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Central Administrative Tribunal
Principal Bench

O.A.No.1164/2002

M.A. No. 1047/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 23rd day of January, 2003

Sheetal Jhamb
s/o late Smt. Prem Kumari
Ex. Asstt. K.V.S.HQs, New Delhi
r/o 608, Sector-16, Faridabad. .. Applicant

(By Advocate: Sh. S.K.Shukla)

Vs.

1. The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.
2. Sr. Admn. Officer
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016. ... Respondents

(By Advocate: Sh. S.Rajappa)

O R D E R

By Shri Shanker Raju, M(J):

This OA is directed against an order passed by the respondents on 29.12.1998 rejecting the claim of applicant for compassionate appointment. Applicant seeks quashment of this order with direction to respondents to appoint applicant on compassionate basis.

2. MA 1047/2002 has been filed for condonation of delay, inter alia, taking the plea that as the deceased Government servant died in harness on 9.5.1997, and request of applicant has been rejected through a non-speaking order dated 29.12.1998, and he continued to make representations, and as retiral benefits have not been paid, Legal Heirs have filed OA 48/2001 and in pursuance of the directions issued to

the respondents on 10.1.2001, respondents have disbursed the retiral benefits as such the penury still exists and the family is in need of financial assistance, the cause of action is continuing, and the delay be condoned in the interest of justice.

3. Applicant is a son of late Smt. Prem Kumar who was working as Assistant in KVS, died on 9.5.1997. Applicant, who was 20 years of age, made a representation which was considered and rejected on 29.12.1998. Thereafter another representation has been filed. As the retiral benefits have not been disbursed, applicant filed OA 48/2001 thereupon the benefits have been disbursed to the family.

4. Sh. S.K.Shukla, learned counsel appearing on behalf of applicant, contended that the retiral benefits have been paid to the applicant's father, the same have been repaid against the Housing Loan, the family is still indigent and has been facing financial crisis.

5. Placing reliance on the decision of the Constitutional Bench in Ram Chandra Shanker Deodhar vs. State of Maharashtra, 1974(2) SCR 216, it is stated that law of limitation is not a rule of law but matter of practice, and as the cause of action is continuing, the application is maintainable.

6. In so far as the merits are concerned, it is stated that as Fifth Central Pay Commission has restricted compassionate appointment against direct recruitment quota upto 5% of the vacancies, in the

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light of the decision of the Apex Court in A.Ravi Kumar, Managing Director, APSRTC, 2001(3) SCT 506(AP) and Deepak B. Kochari v. Accountant General, Audit and Accounts Department, 2001(3) SCT 428, the compassionate appointment is to be accorded to applicant, as applicant is unable to tide over from the calamity caused by the death of the deceased bread earner.

7. Moreover, by stating the examples about four persons have been appointed on compassionate basis, whereas applicant's case is more deserving, has been meted out a differential and arbitrary treatment, which is in violation of Articles 14 and 16 of the Constitution of India.

8. On the other hand, respondents' counsel Sh. S.Rajappa, vehemently opposed the contentions and stated that applicant himself has given *an undertaking* on 20.5.1997 declaring that the father of applicant is earning Rs.2500/- per month and having regard to the financial benefits accorded to applicant, which includes *retiral* benefits and other benefits the family cannot be treated as an indigent and dire need of financial assistance.

9. It is also stated that cause of action had arisen to applicant on 29.12.1998, when his request for compassionate appointment was rejected, but this OA has been filed after more than three years, it is barred by limitation. The grounds shown for condoning the delay are not sufficient as payment of disbursement of retiral benefits has no relation with question of compassionate appointment.

10. In so far as the discrimination is concerned, it is contended that the same has been denied and it is stated that each case has to be considered and recommended on its individual merit and compassionate appointment cannot be claimed as a matter of right.

11. By placing reliance on a decision of the Apex Court in Sanjay Kumar v. State of Bihar, 2000(7) SCC 192, it is contended that compassionate appointment is to be given to enable the family of the deceased employee to tide over from the sudden crisis, as the applicant has been accorded sufficient means and he managed to sustain during this period, the belated claims cannot be considered.

12. I have carefully considered the rival contentions of the parties and perused the material on record. As had already been settled by various pronouncements of the Apex Court that compassionate appointment cannot be claimed as a right and is to be governed by the policy laid down by the Government. As per the policy of the Government, belated claims are not to be entertained.

13. Moreover, on limitation, the cause of action had accrued to applicant on 29.12.1998 but yet he has not filed OA within the stipulated period as provided under Section 21 of the Administrative Tribunals Act, 1985. The grounds taken in the MA for condonation of delay are neither sufficient nor reasonable to condone the delay. Merely because he

was pursuing his remedy for retiral benefits could not preclude him from challenging the rejection of his request for compassionate appointment simultaneously. In this view of the matter, OA is liable to be dismissed on limitation alone.

14. However, in the interest of justice, OA is also considered on merits. As held by the Apex Court in Union of India v. Bhagwan Singh, 1995(6) SCC 476 long delay in applying for compassionate appointment and belated claims frustrates from the object of compassionate appointment to mitigate the hardship caused to applicant and to alleviate the distress of the family.

15. From the perusal of the reply, I find that the family has been paid the dues and has managed to survive and sustainⁱⁿ despite death of deceased Government servant. Moreover, husband of the deceased is admittedly working, and having regard to the amount accorded to the family, the same cannot be, by any stretch of imagination, considered as an indigent family. The very object of compassionate appointment is to redress the family in financial crisis which is lacking in the present case. As the compassionate appointment is not a right, the same cannot be claimed as such. Respondents having considered meticulously, the claim of applicant has been rejected in accordance with Scheme, I do not find any legal infirmity in the order passed by respondents.

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16. Moreover, in so far as the discrimination is concerned, in a matter of compassionate appointment, each case is to be decided on its individual merit. Having considered the case of applicant, I do not find any violation of Articles 14 and 16 of the Constitution of India.

17. In the result, MA and OA are bereft of merit and are accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/