THE CHIEF COMMISSIONER, CENTRAL EXCISE AND CUSTOMS, LUCKNOW & ORS. A

v.

PRABHAT SINGH

(Civil Appeal No. 8635 of 2012)

NOVEMBER 30, 2012 B

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Service Law:

C

Appointment on compassionate ground – O.M. dated 5.5.2003 – Held: The very object of making provision for appointment on compassionate ground, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness – Delay in raising such a claim, is contradictory to the object sought to be achieved – The norms governing compassionate appointment have to be strictly followed – Where claims for compassionate appointment exceed the available vacancies, a selection process based on comparative compassion gradient of eligible candidates, has to be adopted – In the instant case, even though the father of the applicant had died on 2.3.1996 he sought judicial redress, for the first time, by approaching the CAT in 2005 – By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003, as appointment on compassionate ground under the OM is permissible within three years of the death of the bread winner in harness – Order of High Court directing the authorities to appoint the appellant on compassionate ground, against a post in the grade of Tax Assistant or any other post falling in the quota of direct recruitment, is set aside – Department of Personnel and Training, Government of India, O.M. dated 5.5.2003. D E F G

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8635 of 2012.

From the Judgment & Order dated 09.08.2011 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. B 33452 of 2008.

Sidharth Luthra, ASG, B.K. Prasad, Nakul Dewan, Bhakti Pasrija Sethi, Aditya Singhla, Dinesh Choudhary, Arvind Kumar Sharma for the Appellants.

C Saurabh Upadhyay, S.K. Verma, Navin Verma for the Respondent.

The following Order of the Court was delivered by

O R D E R

D

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

2. Vijay Bahadur Singh, who was working as a sepoy in the Central Excise and Customs Department and was posted in the Customs Division at Varanasi, died in harness on E 2.3.1996. His son Prabhat Singh applied for appointment on compassionate ground. It seems, that he could not be appointed as such, because there was no vacancy available to accommodate him. His application therefore remained pending.

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3. Having waited long enough, Prabhat Singh filed Original Application no. 1459 of 2005 before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as the "CAT-Allahabad Bench"). In his Original Application, G Prabhat Singh prayed for a direction to the respondents to appoint him on compassionate grounds, since his father Vijay Bahadur Singh had died in harness. The CAT-Allahabad Bench disposed of the application filed by Prabhat Singh on 8.12.2005 with a direction to the Commissioner, Central Excise, Allahabad H to take a decision on the representation filed by Prabhat Singh

seeking appointment on compassionate ground within three months. A

4. In compliance with the directions issued by the CAT-Allahabad Bench dated 8.12.2005, the Commissioner, Central Excise, Allahabad, adjudicated upon the claim of Prabhat Singh (for appointment on compassionate ground), by an order dated 5.1.2006. A perusal of the aforesaid order inter alia reveals, that the policy instructions pertaining to appointment on compassionate ground envisage, that such appointments can be made only up to a maximum of 5% vacancies, arising under the direct recruitment quota (in any group "C" or group "D" posts). It also emerges from the order dated 5.1.2006, that the Ministry of Finance, vide its letter dated 19.7.2001, restrained the authorities from, filling up any vacancies by way of direct recruitment. In compliance therewith, the department had not made any appointment by way of direct recruitment since December, 2000. Accordingly, in the absence of appointment against direct recruitment vacancies, no compassionate appointment could have been made. This therefore constituted one of the reasons for not appointing Prabhat Singh on compassionate ground. The order passed by the Commissioner, Central Excise, Allahabad further reveals, that the erstwhile cadres of Lower Divisional Clerks and Upper Divisional Clerks had been abolished. The existing Lower Divisional Clerks and Upper Divisional Clerks were merged into a newly created cadre of Tax Assistants. In so far as the post of Tax Assistant is concerned, the minimum prescribed qualification, for appointment by way of direct recruitment thereto, was graduation. Prabhat Singh could not be appointed on compassionate ground, against the post of Tax Assistant as he possessed the qualification of intermediate, which is lower than the minimum prescribed qualification. For the reasons summarized hereinabove, the claim of Prabhat Singh for appointment on compassionate ground was rejected by the order of the Commissioner, Central Excise, Allahabad dated 5.1.2006. B C D E F G H

A 5. Dissatisfied with the order dated 5.1.2006, Prabhat Singh approached the Central Administrative Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "the CAT- Lucknow Bench"), by filing Original Application no.468 of 2006. The instant Original Application filed by Prabhat Singh was B disposed of by CAT-Lucknow Bench by an order dated 14.03.2008, with the direction, that the claim of Prabhat Singh for appointment on compassionate ground be re-considered against the post of Tax Assistant. While issuing the aforesaid direction, it was clarified, that the earlier order dated 5.1.2006 C would not be taken into consideration, to the detriment of the applicant-Prabhat Singh.

