

Before Hemant Gupta & Mohinder Pal, JJ.

CHANDIGARH ADMINISTRATION,—*Petitioner*

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL
AND OTHERS,—*Respondents***

C.W.P. No. 12768/CAT of 2007

18th July, 2008

Constitution of India, 1950—Arts. 226—Father of applicant died in harness—Appointment on compassionate ground—Committee approving name of applicant for appointment—Two candidates appointed before submission of complete form by applicant—In absence of availability of post applicant cannot seek appointment—No discrimination—Tribunal not justified to return a finding that irrespective of vacancy position applicant is entitled to be given appointment—Said approach of Tribunal is wholly unjustified and cannot be sustained—Petition allowed.

Held, that there is no averment in the application to the effect that the number of posts available for filling up on compassionate ground in the relevant department are more than three. The applicant could not get the appointment, even though his name was recommended, in view of the non-availability of the vacancies. The candidates at Serial Nos. 5 & 6 were appointed even before the complete application form was received by the petitioner. Even the Tribunal has negated the allegation of discrimination levelled by the applicant. In the absence of availability of post, the applicant cannot seek any appointment. The finding of the Tribunal that the relevant data has not been produced by the petitioner to determine the 5% quota, is based upon surmises and conjectures. The data was required to be produced only if there was any dispute regarding the number of posts available with the administration at the relevant time. In the absence of any allegation, the Tribunal was not justified to return a finding that irrespective of the vacancy position, the applicant is entitled to be given appointment by

the petitioner. The said approach of the Tribunal is wholly unjustified and cannot be sustained.

(Para 12)

Vikas Chatrath, Advocate, *for the petitioner.*

K.L. Arora, Advocate, *for respondent No. 2*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 19th May, 2006 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), allowing an original application filed by Hari Singh, respondent No. 2 (hereinafter referred to as 'the applicant')

(2) Shri Jaspal Singh, father of the applicant died on 30th August, 1999. He left behind his wife Vidya and sons Ram Singh, Avtar Singh; Jai Singh apart from the applicant. An application for appointment on compassionate ground was submitted by the applicant in December, 1999. The said application was ordered to be returned with a remark to submit the same after endorsement from the Social Welfare Department and in the prescribed proforma along with the connected documents. The application in prescribed proforma was submitted on 17th February, 2000, but the same was returned by the Superintending Engineer with the remarks that other sons of the deceased are wroking, therefore, it should be justified as to how the claim of the applicant is covered for appointment on compassionate ground. Affidavits were filed by the mother and brothers of the applicant in respect of the employment of the applicant on the compassionate ground. The said documents were filed on 5th April, 2000.

(3) The Chandigarh Administration has constituted a Committee for recommending the cases for appointment on compassionate ground called Common Committee for appointment on compassionate ground in terms of the policy framed by the Central Government for appointment on compassionate ground dated 9th October, 1998. The said committee approved the name of the applicant for appointment for the post of white washer, but no appointment was given to the applicant, which led to

the filing of the Original Application before the Tribunal. The applicant claimed that respondent Nos. 5 and 6, have been allowed to jump the queue, while giving them appointment, therefore, the action of the respondents is unjustified and arbitrary.

(4) On the other hand, the petitioner controverted the stand of the applicant and asserted that though father of the applicant died prior to the death of father of respondent Nos. 5 and 6, yet respondent Nos. 5 and 6 have submitted their complete documents earlier than the applicant. Therefore, their names were recommended prior to the case of the applicant. The cases of the said respondents were recommended in April and July, 2000, whereas the case of the applicant was approved on 17th April, 2002. It was also pointed out that since the applicant has been surviving for the last six years after the death of his father, therefore, the dire necessity for the job is not in existence.

(5) The learned Tribunal allowed the application filed by the applicant after returning a finding that the ground of discrimination taken by the applicant is not sustainable. But it was found that the case of the applicant has been recommended for the post of white washer and the petitioners have failed to show as to how many vacancies were kept under 5% quota, nor has shown the vacancy position so as to enable the Court to examine the stand of the present petitioner. It was also observed that though the name of the applicant is at serial No. 10, but it is not mentioned in the written statement that the persons at Serial Nos. 3 to 9 are still waiting for appointment. Thus, the stand of the petitioner was found to be untenable and consequently, the application was allowed.

(6) Before this Court, learned counsel for the petitioner has produced two circulars dated 23rd October, 2000 and 22nd December, 2000, respectively issued by the Chandigarh Administration. In the first circular dated 23rd October, 2000, it is circulated that it has been decided in consultation with the Government of India that the priority is to be assigned with reference to the date of receipt of application by the concerned department for compassionate appointment from the dependent deceased Government employee. The relevant extracts from the said circular read as under :—

“I am directed to invite a reference to this Administration’s letter No. 29/2/94/IH(7)/98/25765, dated 22nd December, 1998

vide which a scheme cited on the subject has been circulated and to say that the matter with regard to assigning priority for compassionate appointments by the Common Committee constituted for purpose is under consideration of this Administration for some time past. It has now been decided in consultation with the Government of India that the priority is to be assigned with reference to the date of receipt of application by the concerned department for compassionate appointment from the dependent deceased Government employee. This fact is required to be intimated to the said Common Committee while sending requisition for such appointments.

2. You are requested to kindly have the above clarification brought to the notice of all concerned for information and compliance and the date of receipt of such applications for compassionate appointment may invariably be intimated to the Common Committee, urgently.”

