

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/01267/2016****Dated Monday ,the 20th day of January, 2020
PRESENT****Hon'ble Mr.T.Jacob , Member (A)**

A. Lakshmanan,
S/o T.Arumugam,
Aged about 46 years,
Employed as gardener at ANP Garden,
Thiruvandar Koil,
Mannadipet Commune,
Puducherry – 605 102.

....Applicant

(By Advocate M/s M. Gnanasekar)

Vs

1. Union of India Rep by
The Chief Secretary to Govt.,
Govt of Puducherry,
Puducherry

2. The Development Commissioner,
Directorate of Rural Development,
Puducherry.

3. The Project Director,
District Rural Development Agency,
Puducherry.

4. The Project Executive Officer,
Community Development Programme,
Villianur, Puducherry.

5. The Block Development Officer,
Villianur, Puducherry

...Respondents

(By Advocate Mr. R. Syed Mustafa)

ORDER
(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “i. set aside the order No.41161/DRD/Estt/A1 2016/125 dated 29.04.2016 passed by the 3rd respondent and consequently direct the respondents to appoint the applicant on any suitable post on compassionate grounds with all monetary and service benefits.
- ii. And pass such further orders as are necessary to meet the ends of justice.
- iii. Award exemplary cost and thus render justice.”

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's father, T. Arumugam while working as a Gardener died in a road accident on 05.12.1985. The applicant was appointed as a Gardener on daily rated wages on 06.12.1985. On 08.06.1988, he was directed to produce his original qualification certificate before the Superintendent, Directorate of Rural Development, Puducherry. The applicant made representations for compassionate appointment on 19.12.2001, 01.10.2010, 05.07.2011, 07.09.2012 and on 16.01.2013. In March 2013, he filed OA No.461/2013 before this Tribunal praying to consider his case for compassionate appointment wherein this Tribunal by order dated 24.02.2016 directed the respondents to consider the application of the applicant within stipulated time. The applicant made an application praying for compassionate appointment on 16.03.2016. The Block Development Officer, Villianur directed the applicant to produce the relevant documents submitted before this Tribunal on 28.03.2016. The

applicant made a representation before the Hon'ble Chief Minister, Puducherry, seeking compassionate appointment on 06.04.2016. On 20.04.2016, the Block Development Officer, Villianur again directed the applicant to produce the relevant documents viz. as to whether his father was a permanent employee, and to produce a copy of his application for compassionate appointment and a certificate to the effect that he was not employed elsewhere. The Project Director, Directorate of Rural Development, Government of Puducherry rejected his application on 29.04.2016. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

- i. The action of the 5th respondent in not appointing the applicant on daily rated basis on compassionate grounds when the applicant father was employed on regular basis is highly illegal and opposed to the scheme of compassionate appointment.
- ii. The appointment of the applicant was on compassionate grounds and made by the competent authority. Therefore the appointment should be treated as regular appointment.
- iii. The action of the 5th respondent in denying engagement to the applicant without giving any opportunity to the applicant and without following the principles of natural justice is illegal, arbitrary and violative of Article 14, 16, 21, 311(2) of the Constitution of India.
- iv. After disengagement of the applicant, the respondents have engaged more than 75 persons during 1989-2005. Such an action

of the respondents is highly discriminatory and violative of applicant's Fundamental Rights and Article 14, 16 of the Constitution of India.

v. Having issued an order of appointment to the applicant, the respondents ought to have issued an order of regular appointment in accordance with the law. Since the applicant was denied employment orally, the non-employment is non-est in the eye of law and in-operative.

vi. After receipt of the order of this Tribunal, the applicant came to know that the 5th respondent conducted a field enquiry and submitted a proposal to the 3rd respondent recommending that the applicant may be appointed against the post of Gardener which was kept vacant for all these years on the ground of violation of the notification of the recruitment rules. The 3rd respondent had not at all applied his mind to the facts of the case and ignored the note made by the 5th respondent and rejected the request of the applicant on untenable grounds. The initial appointment of the applicant as Gardener on compassionate grounds, is evident from the appointment order of the applicant issued by the respondents. As a matter of fact, the Scheme of compassionate appointment contemplates only regular appointment, therefore, the appointment of the applicant on a daily rated basis on compassionate basis is illegal, arbitrary and against the scheme of the compassionate appointment.

vii. There was no reason or justification for not responding to the representation submitted by the applicant under RTI Act.

viii. The order dated 29.04.2016 was hurriedly issued only to avoid contempt proceedings and there was a total non application mind of the 3rd respondent.