6. In compliance with the directions issued by the CAT-Lucknow Bench dated 14.3.2008, the Additional Commissioner, (P&V), Central Excise, Allahabad, re-D considered the claim of Prabhat Singh for appointment on compassionate ground. It would be relevant to mention, that at the time of the instant consideration, an Office Memorandum issued by the Department of Personnel and Training dated 5.5.2003 (hereinafter referred to as "the O.M. dated 5.5.2003") E was taken into consideration. The O.M. dated 5.5.2003, spells out the policy, as also, the terms and conditions for appointment on compassionate ground. A perusal of the order dated 22.5.2008 passed on reconsidering the claim of Prabhat Singh (for appointment on compassionate ground) reveals, that the F O.M. dated 5.5.2003 inter alia expressly provided, that appointment of a dependant family member on compassionate ground, was permissible only within three years of the death of the bread-winner in harness. The aforesaid order dated 22.5.2008, also noticed, that a Review Committee constituted for the purpose of making appointments on compassionate G ground, had re-considered all pending matters on 21.09.2007. The Review Committee had excluded the name of Prabhat Singh (and all other candidates like him) from consideration, because more than three years expired after the death of his father (on 2.3.1996). Apart from the reason expressed above, H

in the order dated 22.5.2008, it was noticed that there was no available vacancy in the cadre of Tax Assistant. It was pointed out, that the cadre controlling authority had not released any further vacancy of Tax Assistant, which could be filled up by direct recruitment. Accordingly, due to non availability of any direct recruitment vacancy, in the cadre of Tax Assistant, the claim of Prabhat Singh for such appointment, was held to be not made out. For the reasons summarized hereinabove, the claim of Prabhat Singh, for appointment on compassionate ground, was again rejected.

7. Even though the appellant in compliance with the directions issued by the CAT-Lucknow Bench, dated 14.3.2008, re-examined the claim of Prabhat Singh for appointment on compassionate ground, and accordingly, passed the order dated 22.5.2008 (referred to in the foregoing paragraph), yet the appellants chose to assail the order passed by the CAT-Lucknow Bench dated 14.3.2008 (disposing of O.A. no.468 of 2006). The appellants accordingly, preferred Miscellaneous Writ Petition no.33452 of 2008 in the High Court of Judicature at Allahabad (hereinafter referred to as "the High Court") to assail the order passed by the CAT-Lucknow Bench, dated 14.3.2008, wherein the directions had been issued to the appellants to re-consider the claim of Prabhat Singh, for appointment on compassionate grounds against the post of Tax Assistant.

8. The High Court disposed of the aforesaid miscellaneous writ petition vide order dated 9.8.2011. The operative part of the order passed by the High Court is being extracted hereunder:-

> "Looking into this fact that now the post of Tax Assistant is to be filled up by way of promotion, the order of Tribunal is modified to the extent that the case of respondent no.1 shall now be considered by the petitioner in the grade of Tax Assistant or any other post falling in the quota of direct

A recruitment. The respondent no.1 shall be given appointment either in the department where his father was working or in any other department of Government of India, expeditiously, but not later than six months from the date of receipt of a certified copy of the order of this Court.

B With the aforesaid directions the writ petition is disposed of."

The aforesaid directions issued by the High Court have been assailed, through the instant Special Leave Petition.

C

9. A perusal of the impugned order passed by the High Court reveals that the High Court expressly noticed the fact, that in the order of the Commissioner, Central Excise, Allahabad, dated 5.1.2006, the ground on which the claim of Prabhat Singh D for appointment on compassionate ground was declined, was expressed as non-availability of any vacancy, because of creation of the new cadre of Tax Assistant (and the merger of the posts of Lower Division Clerk and Upper Division Clerk in the said cadre). The Commissioner, Central Excise, E consequent upon the abolition of posts of Lower Division Clerk and Upper Division Clerk declined the claim of Prabhat Singh for appointment against the post of Tax Assistant on compassionate ground, for the reasons that he did not possess the qualification of graduation, which was the prescribed educational qualification, for appointment by way of direct F recruitment, against the post of Tax Assistant. The claim of Prabhat Singh, having been so considered, the High Court could not have passed the ultimate direction requiring the appellants herein, to yet again consider the claim of Prabhat Singh for appointment against the post of Tax Assistant or G against any other equivalent post in the same grade.

