

Before Rajbir Sehrawat, J.

AMAR CHAND—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No.5679 of 2021

November 30, 2021

Constitution of India, 1950—Arts. 226 and 227—Appointment as a soldier in army on compassionate grounds—Held, mere delay in making application is no ground to deny appointment – policy expressly stated that there was no time limit in making such application and that each case must be considered in the light of circumstances. Merely because the family had been able to manage and surviving for 5 years is no ground to deny appointment – respondents directed to consider the case of the petitioner and take no objection regarding his age as he had approached the court within the age of eligibility.

Held, that a bare perusal of the above said policy shows that it expressly states that there is no time limit for making an application for and consideration of the case of compassionate appointment under the policy. Although the policy also prescribes that the delayed applications should not ordinarily be considered by the authorities, however, the policy also stipulates that every case shall be considered independently as per circumstances of that case and the authorities shall take decision in that regard.

(Para 7)

Held, that a perusal of the impugned orders show that the case of the petitioner has been declined on the ground that the family of the petitioner has been able to manage for all these years. However, merely the fact that members of the family have not ended their lives during the period of 5 years or that they have somehow or the other, managed to survive for the period of 5 years, would not be a ground in itself to deny the compassionate appointment. Although the delay in raising claim for compassionate appointment may be one of the factors under the policy, however, it cannot be the sole factor. The decision has to be based on the cumulative consideration of the facts of each case. the case of the petitioner cannot even be branded as delayed one.

(Para 8)

G.S. Ghuman, Advocate, *for the petitioner*

Rajneesh Shelly, Advocate, for the respondent/UOI

RAJBIR SEHRAWAT, J. (ORAL)

(1) This petition has been filed under Article 226 of the Constitution of India for setting aside letter No. 3982075/SR/LN/NE (Coord) dated 20.1.2021 (Annexure P-16), issued by respondent No.4, whereby the petitioner has been declined appointment as a Soldier on compassionate grounds. Further prayer of the petitioner is for issuance of a writ of mandamus, directing the respondents to enroll/consider the antecedents of the petitioner for appointment on compassionate grounds in the rank of 'Sepoy' in terms of the parameters prescribed by respondent No.1, vide its letter No. B/05183/CA/Policy/Inf-6 (Pers) dated 20.6.2018 (Annexure P-15).

(2) Facts as mentioned in the petition are; that the father of the petitioner namely; Naik Gurdip Singh, Army No. 3982075A, resident of Village and Post Office Bachhoi, Tehsil Garshankar, District Hoshiarpur was serving in the Indian Army. He died while on duty. Although, at the initial stage, there was a dispute as to the manner in which father of the petitioner had expired, however, ultimately, the respondent authorities conceded the fact that the father of the petitioner died in Operational Area on the line of control on 12.5.2000. The death of the father of the petitioner was held to be attributable to Army service. Accordingly, vide letter dated 16.8.2011, the respondents asked the mother of the petitioner to send her son for consideration for compassionate appointment and the authorities granted family pension to the mother of the petitioner vide letter dated 26.11.2011. Hence, after the mother of the petitioner was granted family pension by the authorities in the year 2011, an application was made by the sister of the petitioner seeking compassionate appointment on account of death of the father of the petitioner. However, that application was rejected by the respondents vide order dated 21.10.2015. While rejecting her claim, the objection taken by the respondents was that her name was not on army service record of the deceased father of the petitioner. As per the assertion of the respondents, at that time, only two off-springs of the deceased employee were on the record of the Army. Accordingly, the respondents had made an offer to the brother of the petitioner, who was named in the letter itself, for compassionate appointment. However, the brother of the petitioner did not avail that opportunity.

(3) Another fact which has come on record is that when the father of the petitioner died, the petitioner was only one year of age. Hence, he was also not on service record of his father. But when the matter; regarding the petitioner also being one of the off-springs of the deceased soldier; was brought to the notice of the authorities, the petitioner was also brought on record of the Army as the son of his deceased father vide publication dated 8.02.2018. Since, earlier the sister of the petitioner had been declined the offer of appointment and the brother of the petitioner had not availed the opportunity; and further, the petitioner was not on record of the Army, and accordingly, he could not have applied at that time, therefore, after the petitioner was brought on Army records, an application was made by the petitioner on 21.05.2018 for considering his name for compassionate appointment. However that request was declined by the respondents vide letter dated 6.07.2018 on the ground that the application for compassionate appointment could have been made within 5 years from the date of death of his deceased father; and that the petitioner was not eligible for appointment on compassionate grounds. However, interestingly in the said letter itself, it was written by the respondents that as per existing policy, the petitioner was eligible for enrollment in Army under Unit Headquarter Quota. But at that time, his appointment even under that Quota was not considered by the authorities. Thereafter, again a request for reconsideration was sent by the petitioner through his counsel on 05.12.2020. The said request was also denied by the respondents vide letter dated 20.01.2021 on the ground that the case of the petitioner had already been considered and rejected. It is against this action of the respondents that the present petition has been filed.