3. The respondents have filed a detailed reply statement in which it is stated that the father of the applicant died on 05.12.1985 while working as Gardener in the ANP Garden, Thiruvandar Koil which was under the control of the O/o the Project Executive Officer, Villianur under the control of the Directorate of Rural Development. The applicant was engaged as a Gardener on daily wages basis @Rs.11.50/- per day, w.e.f 06.12.1985, in the same ANP Garden, Thiruvandarkoil, Puducherry with the condition that the services will be terminated at any time without any prior notice. This engagement will not confer any right for claiming regular employment. The various Central Government Schemes as stated by the applicant are implemented through District Rural Development Agency (DRDA) only and not by this Directorate. As such the question of compassionate appointment does not arise. The applicant failed to discharge his official duties and was totally indifferent in his duties. In spite of repeated warnings by the superiors, the applicant continued to indulge in all sorts of malpractices by selling the usufructs of the Garden. The applicant was also implicated in a dowry case on the complaint lodged by his wife to the DRDA authorities. Moreover, the applicant himself has absconded from duty w.e.f 25.05.1989 with the fear that a criminal case would be filed against him in the dowry case as per the letter addressed to the Free Legal Aid Cell, Puducherry, by the Block Development Officer, Villianur, Puducherry vide letter No.BDO/Estt/ 1-21 /89-90/A1 dated 15.02.1990 and his whereabouts were not known till he approached this

Tribunal for re-engagement. None of the Respondents had denied any opportunity to the applicant in any manner, as no representations in writing was received by the respondents till he approached this Tribunal. However, based on the order dated 24.02.2016 in OA.461/2013 filed by the applicant before this Tribunal, an order was issued and communicated to him vide order dated 29.04.2016 of the Directorate of Rural Development, Puducherry. The representation dated 02.05.2016 to the Public Information Officer, Directorate of Rural Development, Puducherry was not made by the applicant. The applicant was engaged immediately with effect from the next day itself i.e. from 06.12.1985, as this was the practice that was being followed at that time, without adhering to any of the procedures enumerated for appointment on compassionate basis and, thereafter, his case was being processed for compassionate appointment and, hence, he has no locus-standi to insist for his re-engagement. His engagement was offered out of sympathy but he chose to remain on unauthorized absence from 25.05.1989 onwards and owing to the same, the Department was constrained to terminate his services on 25.05.1989. From 1989 the applicant has not made any representations to the authorities neither at that time nor thereafter and therefore, his request for re-engagement in the post that has already ceased to exist at this stage i.e. after a lapse of 29 years, the claim is highly belated and hit by laches and therefore cannot be considered at all. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Having regard to the above facts and circumstances of the case, the short point for consideration in this OA is whether the claim of the applicant for appointment on compassionate ground after a lapse of 27 years is sustainable in the eye of law.

6. Admittedly, this is the second round of litigation. The applicant filed OA 461 of 2013 before Hon'ble Central Administrative Tribunal, Madras Bench praying for compassionate appointment and this Tribunal had passed an order directing the respondents to consider the application of the applicant within the stipulated time. On 29.04.2016, the Project Officer, Directorate of Rural Development, Government of Puducherry rejected his application.

7. According to the applicant, he was appointed as Gardener vide order dated 24.03.1986 on daily rate wages basis w.e.f. 06.12.1985 after death of his father on an road accident on 05.12.1985 in the same ANP Garden, Thiruvandarkoil, Puducherry with the condition that his services will be terminated at any time without any prior notice and that his engagement will not confer any right for claiming regular post. He was not allowed to work from 25.05.1989. The contention of the respondents is that as per the records maintained by them, the applicant had applied for regularisation of his service as Gardener and the same was forwarded to the Deputy Secretary to Government, Development Department vide endorsement dated 15.05.1986 wherein vide letter dated 25/11/1988 it was informed that as no Recruitment Rules was framed for the post of Gardener, the proposal for compassionate appointment may be re-submitted as and when the Recruitment Rules for the post of Gardener is framed and notified. Meanwhile, the Block Development Officer, Villianur has informed in

