

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1155/96

New Delhi on this ^{July} 24th day of June, 1996. (2)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri R.K. Ahooja, Member(A).

Ved Prakash,
S/o late Shri Roop Ram,
R/o D-313, Netaji Nagar,
New Delhi.

..Applicant.

By Advocate Shri S.N. Bhardwaj.

Versus

1. Director General of Works,
Central Public Works Department,
Government of India,
Nirman Bhawan,
New Delhi.

2. Chief Engineer, H.Q.,
Central Public Works Department,
Delhi Central Electrical Circle,
New Delhi.

3. Superintending Engineer (Electrical),
Electrical Circle No. 2,
Central Public Works Department,
New Delhi.

4. Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

..Respondents.

O R D E R

Hon'ble Shri R.K. Ahooja, Member(A).

The applicant whose father died in harness on 1.2.1990 in the office under Director General of Works, Central Public Works Department, had sought consideration of his case for compassionate appointment. He had sought the post of Lower Division Clerk (LDC) and had also offered himself to work to the post of Peon/Messenger/Khalasi, etc.

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He was called for interview by the respondents for the post of LDC, but the result of the interview was not declared. During this time, he was in occupation of the house allotted to his late father and he received the notice from Respondent No. 4 on 22.9.1993 to vacate the said quarter by 28.10.1993. The applicant states that he had received a letter from the office of the Chief Engineer, Central Public Works Department, dated 17.2.1992, regarding his compassionate appointment vide which he was required to furnish certain information. This was done by him. Since he did not receive any intimation regarding his appointment and apprehending eviction, he filed an O.A. No.2236/93 before the Tribunal, seeking directions for compassionate appointment as LDC or in Class-IV post and for retention of the accommodation allotted to his deceased father. In its order dated 17.1.94, the Tribunal decided the application with a direction to the respondents to dispose of the representation of the applicant according to the extant rules. However, the respondents did not consider him fit for the post of LDC. Thereafter, the applicant filed a Contempt Petition (CP 148/95). The said petition was dismissed on 21.7.1995 since the respondents had considered, as directed, the case of the applicant and passed an order dated 2.3.1995 which states that the applicant's case for compassionate appointment was considered carefully, but it was not found to be a fit case for such

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appointment under the Rules. The applicant thereafter filed an SLP before the Hon'ble Supreme Court against the aforesaid order of the Tribunal. According to his present application, the same was also dismissed on grounds of delay and limitation.

2. In the background of the above facts, the applicant has now come again with the present application seeking a direction that the respondents should appoint him in a Class-IV post as Peon. He states that though he had applied for the post of LDC, the respondents found him fit only for the post of Peon as per their letter dated 19.7.1994. However, the applicant had submitted necessary documents, including the succession certificate, but the respondents did not offer him the post of Peon. His submission is that in terms of Supreme Court's judgement dated 13.8.1986 reported in AIR 1986 SC 1780, Indian Oil Corporation Ltd. Vs. State of Bihar and Ors., the matter can be agitated once again if the new facts have come to the knowledge of the applicant. The applicant states that in similar circumstances, the Tribunal had given directions not for consideration but for appointment, and had cited the case, O.A. 779/92, Vijay Kumar Vs. Union of India & Ors., decided on 14.8.1992.

3. We have heard the learned counsel for the applicant at the admission stage itself both on the question of limitation as also on the principle of res judicata.

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4. The learned counsel for the applicant submitted that the issue before the Tribunal in the present case was different than that in the earlier O.A. 2236/93. The direction in the earlier O.A. was that the respondents should consider the case of the applicant. Accordingly, the respondents considered his case for compassionate appointment but they did not consider him fit for the post of LDC. The applicant filed a Contempt Petition which was also dismissed on the ground that his case for compassionate appointment was considered carefully but it was not found to be a fit case for such appointment under the rules. In dismissing the contempt petition, the Tribunal had also observed in its order dated 21.7.1995 (Annexure P-2) that in case the applicant was aggrieved by the decision of the respondents, it was open to him to institute such proceedings, if so advised, to challenge the same in accordance with the law. The present issue in the application before the Tribunal was that the respondents must have decided, as is apparent from the letter dated 19.7.1994 (Annexure P-4) that though the applicant had not been found fit for the post of LDC, the interview authority had recommended his case for appointment as Peon. What the applicant now seeks is the implementation of that decision. The learned counsel further submitted that the issue being different before the Tribunal, the application was not barred on the principle of res judicata.

