

interest of the case has been misunderstood by the respondents while taking the decision not to serve show-cause notice before dismissing him. In any case CBI requested the GOC-in-CHQ Western Command, Chandigarh not to do certain things as stated above as the case was still under investigation. The CBI must not have meant that that the petitioner should never be issued show-cause notice before the proposed action. Even if it is presumed for a moment that the State should not issue show-cause notice in view of Annexure R4/1 on 22nd July, 1992 when Annexure R4/1 was written by the CBI, the respondents could have waited till the time investigation was completed and thereafter show-cause notice could be issued. The GOC-in-CHQ Western Command could have written to the Superintendent of Police of the CBI, Chandigarh to complete the investigation expeditiously, in order to enable him to issue show-cause notice. For all these reasons, we are of the considered view that the order of dismissal without granting an opportunity to the petitioner deserves to be set aside.

(20) The question regarding giving effect to the promotion cannot be dealt with at this stage because by quashing dismissal order, the petitioner automatically does not get reinstatement in view of the fact that he was already under suspension when the dismissal order was passed. It is not in dispute that the writ petition challenging the suspension order was dismissed. Therefore, we do not deal with the question of promotion of the petitioner at this stage and keep it open to be decided if at all it is then required to be decided after the final outcome regarding the action against the petitioner.

(21) In the result the writ petition is allowed and the order dismissing the petitioner, annexure P-6 and the consequent letter conveying the order to the petitioner annexure P-4 are quashed. Rest of the prayers are rejected. No order as to Costs.

*J.S.T.*

*Before Hon'ble V. K. Bali, J.*

**RAJINDER KUMAR KHERA,—Petitioner.**

*versus*

**STATE OF HARYANA & ANOTHER,—Respondents.**

**C.W.P. 8540 of 1993**

**26th April, 1996**

***Constitution of India, 1950—Arts. 14, 226/227—Compassionate appointment—Appointment given to dependant of deceased employee***

*under ex-gratia scheme—Discrimination—Others similarly situated appointed as Inspectors whereas petitioner appointed as Sub Inspector—Discrimination between similarly situated persons cannot be permitted—Discretion vested in Government is subject to constitutional and public limitations.*

*Held*, that the only question that needs determination is as to whether, even though, it be an *ex-gratia* scheme the same can discriminate between person similarly situated.

It is by now settled proposition of law that the discretion vested in the Government is subject to constitutional and public limitations. The action of the Government must be in conformity with some principle which may test to reason and relevance. Way back in 1979 Apex Court in *Ramana v. I. A. Authority of India* A.I.R. S.C. 1628, after relying upon number of earlier judgments held :—

“It must, therefore, follow as necessary corollary from the principle of equality enshrined in Article 14 though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstances, but it must act in conformity with some standard or principles which meets that test of reasonableness and non-discrimination and any departure from such standard of principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.”

It is, thus, apparent from the observations of the Supreme Court quoted above that even in the matter of discretion, the Government cannot discriminate between the persons equally situated.

(Paras 4 & 5)

*Further held*, that if unfettered discretion is permitted to vest in the State and there are no norms laid down, it would necessarily result in favouring those who are yielding influence in the corridors of powers and those ordinary citizens who do not have such an influence would be treated entirely in a different manner. Such a course cannot be permitted as that would certainly violate the equality clause incorporated in Article 14 of the Constitution of India.

(Para 5)

P. S. Saini, Advocate, for the Petitioner.

J. C. Sethi, Additional AG(Hy.) with N. S. Bhinder, D.A. Haryana,  
for the Respondents.

## JUDGMENT

V. K. Bali J. (Oral).

(1) The only question that has been mooted out in this writ is as to whether Mr. Rajinder Kumar Khera, in wake of the facts and circumstances of this case should have been appointed on the post of Inspector Co-operative Societies on compassionate basis or on the post of Sub Inspectors. The basic contention in support of the petitioner is that even though appointment on compassionate grounds is in discretion of the Government, the said discretion with regard to persons of equally situate has to be applied universally. In other words, the Government cannot in the garb of this discretion differentiate persons situated similarly and give higher appointment to their chosen favourites and lower appointments to those who are unable to exercise influence in the corridors of power. The question noted above emanates from the admitted facts enumerated hereinafter.

(2) The father of the petitioner, late Shri Barkat Ram Khera who was holding the post of Inspector in the department of Co-operative Societies expired on 16th of December, 1989 while he was on duty when he was posted as Inspector Co-operative Marketing Society Charkhi Dadri. Vide instructions issued by the Government on 22nd of December, 1970, one member of the deceased family who dies while in service has to be considered for absorption in Government service. The aforesaid instructions have been annexed with the petition as Annexure P-1. The instructions were later modified vide Government letter dated 13th of July, 1971. The same have been annexed with the written statement as Annexure R-1. The petitioner passed his B.A. Examination with Mathematics and Economics and was fully qualified for the post of Inspector. The mother of the petitioner thus, applied that her son should be appointed as Inspector. The said representation was made through Audit Officer, Co-operative Societies, Bhiwani. The said officer recommended the case of the petitioner for the post of Inspector as he was fully eligible in all respects. The said recommendation was sent to Registrar, Co-operative Societies, Haryana, respondent No. 2 herein. It is the case of the petitioner that without considering qualifications of the petitioner respondent No. 2 recommended the case of the petitioner to the Chief Secretary for the post of Sub Inspector instead of Inspector. The mother of the petitioner met the Registrar, Co-operative Societies and requested that her son who was eligible for the post of Inspector be recommended for the post of Inspector. Her entreaties made to respondent No. 2, however, brought no tangible

results. She then reiterated her request to the Chief Secretary,—*vide* her representation dated 17th of October, 1990 (Annexure P-2). This was followed by number of representations thereafter. Since, however, the family was hard pressed, petitioner joined his services on the post of Sub Inspector and being convinced that step-motherly treatment was meted out to him, filed the present petition for the relief indicated above.

