(2010) 09 DEL CK 0425

Delhi High Court

Case No: Writ Petition (C.) No. 7142 of 2009

Mahendra Singh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 21

Citation: (2010) 09 DEL CK 0425

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Banke Bihari Sharma, for the Appellant; Jasmine Ahmed, for the Respondent

Judgement

Mool Chand Garg, J.

Father of the petitioner, Sh. Ram Prasad, expired on 24.12.1997. He was employed as Pump Operator in CPWD (Respondent No. 1). After his death, the petitioner''s mother filed an application for compassionate appointment in accordance with O.M. dated 13.06.1987 which was in force as on the date when father of the petitioner expired. Later on, mother of the petitioner sought compassionate appointment for the petitioner on 20.05.1998. She kept on filing various reminders but no reply was received. The petitioner, therefore, filed O.A. No. 1923/2004 which was disposed of on 13.08.2004 with a direction to consider the request of the applicant by passing a reasoned order. The application so filed was rejected vide order dated 18.01.2005 stating therein that there was no vacancy under 5% quota for the year 2004-05. It was, however, stated that the petitioner would be considered against the vacancies for 2005-06 in case an application was filed on prescribed format.

2. The petitioner thereafter applied for compassionate appointment but his request was rejected by a non-reasoned order dated 26.04.2006. Thereafter, the petitioner again filed O.A. No. 1913/2006. This time the O.A. was disposed of on 04.04.2007 directing the

respondents to pass a reasoned order. Consequently, by a reasoned order dated 08.06.2007 the claim of the petitioner was rejected. The reason given by the respondent is as follows:

5. The competent authority, the C.E., N.Z., New Delhi, constituted a committee for compassionate appointment as per the guidelines of Min. of Per. PG and Pen. issued vide its O.M. No. 14014/6/94-Estt.(D) dt. 9.10.1998 and 27.6.2001 and Dte. Gen. of Works Deptt. O.M. No. 5/89/200-EC-V dt. 20.02.2003 and 5/63/2001-EC-V dt. 13.6.2003 and the directions issued accordingly were considered. There is no liability on Mahendra Singh s/o Late Sh. Ram Prasad, Ex. Pump-Operator any liability of marriage, education and maintenance of children and all the members of the family and adult and are competent to make their livelihood. There is also no post presently available under 5% quota for the post of peon. In addition to it the department is paying family pension to Smt. Chameli Devi w/o Late Sh. Ram Prasad, Ex. Pump-Operator Rs. 4467/ - p.m. and under various service benefits she has been paid Rs. 2,69,476 / -. She has also her residential accommodation and they are competent to manage their survival. Therefore, compassionate appointment cannot be granted to them. This letter has been issued with the approval of C.E.(Elec).

3. Aggrieved by the aforesaid order, the petitioner filed another O.A. No. 1072/2008. In this application the petitioner had pleaded that since his father had died on 24.12.1997 he ought to have been considered against every available vacancy in preference to others because restriction of 5% was introduced only vide O.M. dated 09.10.1998. Moreover, since applicant has no vision in one eye and has limited vision in second eye, therefore, he is entitled to reservation under Disabilities Act.

4. The application was contested by the respondents by specifically denying that no reservation for physically handicapped provided under reservation for compassionate appointment. Finally, this application was also dismissed by the Central Administrative Tribunal vide order dated 30.05.2008. Some of the observations made by the Tribunal while dismissing the aforesaid O.A., the Tribunal has made reference to the judgment of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, wherein it was held as under:

As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit..... However, to this general rule ... there are some exceptions carved out in the interests of justice and ... one such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood.... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is

satisfied, that but for the provision of 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.

4. The Tribunal further observed that compassionate appointment cannot be sought as a line of succession but can be granted only in exceptional circumstances on the sudden demise of an employee who was sole bread earner in the family and he dies leaving behind lot of liabilities and family is not even able to survive unless they are given immediate assistance by the department. In other words, compassionate appointment was to be given in case of extreme hardship and the only consideration was pecuniary distress, otherwise it would amount to a separate mode of recruitment de hors the R.Rs., which cannot be countenanced in any case.

5. In the instant case, it is the stand of the respondents that the deceased father of the petitioner left no liability. All his children were major and the widow had been given sufficient terminal benefits apart from pension. They also have a residential accommodation. Thus, the application filed by the petitioner was dismissed by the respondents holding that by no stretch of imagination can it be said to be a case where family was in financial distress or desired to be given compassionate appointment. The Tribunal has also taken note of O.M. dated 13.06.1987 and has found that the same was of no help to the petitioner but substantiated his plea that being a handicap, he was eligible for compassionate appointment and accordingly, dismissed O.A. No. 1072/2008.

6. Aggrieved from the aforesaid order the petitioner has approached this Court.

7. It is well settled that compassionate appointment is not an alternative source of recruitment. The appointment has to be made on compassion that also limited to 5% of the vacancies. If an application is filed in the year 1997 or 1998 and the applicant does not come forward for any grievance before a Court or Tribunal, it would be understood that the applicant is not interested in the appointment even if any error has been committed on the part of the management/Government. As a matter of fact, filing of a petition after seven years would also be barred by limitation in view of Section 21 of the Central Administrative Tribunals Act.

8. Even if it is presumed for the sake of argument that the order passed by the Tribunal in 2004 gave a fresh lease to the petitioner and he was entitled to file an application for compassionate appointment, the consideration of such request has to be as per the availability of the vacancy and the merit of the claim. In any case, firstly, the mother of the petitioner applied for compassionate appointment thereafter she wanted her son to be considered for such appointment by also adding an additional ground that her son was physically handicapped which as rightly observed by the Tribunal could not have been a ground for granting compassionate appointment.

9. Today, we are in 2010. After 13 years the petitioner has survived. Certain amount has also been paid to the mother of the petitioner at the time of the settlement of the dues of

his late father which are to the tune of Rs. 2,69,476/ -. Family pension paid before 6th Pay Commission recommendation were implemented was Rs. 4467/ - per month and we are informed that as of today the amount would be Rs. 6000/ - per month (approximately). Since the quota for compassionate appointment is very limited, to direct the respondents after a period of 13 years again to consider the claim of the petitioner would be doing injustice to others who had been eligible and had been raising their claim within the time prescribed by law. Moreover, we concur with the reasons given by the Tribunal in paragraphs 9 to 12 of the impugned order and do not find any infirmity in the approach of the Tribunal which may call for any interference by this Court.

10. Accordingly, the writ petition is dismissed with no order as to costs.

C.M. 2737-2738/2009

Disposed of as infructous.