

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 501 of 2013**

- Priyanka Krishna Dutta D/o Late Krishna Dutta Aged About 19 Years  
R/o Qtr. No. 4/C, Street 28, Sector 5, Bhilai Nagar, P.S.- Bhilai Nagar,  
Distt Durg, (C.G.) PIN - 490001

---- **Petitioner****Versus**

1. Union Of India, through Secretary, Ministry Of Home Affairs, North Block, Central Secretariat, New Delhi 110001
2. Chairman Recruitment Board, Central Industrial Security Force (Ministry Of Home Affairs) CISF Unit RCFL, Chembur, Mumbai- 74
3. Asstt Inspector General West Zone, CISF Compound, Sector 35, Kharghar, Navi Mumbai-10

---- **Respondents**

For Petitioner:

Mr. Vijay Kumar Sahu, Advocate  
under instruction of Mr. Jaydeep  
Singh Yadav.

For Union of India:

Mr. Ashwani Kumar, Asstt. S.,G.

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****23.12.2015**

1. Claim of the Petitioner through the present Petition is that her application for compassionate appointment has been rejected vide Annexure-P/1 dated 18.09.2012.
2. According to the Petitioner her father was an employee of the Respondent-Organisation and died in harness on 07.01.2009, thereafter she moved an application claiming for compassionate appointment. The Respondent inspite of giving opportunity for appearing in selection process finding her unfit have arbitrarily rejected claim of the Petitioner. Therefore, she has challenged Annexure-P/1 dated 18.09.2012.

3. Learned Assistant Solicitor General submits that the claim for compassionate appointment has been considered immediately after death of the father of the Petitioner. It is not the case where the claim has been rejected for delay or latches nor is it the case whereby the case of the Petitioner has not been considered at all, but repeatedly three opportunities were given to the Petitioner for participating in the recruitment process for grant of appointment which the Petitioner either failed in attempts or did not appear in the selection process her claim was rejected. To be more specific on 25.05.2011, 08.11.2011 and 04.06.2012 the Petitioner was given opportunities for appearing for the post of head constable/clerk in the Respondent-organisation and in all the three occasions the Petitioner failed to pass type writing examination therefore her claim was rejected. It is also pointed out that the Petitioner was further granted two opportunities for participating in the selection process of Constable/G.D. on 26.05.2011 and 05.06.2012 but the Petitioner did not enter her appearance at all in the selection process and therefore, she could not be considered for the appointment.
4. So far as appointment on compassionate ground is concerned it is settled position of law that minimum eligibility criteria can be fixed by State for grant of compassionate appointment. So far as the recruitment is concerned the minimum eligibility can not be compromised for the sake of grant of compassionate appointment.
5. In the case of State of Gujarat and others Vs. Arvindkumar T. Tiwari and Another reported in (2012)9 SCC 545, the Hon'ble Supreme Court examined the issue of eligibility criteria while considering the applications for appointment on compassionate ground. The Hon'ble Supreme Court held and observed in para 9, 10 and 12 as under:-

“9. The eligibility for the post may at times be

misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible.

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. “

6. In the case of State Bank of India and Another Vs. Raj Kumar reported in (2010)11 SCC 661, the Hon'ble Supreme Court has held and observed in para 11 as under:-

“11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.”

7. The same view has further been re-iterated by the Supreme Court in case of State of Uttar Pradesh and Others Vs. Pankaj Kumar Vishnoi (2013(11) SCC 178) and observed in para 22 as under:-

“22. It is accepted position that the respondent appeared in the test and could not qualify. Once he did not qualify in the physical test, the High Court could not have asked the Department to give him an opportunity to hold another test to extend him the benefit of compassionate appointment.....The respondent after being disqualified in the physical test could not have claimed as a matter of right and demand for an appointment in respect of a particular post and the High Court could not have granted further opportunity after the crisis was over.”

8. For the forgoing reasons if the Petitioner has been granted sufficient and ample opportunities for passing minimum eligibility criteria for different posts and she fails, this Court does not find any infirmity in the action on part of the Respondent-organisation in not considering the claim of the Petitioner for grant of compassionate appointment.
9. Accordingly, the Writ Petition being devoid of merit is dismissed.

Sd/-

(P. Sam Koshy)  
**JUDGE**