

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1403 of 2004.

Allahabad, this the 2st day of December, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Udai Singh son of late
Shri Jamuna Prasad Yadav,
Presently permanent residing
at Village and Post Tardih
(Sikandra)
Tahsil- Pheulpur,
District- Allahabad.

.....Applicant.

(By Advocate : Shri S.M. Iqbal Hasan
Shri R.K. Kushwaha

Versus

1. Union of India through Secretary
Ministry of Defense New Delhi.
2. Major General, Army Head Quarters,
Central Commandant, Lucknow.
3. Commandant Ordnance Depot Fort
Allahabad.
4. Deputy Commandant Ordnance Depot,
Fort, Allahabad.
5. Personal Officer Ordnance Depot
Fort, Allahabad.

....Respondents.

(By Advocate : Shri S. Singh)

ORDER

By this O.A. applicant has sought the following
relief(s) :-

- "i) The Hon'ble Tribunal may be pleased to issue
an order or direction directing the respondents
to issue a letter of appointment in favour of
the petitioner for the suitable post, in view
of his qualification on compassionate ground
and to allow him to join and pay salary alongwith
other emoluments permissible under the law.

.....2.

- ii) to issue an order or direction directing the respondents decide the representation dated 10.09.2004 with speaking reasoned order forthwith."

2. It is submitted by applicant that his father died on 5.7.1999 due to cardiac arrest while in service leaving behind wife, 02 sons and 04 daughters out of which only one son was married. They were all dependent on their father therefore applicant applied for compassionate appointment on 10.9.2004. Thereafter, his mother also applied on 3.10.2004 to give compassionate appointment to her eldest son but no reply has been given to the applicant therefore he has no other option but to file the present O.A. for the directions as mentioned above.

3. Counsel for the respondents took preliminary objection to the maintainability of O.A. itself on the ground that OA is barred by limitation therefore it may be dismissed at the admission stage itself.

4. In response to this objection counsel for the applicant submitted that as per Govt. of India's order dated 9.10.1998 case can be considered even in old cases of 05 years therefore at least his case needs to be considered by respondents.

5. I have heard counsel for the applicant and perused the pleadings as well as Govt. of India's order as referred to above.

6. At the outset it is seen that applicant's father died on 5.7.1999 whereas the present O.A. has been filed only on 4.11.2004 that ^{is} after over 05 years therefore this is clearly barred by limitation as period of limitation laid down under section 21 of the A.T. Act, 1985 is one year from the date of cause of action. In this case since applicant's father expired on 5.7.1999 he ought to have applied for compassionate appointment within a reasonable period if family was in an inecgent condition and should have approached within 01 year or at least within 18 months but admittedly the present O.A. has been filed on 4.11.2004 therefore O.A. is clearly barred by limitation and applicant has not even filed an application for condonation of delay. In Ramesh Chand Sharma's case reported in ^{2000(2)ATSLJ 3-C 89} Hon'ble Supreme Court has held that an O.A. which is barred by limitation cannot be entertained by Tribunal unless applicant seeks condonation of delay specifically and delay cannot even be condoned therefore O.A. is liable to be dismissed on this ground alone. Even otherwise no application was made by applicant or his mother immediately after the death of his father and the first time he applied was on 10.9.2004 i.e. after over 05 years which itself shows that the family was able to survive for 05 years ^{which is} ~~therefore~~ itself disentitles the applicant from getting compassionate appointment because object of granting compassionate appointment is to tide over immediate economic distress caused to the family due to sudden death of sole bread earner.

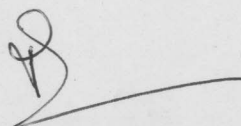
.....4.



7. Compassionate appointment can not be sought as a matter of right at any time by the family members because compassionate appointment is an exception to the general rule and cannot be used as an easy step to gain entry in the Govt. service from back door.

8. Counsel for the applicant strenuously argued that under the scheme even belated requests are to be considered but it is seen that applicant can not even get benefit of this para because he did not even apply within 05 years and even Para 05 does not state that every application has to be considered. It only states Ministries/Department can consider requests for compassionate appointment even where death/retirement on medical grounds of a Govt. servant took place long back say 05 years or so but that does not mean that every belated application has to be considered. It would be only in deserving cases where applicant can justify the delay that application may be considered.

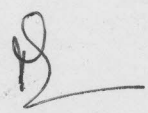
9. In the instant case applicant has not even tried to justify the delay in approaching the department at all which is evident from perusal of his application at page-9 of the OA. Moreover, it is made clear in the same para ~~4~~ that it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to



manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection.

The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned. Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration.

10. Perusal of above paragraph clearly shows that it does not give any indefeasible right to the applicant to claim appointment on compassionate grounds as a matter of right therefore the relief as claimed by applicant cannot be given to him. These O.A. is therefore dismissed at the admission stage itself being devoid of any merit. No costs.


Member (J)

shukla/-