10. Whether or not the claim of Prabhat Singh for appointment on compassionate ground could be considered, in terms of directions issued by the High Court, would truly H depend on the OM dated 5.5.2003 which laid down the policy,

as also, the terms and conditions of eligibility for appointment as such. It is evident from the narration of facts noticed above, that the appellants while considering the claim of Prabhat Singh for appointment on compassionate ground (consequent upon directions issued by the CAT-Allahabad Bench and CAT-Lucknow Bench) vide orders dated 5.1.2006 and 22.5.2008, clearly expressed, that there was no direct recruitment vacancy available, to consider the candidature of Prabhat Singh, for appointment on compassionate ground. In the background of the aforesaid factual position, there was hardly any justification for the High Court to have passed the directions extracted above.

11. It would also be pertinent to mention, that the High Court, in the impugned order dated 9.8.2011, also took notice of the fact, that the Ministry of Finance vide its order dated 19.7.2001, had prohibited the appellants from filling up any further vacancies by way of direct recruitment. In the orders passed by the appellants herein, it was categorically noticed, that no vacancies by way of direct recruitment were actually filled up after December, 2000. Since the OM dated 5.5.2003 laid down a quota of 5%, for appointment on compassionate ground, out of vacancies filled up by direct recruitment, the question of appointment on compassionate ground could have arisen, only if the appellants had proceeded to make appointments by way of direct recruitment. Since it is not a matter of dispute before us, that no appointment by way of direct recruitment was made by the appellants after December, 2000, it clearly emerges that the quota contemplated in the OM dated 5.5.2003 for appointment on compassionate ground had not become available. Therefore, the question of appointment of Prabhat Singh at the hands of the appellants on compassionate ground, did not arise at all.

12. The High Court expressed, that ban at the hands of Finance Department would not affect appointment on compassionate ground, the said determination, in our view, was

A rendered without taking into consideration the fact, that the quota of 5% would arise only when appointments by direct recruitment were actually made. Out of vacancies filled up by way of direct recruitment, 5% could then be earmarked towards compassionate appointment under the OM dated 5.5.2003. B Since no direct recruitment was made by the appellants after December, 2000, clearly no vacancy had became available for appointment on compassionate ground, with effect from December, 2000. The direction issued by the High Court dated 9.8.2011, requiring the appellants to consider the case of C Prabhat Singh for appointment on compassionate ground, was without reference to the OM dated 5.5.2003, wherein the policy, and terms and conditions for appointment on compassionate ground, were laid down.

13. Most importantly, the High Court did not take into D consideration one of the most significant reasons depicted in the orders passed by the appellants (dated 5.1.2006 and 22.5.2008), namely, that under the OM dated 5.5.2003 appointment on compassionate ground was permissible within a period of three years from the date of death of the concerned E employee in harness. Vijay Bahadur Singh, the father of Prabhat Singh had died on 2.3.1996. The candidature of Prabhat Singh, for appointment on compassionate ground, under the OM dated 5.5.2003 could have been considered only till 1.3.1999. Thereafter, Prabhat Singh was rendered ineligible F for appointment on compassionate ground. Pointedly, on aforesaid ground the Review Committee constituted by the appellants to consider the claims of dependents of employees who had died in harness, vide an order dated 21.9.2007, had excluded the names of persons including Prabhat Singh, from G the list of pending cases for appointment on compassionate ground, because they could no longer be appointed on compassionate ground, since more than three years had expired after the death of the concerned bread winner in harness. Had the High Court or the Tribunals applied their mind H to the aforesaid pre-condition for eligibility for appointment on

compassionate ground, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfillment of the terms and conditions stipulated in rules/regulations/policy instructions/ office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again. In the instant case, on a simple issue of compassionate appointment, there have been repeated rounds of litigation, the first time before the CAT-Allahabad Bench, then before the CAT-Lucknow Bench, and thereafter, before the High Court. From the High Court the matter has now been carried to this Court. If only the pre-requisite eligibility of Prabhat Singh for appointment on compassionate ground had been examined, it would not have been necessary to examine the matter again, and yet again. The instant observations have been recorded only to demonstrate how judicial time at different levels has been wasted by entertaining a frivolous litigation. Surely, because Prabhat Singh had approached a judicial forum nine years after the death of his father, whereas, appointment on compassionate ground is permissible only within three years of the death of the bread winner, the matter deserved to have been rejected at the stage of first entertainment.

14. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate ground, exceed, the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates

A but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a B solitary available vacancy, can be shown to be based on reason, fair-play and non arbitrariness.

15. The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately C died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object D sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT-Allahabad E Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner F in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.

16. Courts and Tribunals should not fall prey to any G sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every H

such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.

17. For the reasons recorded hereinabove, the impugned order passed by the High Court dated 9.8.2011, directing the appellants to appoint Prabhat Singh on compassionate ground, against a post in the grade of Tax Assistant or any other post falling in the quota of direct recruitment, is liable to be set aside. The same is accordingly hereby set aside.

18. The instant appeal is accordingly allowed.

R.P. Appeal allowed.