

Union Of India And Anr vs Sajjan Kumar And Ors on 28 March, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2633/2023

UNION OF INDIA AND ANR.

..... Petition

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul and Ms. Swati
Kwatra, Advs.

versus

SAJJAN KUMAR AND ORS.

..... Responden

Through: Mr. Ashish Nishchal, Mr. Arun
Nishal and Ms. Rinku Shah, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 28.03.2023

1. This is an application filed by the respondents for early hearing of the petition. Mr. Ashish Nishchal, learned counsel appearing for the respondents states, he does not wish to file reply to the petition. Even Mr. Ajay Digpaul, learned CGSC appearing for the petitioners has no objection for early hearing of the petition.

2. Accordingly, application is allowed. The writ petition is taken up for hearing.

W.P.(C) 2633/2023

3. The challenge in this petition is to an order dated October 20, 2022 whereby, the Tribunal has allowed the Original Application being O.A. 336/2016 filed by the respondents herein, wherein their appointment as LDC on compassionate ground was cancelled. The Tribunal directed the petitioners herein to revive the offers of appointment issued to the respondents and allow them to join their place of posting within a period of two weeks.

4. The case of the respondents before the Tribunal was that they were appointed as an LDC on compassionate grounds on the basis of recommendations made by the Compassionate Appointment Board, and were given offers of appointment to the post of LDC vide communication dated February

18, 2015. The respondents were called upon to join their place of posting on or before March 17, 2015. However, without assigning any reason or without giving any notice to them, an Office Memorandum dated February 27, 2015 was issued whereby the appointment letters issued to them were kept on hold till further orders.

5. The case of the respondents was that, they were not informed any reason whatsoever for keeping the offers of appointment in abeyance and that an impugned order dated December 23, 2015 was issued whereby the offers of appointment were cancelled.

6. The case of the petitioners before the Tribunal was that the process of inviting applications for compassionate appointment against six vacancies in the grade of LDC was taken up. Pursuant thereto, in terms of the recommendations of the Compassionate Appointment Board, six persons were appointed as LDC on compassionate basis. It was also stated that two persons had already joined as LDC. It was their case that they decided to review the offers of compassionate appointment approved on February 16, 2015 due to certain complaints received with regard to the appointments made. Pursuant thereto, a Review Board, considered the process of appointment of six LDCs on compassionate basis and had come to a conclusion that fresh applications need to be invited against six vacancies of LDC. The Review Committee was of the following view:-

"C. Facts related to current case of approval of offers of appointment in the grade of LDC against six vacancies.

1. The vacancies in the category of LDC under compassionate appointment quota were notified as 6 nos. for the vacancy period from 1.7.2014 to 31.12.2014 vide no 9(14)/2014/ .(.)/ -6/129 dated 13.01.2015 with cut-off date for receipt of applications being 22-01-2015.

2. No extension of time was granted beyond 22-01-2015 for receipt of applications.

3. Compassionate Appointment Board meeting was postponed initially on 4.2.2015 due to technical reasons and finally held on 16.2.2015 wherein 10/12 complete applications received upto the cut-off date i.e. 22.01.2015 for which the appointments on Compassionate ground was considered by the Compassionate Appointment Board. Out of 10 applications 6 applications were selected for giving offer of appointment with minimum cut of score as low as 71 based on the initial notice, period of 9/10 days, which was not extended subsequently.

4. The decision of the CAB was immediately communicated by issuing offer of appointment on 18.2.2015. However, soon after the receipt of a complaint from Smt. Anita Bhardwaj on 27.2.2015 claiming to have scored 89 marks, based on the decision taken by DDG (Coord)NR, the appointments were put on hold on 27.2.2015 vide letter no. 9(14-LDC)/ . .(.)/2014-15/E- 6/590 which was also notified on CPWD website,

5. Subsequently, vide Secretary(UD)'s FTS No 2289 dated 26.5.2015, complaint of Shri Raman Mandoria was received claiming to have scored 88 marks followed by another VIP reference received Dr. Virender Kumar, MP(Lok Sabha cum Chairman, Standing Committee of Parliament on Labour). This letter dated 27.4.2015 was received through Directorate General of CPWD vide their No. 4/16/2015-L&CA dated 22.5.2015. This case pertained to Smt. Santosh Devi claiming to have scored 100 marks and left out from the offer of appointment. Similar case of Smt. Santosh Devi was also received through (not legible) alleging that the period of notification and cut-off date for receipt of application was too short for processing by the CAC and then forwarding to the CAB."

