirit of this clause it seems to point out excluding the dependents of dismissed employees. Even going by the language of this clause, there is a specific provision that result of police investigation should also be taken into account. In the case of the applicant's father he was involved in a criminal case wherein the police investigation reached its conclusion and a case was filed in a Criminal Court, even though, it resulted in acquittal giving the benefit of doubt.

11. However, even without reference on the point of dismissal, the various rulings of the Hon'ble Apex Court clearly establish that the mere death of the employee in harness does not entitle his family to get the appointment on compassionate grounds. There should not be a great deal of time between the death (in this case the event which may have caused financial hardship to the family i.e., dismissal of the father of the applicant) and such appointment should be given only to tide over sudden

financial crisis. The circumstances of the present case do not warrant such a situation. It is also to be noted that though the mother of the applicant had been applying for compassionate appointment, it was only in 2017 that the applicant himself applied for the appointment.

12. In the light of the above, I am of the view that the reliefs sought in this O.A cannot be granted. The O.A is dismissed. No orders as to costs.

(Aradhana Johri)
Member (A)

/Mbt/