

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this the ^{November} 14th day of 1996

CORAM: Hon'ble Mr D.S.Baweja, Member (A)

ORIGINAL APPLICATION No.1115 OF 1993

Arvind Kumar Misra son of Late
Ram Awadh Misra, Resident of village
Khajura, Post Baurkhan, District
Ghazipur
(C/A Sri Inder Raj Singh)

- APPLICANT

Versus

1. Union of India through its
Secretary of Telegraph Department,
New Delhi

2. Director of Telegraph, New Delhi

3. Chief General Manager, Telegraph,
Lucknow

4. General Manager, Telegraph,
Varanasi

- RESPONDENTS

(C/R Sri Amit Ashthalkar)

O R D E R

(By Hon'ble Mr D.S. Baweja, Member (A))

This application under section 19 of the Administrative Tribunal's Act 1985 ^{has been filed} praying for issue of direction to the respondents to appoint the applicant on suitable post on compassionate ground.

2. The father of the applicant Sri R.K.Misra, who was working as a Group 'D' employee at Lineman in Telephone Department, Kachhawa Road, Mirzapur, disappeared since 1975 and inspite of best efforts he could not be traced and it appears that he had died. On attaining the age of 18 years the applicant, who is the eldest son of Sri R.K.Misra represented for compassionate appointment vide application dated 13.7.1992 which was followed by a reminder dated

8.1.1993. However, no action had been taken on these

representations and being aggrieved, this application has been filed on 23.7.1993. (✓)

3. The respondents have filed the counter reply. It is admitted that the father of the applicant absconded from duty sometime in April 1975 and thereafter he did not turn up. As per the departmental rules, in case the employee is missing for a ²period of 7 years, he may be presumed to have died and dependents of ~~the~~ such employee are entitled for all the claims as admissible in case of the death of an employee ^{in service.} The applicant, therefore, should have approached for compassionate appointment after seven years i.e. in 1982 but the applicant did not make any application. Even the representation said to have been submitted by the applicant in 1992 has not been received by the department. The present application has been filed in 1993 after 11 years of the applicant having become entitled to be considered for compassionate appointment as per the extant rules, the application is highly time barred. The purpose of the compassionate appointment is to provide assistance to the family of the deceased employee immediately to mitigate the hardship of the family. However, in this case the applicant remained silent for eleven years and indicated that the family was not in the financial hardship warranting appointment on compassionate ground. In view of these facts, the application is devoid of merits and deserves to be dismissed.

4. The applicant has filed the rejoinder reply controverting the submissions made in the counter reply and reiterating the grounds taken in the original application.

5. From the submissions made by the either party, it is admitted fact that the applicant's father absconded

from duty sometime in April , 1975, and thereafter he did not turn up. As stated by the respondents, members of the family are eligible for the claims as due to the employee who dies in service after period of seven years when presumption of death can be taken. Therefore, the applicant who is the only son of the missing employee of Sri R.K.Misra was entitled to be considered for compassionate appointment. The main stand taken by the respondent is that the applicant did not make any application for compassionate appointment in 1982 when the same could be considered as per rules and the application made now is time barred. The respondents have even denied the receipt of any of the representations dated 13.7.1992 and 8.1.1993. The applicant has also averred that ~~at~~ the application was made in 1992, after he attained the age of 18 years which indicates that the applicant was minor at the time of missing of his father as well as in 1982 after a period of seven years when the applicant could be considered for compassionate appointment. Therefore, the contention of the respondents that he did not apply in 1982 does not carry weight as the application could be made only on becoming major. I am also not inclined to subscribe to the contention of the respondents that the ^{representations} ~~respondents~~ were not made in 1992. If the applicant was not eager for the compassionate appointment he would not have resorted to seeking legal remedy without first making the representation to the Department by filing an application before the Tribunal.

6. Apex Court in the case of Life Insurance Corporation of India Versus Asha Ramchandra Ambedkar and another¹ 1994 (2) SLR¹ (SC) has pointed out that High Court and the Administrative Tribunals cannot issue directions for sympathetic consideration to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. Any such right to appointment on compassionate ground flows

on basis of rules, regulation or some administrative orders issued in the form of office memorandum. In the present case the only plea taken by the respondents is that the applicant did not apply for appointment in 1982 after seven years when he was eligible for consideration. As I have elaborated above, the applicant became major in 1992 and then only he could make an application for compassionate appointment. The applicant has not brought on record the extant rules governing the compassionate appointment of the ward on becoming major, who is minor at the time of death of the Government employee. The respondents are also silent on this aspect and have simply brushed aside the matter by an averment that applicant did not apply for the appointment in 1982 after seven years of his missing of his father. In view of this position I consider it appropriate to direct the respondents to consider the representation dated 13.7.92 of the applicant for compassionate appointment as per extant rules. The applicant shall furnish the copy of the representation within one month from the date of communication of the judgement. The representation shall be replied through a speaking order within two months thereafter.

7. Keeping the above, ^{in view of} the application is allowed with the directionⁱⁿ contained in para 6 above.

No order as to costs.

S. K. Singh
MEMBER (A)

RJ