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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 621 of 1994

Allahabad this the 28th day of Sep 1995

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

1. Smt. Durga Devi Widow of Late Shri Surendra Prasad Srivastava, R/o 48 Mahatma Gandhi Marg, George Town, Allahabad.
2. Jitendra Prakash Srivastava, S/o Late Shri Somendra Prasad Srivastava, A/a 27 years., R/o 48 M.G. Marg, George Town, Allahabad.

APPLICANT.

By Advocate Shri A.B.L. Srivastava
Versus

1. Union of India through the Ministry of Communication, Government of India, Dak Bhawan, New Delhi.
2. Assistant Director General (Pensions) Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Post Master General, Uttar Pradesh Mandal, Lucknow.
4. Senior Superintendent, Railways Mail Services, A-Division, ALLAHABAD.

RESPONDENTS.

By Advocate Shri N.B. Singh.

ORDER

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

This appl-ication has been filed under
Section 19 of the Administrative Tribunals Act, 1985

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challenging the rejection of appointment of Jitendra Prakash Srivastava-applicant no.2 on compassionate ground.in place of -- his deceased father.

2. The facts of the case are that the Late Surendra Prasad Srivastava was working with the respondents as Sorting Assistant at Allahabad. While in service, he died on 31.1.1989 leaving behind him, Smt. Durga Devi-applicant no.1, the widow, five sons and one married daughter. ²Four of the sons of the deceased employee were employed but, they were living separately. The fifth son-Jitendra Prakash Srivastava, applicant no.2 was unemployed and was living with his mother Smt.Durga Devi. The applicant no.1, therefore, move the respondents to give appointment to applicant no.2 on compassionate ground. Since, nothing was heard, the reminders were also given. The respondent no.4, however, communicated vide Annexure-2 that the claim of the applicant was rejected by the Selection Committee. The Review of the said order was preferred vide Annexure-3. Again several reminders were given. The authorities were also approached through local M.L.A. and the request was also made to the Minister for Communication. It appears that the inquiry about the financial condition of the applicant was conducted and even after inquiry report was given in favour of the applicant, the claim was rejected.

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It was then the O.A. was filed by Smt. Durga Devi and after getting the O.A. amended the name of Shri Jitendra Prakash was added as applicant no.2. The relief claimed by the applicant is that the orders, Annexure-2, 6 and 10 about rejection of the prayer for appointment on compassionate ground be quashed and the respondents be directed to appoint Shri Jitendra Prakash on compassionate ground and direction is also sought to comply with the orders passed by the then Minister for Communication.

3. The respondents contested the case on the grounds that the petition was belated one because Late Somendra Prasad Srivastava had died on 31.1.1989 and the request for appointment on compassionate ground was rejected on 28.11.1989. The petition which was made to the Chief Post Master General was also rejected on 04.2.1991 and the information of the result of rejection was conveyed to the applicant on 13.2.1991. The limitation for the purpose of filing this O.A., according to the respondents was run from 05.12.89. It is also averred that appointment on compassionate ground is not a matter of right and such appointments are examined on the financial condition of the deceased employee. It is also contended that the applicants are not indigent persons and, therefore, the rejection of the claim for appointment was quite legal and valid.

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4. The applicants filed rejoinder in which it was contended that the impugned order is dated 24.4.1992 and the period of limitation shall start therefrom. In this way the delay, according to the applicants, is only of about 3 months and that to because of the mistake of the Clerk of the Counsel who was earlier engaged. It is also pleaded that as a Social Welfare measure the respondents are under obligation to provide appointment on compassionate ground. The facts which were mentioned in the O.A, have also been reiterated.

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

6. There is no dispute that Late Somendra Prasad ~~Si~~ivastava had died on 31.1.1989 and the claim for appointment of applicant no.2 on compassionate ground was rejected on 08.11.1989. It is true that the applicant had been moving Review Application and further representations but, the question arises as to from which date, the period of limitation shall started. The learned counsel for the applicant could not show if, there is any provision for filing review and petitions after petitions or representations after representations. Since,

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the review or petition or representation are not mentioned anywhere either in the executive instructions or the circulars, the period of limitation shall start from the date when the rejection of the claim was communicated. In this the, the applicants themselves admitted that it was communicated on 08.11.1989. The respondents, however, came with averments that the limitation shall start from 05.12.1989. This date has been taken from the fact that the applicant had preferred a representation to the Chief Post Master General on that date. Even if, it is assumed that the limitation shall start from 05.12.1989, the O.A. which was filed on 18.2.1994 is definitely beyond the period of limitation. The argument advanced on behalf of the applicants that the delay was only of 3 months is not tenable.

7. As a matter of fact, the O.A. should have been disposed of when it was found to have been filed beyond the period of limitation. Since, other points have also been taken up and the trend of the Hon'ble Supreme Court in some decisions is noticed that other points should also be taken for consideration, I propose to consider the case on merits as well. It is not denied that Late Shri Somendra Prasad Srivastava left behind his widow, five sons and one married daughter. The married daughter is not said to be dependent

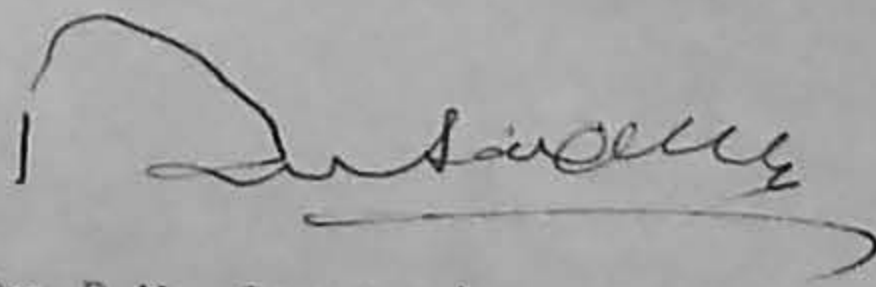
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on the widow. Out of 5 sons, 4 of them are employed. The case of the applicants, however, is that those 4 sons were living separately and, therefore, they were of no help to the applicants. It is further averred that the applicants are living jointly and since applicant no.2 is not employed, the claim for appointment on compassionate ground is preferred. It has been emphasised at several places in the O.A. particularly in para 4(XVII) that the applicant no.2 is unemployed and sitting idle. It appears that the applicants are not stressing the point that they were indigent persons and in order to tide over the financial crisis, the appointment on compassionate ground is sought. What is the anxiety of the applicants is that applicant no.2 should get an employment. It is anti-thesis of the principle on which the appointment on compassionate ground, is given. The respondents have clearly averred that the applicants are not indigent persons. It was the onus on the applicants to have established that they were indigent persons and since, they have failed to discharge the said onus and, therefore, I am of the view that impugned orders of rejecting the claim for appointment on compassionate ground suffers with no illegality. The O.A., therefore, stands rejected. No order as to costs.


(Dr. R.K. Saxena)
Member (J)

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