(7) Vide circular dated 22nd December, 2000, the Office of the Executive Engineer or the Superintending Engineer, as the case may be, was designated as the Office of the deceased employee for the purpose of receiving the request for appointment on compassionate ground in complete form on the prescribed proforma. On the basis of the said circulars, it is pointed out that from 23rd October, 2000, the priority list of the candidates has been maintained on the basis of receipt of the complete application form by the concerned office. The date of receipt of complete application form of the applicant is 5th May, 2000, whereas the complete application form of respondent Nos. 5 and 6 were received on 15th December, 1999 and 29th December, 1999, respectively. The Common Committee for appointment on the compassionate ground has made recommendations after the issuance of such circulars, and therefore, it cannot be said that respondent Nos. 5 and 6 were preferred in an arbitrary manner as against the applicant.

(8) The circulars of the Administration, produced by the counsel for the petitioner during the course of hearing before this Court, have not been controverted. The priority list has been prepared as per the date of complete application form. Thus, it cannot be said that the preparation of such priority list for giving appointment on compassionate ground is arbitrary in any manner or is in any way unreasonable.

(9) The argument of the learned counsel for the respondent that the date of death should be relevant for determining the priority, is not tenable. A candidate who applies after more than three years of death of his father, will not rank higher in priority list than the candidate, who has applied for the post soon after the death of his bread-winner. The principle adopted by the Administration seems to be that a person, who has a necessity for seeking appointment, will move an application at the earliest. Therefore, the priority should be determined from receipt of such application. Still further, it could not be pointed out that there was any *mala-fide* in the action of the petitioner in returning the application submitted by the applicant so as to deprive the applicant of the opportunity of appointment on compassionate ground.

(10) A perusal of the seniority list prepared on 15th July, 2004 shows that the name of the applicant appears at serial No. 8. Candidates at serial Nos. 3 and 6 have lost their father on 21st August, 1999 and 9th March, 1999, the same date as the date of death of father of the applicant. The applications of candidates at Serial No. 3, 4 and 6 were received earlier in point of time i.e. on 12th January, 2000; 28th February, 2000 and 7th April, 2000 as against the applicant, whose application was received on 5th May, 2000. Since there were only three posts available for appointment on compassionate ground, the applicant, even if the list is prepared as per the date of death, will rank at Serial No. 4. It may be noticed that Annexure A. 4 produced by the applicant before the Tribunal is the list of candidates prepared for giving compassionate appointment, on 27th March, 2003. The petitioner in its reply before the learned Tribunal has asserted that the said Annexure has been prepared by the Personnel and Law Officer for his administrative convenience and not intended to be the final official document. In the said list, the name of the applicant is at Serial No. 10.

(11) Learned counsel for the petitioner has produced the file of minutes of meeting of the Common Committee for appointment on compassionate ground for the period 5th February, 1999 to 30th April, 2005. The name of Subramaniam son of late Shri Narayan was recommended for appointment by the Common Committee on 7th April, 2000, whereas the name of Moti Ram, respondent No. 6 was recommended by the Common Committee on 11th July, 2000. The application of the applicant in the requisite proforma was received on 5th May, 2000 i.e. after respondent Nos. 5 and 6 were recommended for appointment. The name of the applicant was recommended by the Common Committee on 17th September, 2002. The Common Committee in its meeting held on 10th September, 2004 decided that all cases for compassionate appointment pending on 10th September, 2004 for more than three years from the date of the death of the deceased Government employees be deleted from the list. The relevant extract read as under :-

“Government of India vide letter dated 5th May, 2003 communicated that if compassionate appointment to genuine and deserving cases, as per guidelines, is not possible in the past one year due to non- availability of the regular vacancy, the committee may review such cases to evaluate the financial condition of the family to arrive at a decision as to whether a particular case warrants extension for one more year for consideration for compassionate appointment, subject to the availability of the clear vacancy within 5th quota. If considered on scrutiny by the Committee, a case is considered to be deserving name of such person can be continued for consideration for one more year. The maximum time a person’s name can be kept under consideration for offering appointment will be three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. In this regard the committee decided that all such cases pending as on 10th September, 2004 for more than three years from the date of death of the deceased Government employee may be deleted from the list as per instructions issued by the Government of India vide letter dated 5th May, 2003 and 4th November, 2003

(copy attached) by the various appointing authorities and the list of deleted names may be sent to the Regional Employment Exchange for verification. It was also decided that the cases of such dependents who are waiting for appointment for more than two years from the date of death of the deceased Government employee may be reviewed and a meeting of the Common Committee may be called on 6th October, 2004 at 3 P.M. in the office of CMD, CITCO for this purpose.”

It was in pursuance of such decision, the name of the applicant was deleted from the list from the eligible candidates for appointment on compassionate ground.

(12) There is no averment in the abovesaid application to the effect that the number of posts available for filling up on compassionate ground in the relevant department are more than three. The applicant could not get the appointment, even though his name was recommended, in view of the non availability of the vacancies. The candidates at Serial Nos. 5 and 6 were appointed even before the complete application from was received by the petitioner. Even the Tribunal has negated the allegation of discrimination levelled by the applicant. In the absence of availability of post, the applicant cannot seek any appointment. The finding of the Tribunal that the relevant data has not been produced by the petitioner to determine the 5% quota, is based upon surmises and conjectures. The data was required to be produced only if there was any dispute regarding the number of posts available with the administration at the relevant time. In the absence of any allegation, the Tribunal was not justified to return a finding that irrespective of the vacancy position, the applicant is entitled to be given appointment by the petitioner. The said approach of the Tribunal is wholly unjustified and cannot be sustained.

(13) Consequently, the present writ petition is allowed. The impugned order passed by the learned Tribunal is set aside. As a consequence thereof, the Original Application filed by the applicant is dismissed.