(3) The only contention raised by Mr. P. S. Saini, the learned Counsel representing the petitioner is that petitioner was able to convince the respondents that he was situated like those who were given the post of Inspector but only in the case of the petitioner respondents thought it proper to accommodate him on the post of Sub Inspector. In the present petition in paragraph 16, names of six persons have been given, who it is pleaded were appointed to the post of Inspector and who could not on the facts stake better claim than the petitioner. The persons appointed on the post of Inspector with their dates are as follows :—

- |                   |                                 |
|-------------------|---------------------------------|
| 1. Mam Raj        | Appointed in 1982 as Inspector. |
| 2. Yash Pal       | Appointed in 1983 as Inspector. |
| 3. Mahabir Sharma | Appointed in 1987 as Inspector  |
| 4. Inder Singh    | Appointed in 1992 as Inspector. |
| 5. Sunil Kumar    | Appointed in 1992 as Inspector. |
| 6. Sumer Chand    | Appointed in 1991 as Inspector. |

It is further pleaded in the paragraph that all the above six persons were given appointment as Inspector Co-operative Societies on the death of their father working as Inspector, Co-operative Societies in Co-operative Department. This unequal treatment given to the petitioner offends Article 14 of the Constitution of India contends the learned Counsel. In the reply that has been filed on behalf of the respondents, averments made in paragraphs 16 in the petition have not been denied. It has been pleaded in the written statement that officials at Sr. No. 1, 3, 4 and 5 were appointed as Inspector, Co-operative Societies, as their fathers were working as Inspector Co-operative Societies at the time of their death. As regards Yash Pal who is shown at No. 2, his father was Deputy Registrar and not

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Inspector. It is further stated in the corresponding para of the written statement that appointment given to person shown at No. 3 could not be verified due to the wrong facts. It is also pleaded that the appointment of the officials aforementioned have been made to the post of Inspector, Co-operative Societies, but as a matter of fact, the employment to the dependent of the deceased employee under the petitioner fully detailed above that if not more, then at least matter of right and if the petitioner is interested in the higher post, he can compete in the examination as and when it is held by the competent body.

(4) As mentioned above, the only question that, thus, needs determination is as to whether, even though, it be an *ex gratia* scheme the same can discriminate between person similarly situate.

(5) It is by now settled proposition of law that the discretion vested in the Government is subject to constitutional and public limitations. The action of the Government must be in conformity with some principle which may test to reason and relevance. Way back in 1979 Apex Court in *Ramana v. I.A. Authority of India* (1), after relying upon number of earlier judgments held :—

“It must, therefore, follow as a necessary corollary from the principle of equality enshrined in Article 14 though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principles which meets that test of reasonableness and non-discrimination and any departure from such standard of principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.”

It is, thus, apparent from the observations of the Supreme Court quoted above that even in the matter of discretion, the Government cannot discriminate between the persons equally situated. It has been proved in this case on account of non-denial of pleadings of the petitioner fully detailed above that if not more, then at least four persons who were equally situate as that of the petitioner were

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(1) A.I.R. 1979 S.C. 1628.

appointed to the post of Inspector whereas the petitioner only was discriminated by way of giving lower post of Sub Inspector. If unfettered discretion is permitted to vest in the State and there are no norms laid down, it would necessarily result in favouring those who are yielding influence in the corridors of powers and those ordinary citizens who do not have such an influence would be treated entirely in a different manner. Such a course cannot be permitted as that would certainly violate the equality clause incorporated in Article 14 of the Constitution of India.

(6) For the reasons stated above, this petition is allowed. A direction is issued to the respondents of offer to the petitioner the post of Inspector if he otherwise qualifies for the post and might have good antecedents to the post under contention. It is not possible to give a direction to the respondents at this stage to treat the petitioner as having been appointed Inspector from the date when he was offered the post of Sub Inspector and therefore, on the basis of the judgment rendered today in his favour, he shall not be entitled to claim difference in pay or seniority. However, that would not mean that the State would take a very long time in offering the post to the petitioner and therefore, a further direction is issued to the respondents to do the needful exercise within a couple of months from today. Parties are left to bear their own costs.

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J.S.T.

Before Hon'ble R. S. Mongia & M. L. Singhal, JJ.

EX. L. NK (DVR) MOHINDER SINGH,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

C.W.P. 5579 of 1995.

5th February, 1996.

*Constitution of India, 1950—Art. 226—Amendment to guidelines of Central Welfare (Risk Premia) Fund Scheme—Para 7 benefits to individuals who might be invalidated—Amputation above knee and not at hip level—Would be entitled to benefit of compensation under Para 7-B(i)—Object behind instruction is to rehabilitate Officer—To determine disability and not the exact place where limb is amputat-*