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5. On the question of limitation, the learned counsel submitted that he had filed the earlier O.A. in 1993 which was decided on 17.1.1994 and the same was followed by the contempt petition which was decided only on 21.7.1995 and he had thereafter approached the Hon'ble Supreme Court in SLP but the same was dismissed in limine on 23.2.1996, observing that the same was time barred and hence the limitation. He, however, submitted that the Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd. Vs. State of Bihar & Ors. (Supra), had observed as under:

"...The dismissal of a special leave petition in limine by a non-speaking order does not, therefore, justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by the court..."

The learned counsel submitted that in the light of the above observations the dismissal of the SLP by a simple order that the same was barred by limitation did not debar the applicant from agitating the matter before the Tribunal on the question of merit, in view of the fact that the new facts have come to his knowledge, namely, that the Tribunal in the case of Vijay Kumar Vs. Union of India (Supra) had given directions for the appointment of the petitioner on compassionate ground and secondly that the respondents themselves had ordered vide letter dated 19.7.1994 (Annexure P-4) that the

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interview authority had recommended the applicant for the post of Peon though he had not been found suitable for the post of LDC.

6. We have given our careful consideration to the above mentioned arguments of the learned counsel for the applicant but we are unable to agree with the same. The father of the applicant died in 1990 and when the respondents did not accede to his request for compassionate appointment, he came before the Tribunal in 1993 when he filed O.A. No. 2236/93 wherein he sought directions that the respondents should either give him the post of LDC or a Grade-IV post like Peon, Messenger, etc. In its order dated 17.1.1994, the Tribunal, however, gave the directions that the respondents should consider the case of the applicant which they did, but found the applicant not eligible for compassionate appointment. Consequently, the contempt petition filed by the applicant was also dismissed. In the circumstances, the plea of the applicant that the Hon'ble Supreme Court in SLP had not considered the matter on merit and, therefore, it was still open for him to agitate before the Tribunal, is not correct. The matter regarding his appointment in a Grade-IV post failing which his selection as LDC was very much a subject matter of the application, O.A. No. 2236/93. The decision of the applicant was given on 2.3.1995. Even otherwise, he had to agitate the matter within one year u/s 21 of the Administrative Tribunals Act, 1985. The present application has been filed

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on 9.5.1996 and is, therefore, time barred. Though the order of the Hon'ble Supreme Court has not been annexed, the applicant himself stated that the application was dismissed on the ground of limitation. The ratio of the case of Indian Oil Corporation Ltd. Vs. State of Bihar (Supra) would not apply because in this order, the Hon'ble Supreme Court had given its verdict on the question of limitation. The applicant cannot seek once again to consider his case if he cannot in the first instance cross the hurdles of limitation.

7. The learned counsel has sought to ^{meet}~~make~~ the above objection on the ground that he had taken the matter to the Supreme Court which decided the case only on 23.2.1996. This is again of no assistance to the applicant since no stay was allowed and the SLP itself was dismissed on the ground of limitation.


8. The argument advanced by the learned counsel that in a similar case, i.e. Vijay Kumar Vs. Union of India (Supra), the Tribunal had given directions for appointment of the petitioner in a Grade-IV post is not relevant. The learned counsel cited it as a new fact which had come to his knowledge but the relevance of this could not be established. Each case has its own facts on the basis of which individual judgements are reached. It is not clear that in what way the orders in Vijay Kumar's case can form the basis of a fresh O.A. when the matter has already been agitated once before the Tribunal, since this is not a review application but a fresh application.

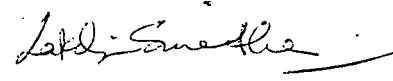
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9. The case of the applicant that the letter dated 19.7.1994 (Annexure P-4), addressed to the Chief Engineer, CPWD, gives a fresh cause of action is also not valid since the final decision of the respondents rejecting his case for compassionate appointment which was agitated in the contempt proceedings, is dated 2.3.1995.

10. On the basis of the above discussions, we are ^{of} ~~firmly~~ of the view that the present application must go at the very threshold, on grounds of limitation as well as res judicata. The application is accordingly dismissed. No order as to costs.


(R.K. AHOOJA)
MEMBER(A)
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(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)
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