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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1000 of 1993

Allahabad this the 6th day of Sep. 1995

Hon'ble Dr. R.K. Saxena, Member (J)

1. Ganga Sagar, A/a 69 years, S/o Late Maikoo Lal, presently residing at 415, Gujaini, I-Block, Kanpur.
2. Ram Baboo, A/a 28 years, S/o Shri Ganga Sagar, R/o 415, Gujaini, I-Block, Kanpur.

APPLICANTS

By Advocate Shri N.K. Nair.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Department of Defence Production, Government of India, New Delhi.
2. Additional Director General of Ordnance Factories, ODF Group Head Quarters, G.T. Road, Kanpur.
3. General Manager, Ordnance Parachute Factory, Kanpur.

RESPONDENTS.

By Advocate K.M. S.N. Srivastava,

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

To challenge the order dated 24.12.1982  
Annexure A-1 whereby the appointment was denied to <sup>1/2</sup> ~~1/2~~ applicant no.2, is filed this O.A.

2. The brief facts of the case are that the

applicant no.1 Shri Ganga Sagar was employed as Tailor 'A' in the Ordnance Parachute Factory, Kanpur (hereinafter referred as O.P.F.). He was suffering from illness and, therefore, on that account, he was boarded out and discharged from the employment on 05.9.1981 at the age of 59 years. This applicant no.1 had no other source of livelihood except the meagre amount of pension and the retirement benefits which were ~~spent~~ <sup>spent</sup> on marriage of his daughter. He was, therefore, in dire necessity of financial help. For that reason, the applicant no.2 who is one of the sons of the applicant no.1, moved the application for his appointment on compassionate ground. It was not correctly considered and the problem of the applicant was not appreciated properly by rejecting the same prayer. He, therefore, moved representations to higher authorities including Additional Director General of Ordnance Factories. On the basis of these representations, the General Manager of the factory made a request to the District Magistrate, Kanpur vide letter dated 25.10.1990 to give a report regarding the financial position of the family of the applicant. However, the report was submitted on 06.2.1991, recommending the appointment on compassionate ground to applicant no.2. Thereafter a further appeal was made to the Secretary, Ministry of Defence on 10.1.1992. Since, nothing was done despite the fact that

about 17 months had passed, the applicants brought this O.A.

3. The basic ground in this O.A. is that the applicant no.1 is an indigent person and, therefore, the appointment on compassionate ground should have been given to the applicant no.2.

4. The respondents contested the case on the ground that the applicant was a Tailor in the Ordnance Parachute Factory, Kanpur and his date of birth was 01.1.1923 and as such, on the completion of 60 years of age, he was to retire on 31.12.1982. Since, he was on prolonged illness, he was medically boarded out on 05.9.1981 at the age of about 59 years. Thereafter, the applicant had moved the application for appointment of his son Ram Babu - applicant no.2 on compassionate ground. The said application was rejected vide letters dated 10.12.1982 and 22.4.1984 on the ground that as per existing rules, ~~that~~ the benefits of compassionate appointment could not be extended to such government servant who were retired on medical ground on or after attaining the age of 55 years. The applicant further moved application on 04.6.1987 for appointment and that too was disposed of by reference of the earlier order intimated to the applicant on 24.12.1984. The appeal which was preferred by him, was disposed of on 12.12.1991 in the light of O.M. dated 18.3.1982 and 01.3.1984 of Ministry of Home Affairs. Thus,

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the matter was finally disposed of in the year 1991. It is averred on behalf of the respondents that the order dated 12.12.1991 has been challenged before this Tribunal by filing O.A. in 1993 and thus, it was time-barred. The contention of the applicant that application was preferred to Secretary of Ministry of Defence on 10.1.1992, is denied. It is also pleaded on behalf of the respondents that applicant no.1 was paid pensionary benefits and retiral benefits. Besides, two sons namely Shri Santosh Kumar, Shri Chandra Bhushan of the applicant no.1 are serving and thus, the applicant no.1 is not an indigent person. It is also the case of the respondents that the request for appointment on compassionate ground has been rejected legally and, therefore, there is no basis to maintain this O.A.

5. The applicant filed rejoinder in which the facts as are narrated in the O.A. have been reiterated. It is, however, averred that the application was filed within the period of limitation and the rejection of prayer was not on valid grounds.