(4) While arguing on behalf of the petitioner, the counsel for the petitioner has submitted that earlier the respondents had not even accepted the fact that the death of the father of the petitioner was attributable to the Army service. However, after 11 years, this fact was accepted by the respondent authorities and the mother of the petitioner was granted special family pension; and further, she was intimated that she can send the application of her son for compassionate appointment. However, since at the time of death of his father, the petitioner was only of the age of one year and even in the year 2011, he had not attained the age required for recruitment in the Army, therefore, the mother of the petitioner had opted compassionate appointment for the sister of the petitioner. The claim of the sister of the petitioner was rejected broadly on two grounds; namely; that her name was not

mentioned in the service records and that the application on her behalf was belated. Even at this stage, the respondents had themselves written to the mother of the petitioner that her son whose name was on Army service record of her deceased husband, could apply for compassionate appointment. At this stage also, since the name of the petitioner was not entered into the service record of the father of the petitioner, therefore, he could not have applied for the compassionate appointment. However, the brother of the petitioner, who was named by the authorities as eligible to seek appointment on compassionate ground, had not availed that opportunity. Therefore, the concession of compassionate appointment had not been granted to any family member of the petitioner. Now the name of the petitioner has also been entered in the Army service record of the father of the petitioner. Therefore, he had rightly applied for compassionate appointment. His claim has wrongly been rejected on the ground that the claim made by the petitioner was belated. The counsel has submitted that although in the rejection order, the respondents have written that the petitioner was not eligible for recruitment as Sepoy in the Army, however, in the said letter itself, they have written that the petitioner was eligible for being appointed in the Quota of Unit Headquarter. Therefore, the case of the petitioner should have been considered by the respondents in that Quota; at least. Qua the delay in making the application, the counsel for the petitioner has submitted that the policy of compassionate appointment adopted by the respondents do not provide for any time limit. Although the policy also says that the claim should not ordinarily be accepted after period of 5 years from the date of death because in the meantime, the family might have got out of the financial problems, however, in the present case, even this period of 5 years is not applicable. For the initial 11 years, the respondents themselves did not accept the fact that the death of the father of the petitioner was attributable to the Army service. Hence, there is no question of the petitioner making the application within 5 years of the death of his father. Moreover, in the year 2015, when the case of the sister of the petitioner was rejected, the respondents themselves had offered the compassionate appointment to the brother of the petitioner, whose name was mentioned in the letter written by the respondents themselves. Although the brother of the petitioner had not availed that opportunity, however, the petitioner could not even have availed that opportunity because his name was not entered in the record of the Army at that time. It is only in the year 2018 that the name of the petitioner was entered in the Army records as the son of the deceased

soldier. Immediately thereafter, the petitioner had made the application for compassionate appointment. Hence, by no means, any delay is attributable to the petitioner as such. Hence, the petitioner deserves to be considered for compassionate appointment.

(5) On the other hand, the counsel for the respondents has submitted that the father of the petitioner died in the year 2000. The policy applicable for the compassionate appointment prescribes that ordinarily the case for compassionate appointment should not be considered after 5 years. Hence, the case of the petitioner has rightly been declined as being delayed. It is further submitted that the respondents authorities have duly informed the petitioner that he is not entitled to any appointment. Accordingly, it is submitted that the present petition be dismissed.

(6) As per the argument of counsel for the parties, the dispute relates to the delay in making the application for compassionate appointment. Therefore, it would be appropriate to have a reference to the provisions of the policy issued for compassionate appointments in this regard. The relevant paragraph of the policy is reproduced herein below :-

“8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT:

Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M. No. 14014/2011-Estt.(D) dated 26.7.2012, subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case.

9. BELATED REQUESTS FOR COMPASSIONATE APPOINTMENT

(a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the

family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/ Ministry concerned.

(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration.

(c) The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment (Para 4 of O.M. No. 14014/3/2011-Estt.(D) dated 26.7.2012.)