7. The Tribunal in the impugned order has in paragraphs 5 to 7 has stated as under:

"5. Today, we have been shown certain papers which are basically nothing more than duplicate copies of several documents which are already on record. These papers do not throw much light on the issue at hand. Although, the learned counsel for the respondents, assisting us in the matter, submits that pursuant to the offer of appointment, there were certain complaints that the applicants were ineligible for appointment on compassionate grounds in accordance with the provisions set forth for such appointment. Thereafter, the matter was reviewed by the competent authority and only after such review, the decision to cancel the appointment was taken. He also draws our attention to the specific averments to this effect he has made in his reply. While we appreciate the contentions of the learned counsel for the respondents, we do not find them to be substantiated on the basis of the record which has been produced before us today. The minutes of the meeting of Compassionate Appointment Board dated 16.02.2015 gives a categorical approval to the applicants along with few others for appointment on compassionate grounds. The said minutes also refer to the evaluation / weightage points received by each of the applicants along with others and it is obvious that it is on the basis of these weightage points that the applicants were given the offers of appointment.

6. We have also gone through the review made by the Compassionate Appointment Board and the reason which emerged from the said meeting is not that the eligibility of the applicants is being questioned, it is the omission on the part of the respondents to appropriately calculate the number of vacancies which were available for compassionate appointment. In case there was an error on the part of the respondents to calculate such vacancies, the consequence of the same cannot be faced by the applicants and that too after they had been given the offers of appointment along with the station of posting. Further, if the said offer was to be reviewed, the respondents were obliged to offer an opportunity to the applicants to submit their representations or contest the said review if they chose to do so.

7. We are not convinced about the stand of the respondents on the basis of the documents which have been placed before us either in the pleadings or by way of the

relevant file before us today. The respondents had no plausible cause to review the offer of appointment which was duly issued on the basis of approval of the Board constituted for the purpose, after evaluating the eligibility and merit of the candidates and that too after a much delayed period of ten months. Moreover, as stated earlier the reasons recorded in the review meeting for withdrawing the offer of appointment are solely attributed to the respondents and the applicants cannot be made to suffer the consequences for this act or omission."

8. Mr. Digpaul submits that the Tribunal has misdirected itself in not considering the case set up by the petitioners in their counter-affidavit. According to him, though the Tribunal has referred to the minutes of the meeting of the Compassionate Appointment Board, as well as, the review made by the Compassionate Appointment Board of the six appointments sought to be made by the petitioners, but it had not dealt with glaring procedural lapses which have taken place while appointing six persons on compassionate basis.

9. He submits that the impugned order of the Tribunal is clearly a perverse order and could not have been passed, in the facts of this case, more so when the complaints were made by persons who have secured more marks than the persons / respondents, who have been issued the offers of appointment as LDC on compassionate basis. He states, in the facts of this case, the order of the Tribunal is liable to be set aside.

10. Mr. Nischal submits that the petitioners could not have cancelled the offers of appointment after a period of 10 months, more so when two, amongst six appointees have already joined their place of posting as LDC.

