

RESERVED

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE <sup>16<sup>th</sup></sup> DECEMBER, 1998

Corum : Hon'ble Mr. G. Ramakrishnan A.M.

ORIGINAL APPLICATION NO.446 OF 1994

Ganesh Chand Yadav s/o Late Chirinji Lal Yadav  
resident of 20/22 Thornhill Road,

Allahabad

----- Applicant

C/A Shri Sudhir Agrawal

Versus

1. Union of India through the Secretary  
Ministry of Defence, New Delhi.

2. The Chief Engineer, Headquarters  
Central Command, Lucknow.

3. Garrison Engineer (West),  
Allahabad. ----- Respondents

C/R Shri N.B. Singh

ORDER

By Hon'ble Mr. G. Ramakrishnan A.M.

This is an application under section 19 of  
the Administrative Tribunals Act, 1985 by the applicant  
praying for the following reliefs.

(A) a writ, order or direction in the nature  
of mandamus be issued against the opposite parties  
No.1 to 3 to appoint the applicant on a suitable post  
according to his qualifications in Military Engineering  
Services Department or in any other Department under

*Ramakrishnan*

the Ministry of Defence or in any other Department under the Union of India.

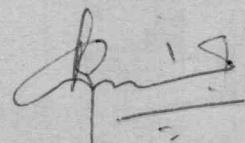
(B) a writ, order or direction be issued to the opposite parties 1 to 3 to decide the applicant's representation dated 23rd March, 1993.

(C) to grant any other and further reliefs which the Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case

& (D) award cost of the petition to the applicant.

2. The applicant stated that he was the son of late Chiranji Lal who while working as a Chowkidar, a class IV post, under Garrison Engineer (West), Allahabad- respondent No.3-died on 3.6.1974 leaving behind the applicant, his mother, his younger brother and his sister. His mother who was in receipt of Family pension after the death of his father also died on 27-11-1977. Thereafter the applicant was granted Family pension till 9.10.1989 after which his brother became eligible for Family pension. The applicant jointly with his brother made a representation addressed to the respondents on 23.3.1993 (annexure 6) requesting for appointment. Getting no reply, the present O.A. was filed.

3. The respondent no.3 who filed the counter affidavit on behalf of all the respondents stated that the representation of the applicant had been received and under consideration of the respondents at higher levels. It was stated that the application had been received after 18 years and the O.A. as presented was highly time barred and the applicant himself was guilty of laches.



(11)

4. In the rejoinder affidavit the applicant apart from reiterating what was stated in the O.A., also stated that he had attended an interview by a Board of Officers to assess his suitability for compassionate appointment and the result thereof had not been advised. He had explained that he did not apply for appointment immediately after attaining majority on 10.10.1986 because of wrong legal advice given to him that if Family pension is being given to the dependents of Sri Chiranjit Lal-deceased-employment could not be given under rule. Further in a supplementary affidavit, the applicant had stated that his younger brother was a motor Mechanic and driving private vehicle and was not interested in appointment on compassionate ground. Copy of an affidavit to this effect by the younger brother was also enclosed. In a supplementary C. A., respondents stated that as per rule, if any of the family member was in service, either government service or private service or in business, the Department was not bound to give appointment to another family member of the deceased government employee (Since the brother was employed in private service)

5. During the hearing, the learned counsel for the applicant and respondents cited the following judgments of the Hon'ble Supreme court and Allahabad High court :

(i) JT 1996(2) SC 542 Haryana Electricity Board V/s Naresh Tanwar and another C A No.3216-17 of 1996 (arising out of S L P. No.7878/95 with SLP No.13703/95

(ii) JT 1994(3) SC 525 Umash Kumar Nagpal V/s State of Haryana & others Special Leave petition No.10504 of 1993 with



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Anil Malik V/s State of Haryana & others

SLP No.2385 of 1991.

(iii) 1995 ALL. LJ 1682 (Lucknow bench)

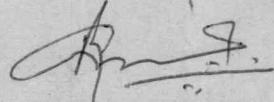
Rajendra Prasad Mishra V/s State of U.P.  
and others.

(iv) 1996 ALL. LJ. 442 (Lucknow bench)

U.P.State Road Corporation V/s Avinash  
Kumar Mishra.

Learned counsel for the applicant quoting para 11 of the judgment of the Hon'ble Supreme court quoted at (i) above pleaded that the Tribunal may direct the respondents to consider the representation and decide the same. He stated that he is pressing for only relief under 8(B). Learned counsel for the respondents quoting from the same judgment and the judgment of Hon'ble Supreme court in Umesh Kumar Nagpal and the other judgments of High Court cited by him, argued that compassionate appointment after a long lapse of reasonable period was not justified and, therefore, the application should be dismissed.

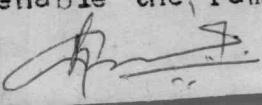
6. I have given careful consideration to the rival pleadings and arguments. In this case the applicant was born on 10.10.1968 and he attained 18 years of age in October, 1986 when he became eligible for employment under the government. But he approached the Tribunal by this O.A. after more than seven years of his attaining 18 years. An application for condonation of delay stating that O.A. was filed because of wrong legal advice and also because the Ministry of Home Affairs O.M. No.14034/1, /77-Estt (D) dated 25.11.1978 issuing the rules for Recruitment of dependents of government servant dying in harness did not fix any time limit and also the representation to the department was submitted on 23.3.93



and O.A. was filed on 11.3.1994, there is no delay in filing the O.A. and if at all any delay was there, the applicant requested for condoning the same. The respondents have opposed the Misc. Application for delay condonation. This Tribunal is not impressed with the pleadings made in the delay condonation application. The father of the applicant died on 3.6.1974. The applicant who was a minor at that time attained majority in 1986 and approached the department in 1993. No rule or departmental instruction has been produced to show that he can approach the department at any time he chose. The objective of compassionate ground employment is to give assistance to the bereaved family, therefore, it can be assumed that a dependent will make efforts to get the employment within a reasonable time of his becoming eligible (attainment of 18 years). A late representation will not enable the applicant to avoid the limitation under section 21 of the Administrative Tribunals Act, 1985. Thus the present application suffers from delay and laches and is barred by limitation.

7. Among the different judgments quoted by both the learned counsel for the parties, leading judgment is the one delivered by the Hon'ble Supreme court in Umesh Kumar Nagpal Vs State of Haryana and others. Hon'ble Supreme court has laid down the following in connection with compassionate ground appointment.

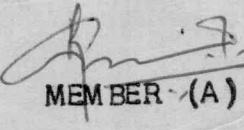
\* the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such appointment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the



financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be ~~clai~~ claimed and offered whatever the lapse of time and after the crisis is over."

" It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the government or the public authority concerned. The employment cannot be offered by an individual functionary on an adhoc basis. "

7.1 <sup>judgement</sup> It will be evident from the above, that compassionate employment have to be made as per rules laid down and courts/Tribunals should not give any direction contrary to the rules. A compassionate employment is not a vested right of a dependent. Neither party produced the rules laid down for the purpose by the department. In any case, as it has already been found that the present application is barred by limitation, it is liable to be dismissed and accordingly dismissed. No order as to costs.

  
MEMBER (A)

SQI