(7) A bare perusal of the above said policy shows that it expressly states that there is no time limit for making an application for and consideration of the case of compassionate appointment under the policy. Although the policy also prescribes that the delayed applications should not ordinarily be considered by the authorities, however, the policy also stipulates that every case shall be considered independently as per circumstances of that case and the authorities shall take decision in that regard.

(8) Having considered the arguments of counsel for the parties, this Court finds substance in the argument raised by counsel for the petitioner. A perusal of the impugned orders show that the case of the petitioner has been declined on the ground that the family of the petitioner has been able to manage for all these years. However, merely the fact that members of the family have not ended their lives during the period of 5 years or that they have somehow or the other, managed to survive for the period of 5 years, would not be a ground in itself to deny the compassionate appointment. Although the delay in raising claim for compassionate appointment may be one of the factors under the policy, however, it cannot be the sole factor. The decision has to be based on the cumulative consideration of the facts of each case. In the present case, the case of the petitioner cannot even be branded as

delayed one. Undisputedly, for 11 years, the respondents had not even accepted the fact that the death of the father of the petitioner was attributable to the Army service. For the first time, this fact was accepted in the year 2011. While accepting this fact, the respondents themselves had written to the mother of the petitioner in the year 2011 that her son could apply for compassionate appointment. Hence, the counting of 5 years from the date of death of father of the petitioner becomes totally irrelevant in the present case. Needless to say, that on receipt of the letter from the respondents, the sister of the petitioner had applied for compassionate appointment. Although her claim was rejected but at that time also, in the year 2015, the respondents themselves had written that brother of the petitioner, whose name was mentioned in the communication received from the respondents, could apply for compassionate appointment. Hence, even the time period upto 2015 cannot be now branded as delayed period. As has come on record, when the case of the sister of the petitioner was rejected, while advising the mother of the petitioner to make application on behalf of her son, the petitioner was not entered in the record of the respondents as the son of the deceased soldier. His name was entered in the record for the first time only in the year 2018. Immediately thereafter, the application for compassionate appointment was moved by the petitioner in the year 2018 itself. Hence, there is no question of any delay in submission of the application on behalf of the petitioner.

(9) Although the respondents have taken delay in making the application by the petitioner as a ground for declining the compassionate appointment to the petitioner, however, they themselves seem to be convinced that it is not a case of delayed application on behalf of the petitioner. Therefore, while rejecting the case of the petitioner, inter alia, on the ground of delay and asserting that the petitioner was not eligible for recruitment as Sepoy in the Army; because there was no provision for compassionate appointment as Sepoy, the respondents themselves have observed in the same letter that the petitioner was eligible for appointment in Group C, Tradesman Post; in the Unit Headquarter Quota. Even in the written statement filed by the respondents, the same stand has been taken by the respondents, which is reproduced herein as under:-

“Compassionate appointment cannot be granted after lapse of a reasonable period and it is not vested right, which can be exercised at any time in future. Also there exist no provisions for compassionate appointment for enrollment in

the Army in the rank of a Sepoy. However, the petitioner can be considered for enrollment in the Army as a recruit in Tradesman Category under Unit Headquarters Quota (Priority 2) after fulfilling the requisite criteria for enrollment and qualifying physical standards on the available vacancy allotted to the Regiment by the Recruiting Directorate.

It is also brought to the kind notice of the Hon'ble Court that Board No.16 for selection of applicants (NOKs) for grant of compassionate appointment was convened on 7th January, 2021 at Integrated HQ of Ministry of Defence (Army) and 5 vacancies were earmarked in terms of laid down 5% earmarked quota of total direct recruitment vacancies out of 302 applications.”

(10) Hence, it is obvious that the petitioner deserves to be considered for the compassionate appointment as a recruit in Tradesman Category under Unit Headquarter Quota (priority No. 2); even as per the stand taken by the respondents.

(11) Accordingly, the present petition is allowed. The impugned orders are set aside to the extent these declined the compassionate appointment to the petitioner. The respondents are directed to consider the case of the petitioner in the Unit Headquarter Quota as per their policy, as per his entitlement and merit, but subject to the petitioner fulfilling the other standards meant for the said recruitment. However, since the petitioner had approached the Court at the time when he was within the age of eligibility, therefore, the respondents shall not take any objection against the petitioner that on the date of actual recruitment he is getting overage. The exercise of consideration of the case of the petitioner is ordered to be completed within a period of 3 months from today.

Dr. Payel Mehta