11. We are not convinced by the submissions made by Mr. Nischal, in view of the facts as noted from the record, more particularly, the conclusion drawn by the Compassionate Appointment Board in their review, more specifically Para (C) thereof, which we have already reproduced above. That apart in Para 10 of the minutes, the Committee throws light on the fact that the proper procedure has not been followed by the Compassionate Appointment Board. The relevant paragraphs of the minutes are reproduced as under:

"Conclusions: The facts brought out as above in past 2 cases and the current case of compassionate appointments are compared in the table as under:-

Description	Past Past	Compassionate	Current	Compassionate
Appointment in Work charged	Appointment in grade of LDCs / categories (Beldar + the grade of LDCs MTS categories for Khallasi)	for for vacancies	vacancies during	vacancies during
the period	the period	from period	from period	from period
01-01-	from 01-07-2014	01-01-2014 to 30-	2014 to 30-06-2014	to 31-12-2014
06-2014	Initial notice	21 days	22 days	9 days
period of receipt of applications	Extended period	62 days	81 days	9 days (No for receipt of extension granted)
applications	Cut-off weightage	97 (LDC)	and 114 101 (Beldar) & 130 71 points (MTS)	(Khallasi) No. of 111 + 121 73 (Beldar) + 75 10 applications (MTS+Chowkidar)

(Khallasi) = 148 considered by the = 232 (excluding the CAB applications received for Chowkidar which have been included in the applications received for LDC /MTS It has been seen from the above fact:

1. The initial notice for receipt of applications of 9 days is much lesser than 21 / 22 days in the past two cases.
2. No extension has been granted for the receipt of Compassionate appointment applications. Whereas, in the past two cases extensions were given for the receipt of application from time to time. Final extended notice period for receipt of applications was 62 /81 days.
3. In this particular case, the numbers of applications considered by the CAB were 10 nos. as against 73 minimum applicants in any of the category in the past cases. Also, the minimum cut off score obtained by the applicants was as low as 71 against the minimum cut-off in the aforesaid cases being 97.

These are contrastingly different then the two past cases of Compassionate Appointment."

12. On review the Board made the following recommendations:

- "a. Continue with the hold on the entire process including the status of already joined two cases based on approval accorded on 16-02-2015 by CAB.
- b. Process of inviting applications for compassionate appointment be taken up afresh for the same number of six vacancies in the grade of LDC to review the offers of compassionate appointments approved earlier on 16-02-2015 but by enhancing the notice period from 9 days to a minimum of 30 days.
- c. Applications so received (including from those six cases already offered letters of appointment) with weightage points as on 31-12-2014 be reconsidered by CAB immediately after the cut-off date yet to be notified.
- d. In case any of those six applicants, who were issued offer of appointment earlier, are found ineligible, such ineligible applicants, in case already joined, shall be issued by the appointing authority a one month notice for termination of their services as per condition No. 5 of Terms and Conditions of the offer of appointment. Appropriate decision of termination, if any, shall be kept on receipt of the reply from the candidates accordingly.
- e. Following timelines are prescribed to complete the review of appointments on compassionate grounds for vacancies of LDCs based on the compassionate appointment quota for the vacancy period from 01.07.2014 to 31.12.2014 as under:

1. Publication of Notice re-inviting applications against six number vacancies within 30 days from the date of such notification for appointment under compassionate appointment quota in the grade of LDCs for the period from 01.07.2014 to 31.12.2014 latest by 10th July, 2015 based on same eligibility criteria as on 31-12-2014.

(Action: DDG, Coord. (NR))

2. The entire process of compassionate appointment based on the aforesaid notification and receipt of application shall be completed within a period of 90 days from today, i.e., 01.07.2015.

(Action: DDG, Coord. (NR))"

13. It is apparent from the facts as noted above that the procedure which was followed in the past has not been followed while making appointments of the respondents herein. Moreover, the persons who have secured more marks than the selectees / respondents, have not been given the offers of appointment.

14. We are of the view that the Tribunal has clearly overlooked the aforesaid aspects while allowing the OA of the respondents as it has not referred to the finding of the Review Board which concedingly were before the Tribunal when it had rendered the impugned judgment.

15. Accordingly, the order of the Tribunal dated October 20, 2022 passed in OA No. 336/2016 is liable to be set aside. It is ordered accordingly.

16. The petition is disposed of as allowed. Pending application, if any, stands disposed as being infructuous. No costs.

17. The date already fixed, i.e., September 22, 2023 stands cancelled.

V. KAMESWAR RAO, J ANOOP KUMAR MENDIRATTA, J MARCH 28, 2023/jg