his letter dated 09/11/1989 that the applicant had failed to discharge his official duties and totally indifferent in his duties. It is also stated that inspite of repeated warning by the superiors, the applicant continued to indulge in all sorts of malpractice by selling the usufructs of Garden. Further the applicant was implicated in a Dowry case on the complaint lodged by his wife to the District Revenue Authority and that all these acts had resulted in his dis-engagement and as well the applicant not reported for duty since 25/05/1989 as per the letter addressed by the Block Development Officer, Villianur to the Free Legal Aid Cell, Puducherry dated 15/02/1990. Further the respondents in their speaking order dated 29.4.2016 had stated that the applicant had absented himself from duty on his own volition w.e.f. 25.05.1989 and in the meantime, the maintenance of the said garden were transferred to Mannadipet Commune Panchayat and was placed under the control of Local Administration Department for further maintenance and, hence, the place of engagement of the applicant on daily rated basis also ceased to exist from then onwards. According to the respondent, from 1989, the applicant had not made any representations to the authorities neither at that time nor thereafter and, therefore, his request for re-engagement in the post that has already ceased to exist, at this stage i.e., after a lapse of 27 years, is highly belated and hit by laches and therefore cannot be considered at all.

8. The whole object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the

family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non-statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate financial crisis due to loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. The object is not to give a member of such family a post much less a post held by the deceased.

9. In the instant case, the applicant's father died on 05-12-1985 and he had discharged his family obligations. According to the respondents, though daily rated engagement was offered to Thiru A. Lakshmanan, out of sympathy, but he chose to remain on unauthorised absence from 25-05-1989 onwards and owing to the same, the Department was constrained to terminate his services on 25-05-1989. At this

distant date, in the year 2020, there is no justification for offering an appointment which was already rejected by the Project Director, who is the competent authority for considering the compassionate ground appointment in the present case. Further, the applicant has not challenged his dis-engagement in the year 1989. Had the applicant been aggrieved by the same, he ought to have approached the Tribunal at the material point of time, which he chose not to. It was after a long period of twenty four years that the applicant approached the Central Administrative Tribunal, Madras Bench for his re-engagement. It is settled law that repeated unsuccessful representations do not elongate the period of Limitation (Paragraphs 20 and 21 in the judgment **S.S. Rathore vs State of MP (1989) 4 SCC 582**). Again, in the case of **C. Jacob vs Director of Geology and Mining (2008) 10 SCC 115**, the Apex Court has held as under:-

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

10. When a cause of action had arisen in 25/05/1989 if an individual approaches the judicial forum at his/her own leisure hours after a hibernation of years, the case could be easily rejected on account of inordinate and unexplained delay. The Apex Court has in the case of **Chennai Metropolitan Water Supply & Sewerage Board vs T.T.**

Murali Babu, (2014) 4 SCC 108 has held as follows:-

"17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

11. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow vs. V. Prabhat Singh (C.A.8635/2012) has held that Courts and Tribunal should not fall pray to any sympathy syndrome so as to issue direction for compassionate appointment without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the compassionate appointment to all those who seek the court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion wherein direction are issued for appointment on compassionate ground could deprive a really needed family requiring financial support and thereby push into penury a truly indigent destitute and impoverished family. Discretion is, therefore, ruled out. So are misplaced sympathy and compassion.

12. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Ltd. (TANGEDCO) in W.P.3882/2014 dated 06.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

“28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the question of providing compassionate appointment to the writ petitioner does not arise at all.”

13. Telescoping the above decisions on the facts of the case, it is clear that the parameters for grant of compassionate appointment are not fulfilled in the instant case and further the daily rated engagement was terminated as early as in 25-05-1989 by the administration against which the applicant has filed his first OA.461/2013 after an inordinate delay of 24 years.

14. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court and High Court (supra), I do not see any justification to allow the OA in favour of the applicant. Resultantly, the OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. JACOB)
MEMBER (A)
.01.2020

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