6. I have heard the learned counsel for the parties and have perused the record.

7. The question for consideration is if, this O.A. has been filed within the period of limitation. The applicants have themselves

brought on record the order (Annexure A -1) by which the request for employment on compassionate ground was not acceded to and the applicant no.1 Ganga Sagar was informed accordingly. The applicants did not take any action thereafter. The cause of action as a matter of fact, had arisen soon after this intimation was received. It appears that the applicants ~~wake~~ up later on and Shri Ganga Sagar had moved undated application to the General Manager, which was replied on 24.6.1987 rejecting the demand for appointment on compassionate ground. The application dated 30.8.1990 (Annexure A-7) was given to Additional D.G.P. and another application was given on 21.11.1-991 which was also replied vide Annexure A-3. These documents and facts show that the cause of action which had arisen in the year 1982, cannot be extended by moving fresh applications in the year 1987 and subsequent thereto. Before the jurisdiction of service matters was transferred to the Tribunal, Civil Courts were exercising the said jurisdiction and the limitation of such cases could not be more than 3 years. Thus, the cause of action which had arisen in 1982, the case challenging the order ought to have been instituted by 1985 but, the present O.A. has been filed in the year 1993. The plea of learned counsel for the applicant is that since the representations ~~were~~ made in subsequent years particularly in the year 1986,-87 and appeal was preferred in the year 1990, therefore, the matter remained pending. It is further contended

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that the final order was communicated in the year 1992 and, thus, the O.A. was filed within the limitation. I am unable to agree with this argument. It is admitted to the parties that the rejection of the request about employment on compassionate ground of applicant no.2, was rejected in 1982 and the applicant no.1 was informed vide letter dated 24.12.1982. No step was taken by the applicant either to move representation or to file appeal before the higher authority till the year 1986~~87~~. Thus, he had been sleeping over the matter from 1982 to 1986. Once, the cause of action arises, limitation starts running. It cannot be stopped simply by moving fresh representations and that too after the expiry of about 4 or 5 years. It is also well settled that the repeated representations will not extend the period of limitation. On the consideration of the facts on record, I am of the view that this O.A. has been filed much beyond the period of limitation and thus, it is not entertainable.

8. Assuming for the sake of argument, that the cause of action arose in the year 1992, the applicant has failed to establish the case on merits. He had three sons namely Santosh Kumar, Chandra Bhushan and Ram Babu besides <sup>urho</sup> Smt. Deepak Rani <sup>she</sup> was a married daughter. Two of his sons were employed and were earning.

The distinction has been attempted to be made by saying that those sons were employed in a private service. What is to be seen in the case, is the financial position of the retired employee and not the fact if the sons or the dependents were employed in a public service or a private service. By making this distinction, the case of the applicant is not going to be strengthened. The appointment on compassionate ground is made only to tide over the financial crisis which is cropped up on account of retirement or demise of the employee. In this case, the applicant was getting pension and, thus, from no angle he can be said to an indigent person. It may be clearly understood that the appointment on compassionate ground cannot be sought for the reason that one of the sons is unemployed. It appears from the pleadings of the applicant that his two sons were employed and since third one was unemployed, he was trying hard to see that he is employed in the department from where he retired.

9. The learned counsel for the applicant also argued that the case of the applicant is covered by the instructions <sup>as given</sup> interpreted in Annexure S.C.A-1 and C.A.-5. No doubt, the respondents had taken the plea that a person who is retired on medical ground after he has attained the age of 55 years which

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<sup>to 57 years</sup>  
was subsequently amended, cannot seek appointment of his son or heir on compassionate ground. There is no dispute that the applicant was of 59 years of at the time when he was retired on medical ground. So far as the request of the applicant for appointment of applicant no.2 on compassionate ground is concerned, it was considered by the respondents and was rejected thereafter. On the analysis of the facts which have been come out in the pleadings of the parties, I come to the conclusion that applicant no.2 does not come within the scope of appointment being given on compassionate ground.

10. On the consideration of the facts and circumstances of the case, I hold the view that the O.A. is not maintainable because of its being filed beyond limitation and it also does not have merits. It is, therefore, rejected. No order as to costs.

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Member ( J )

/M.M./