

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1332 of 2002

Allahabad this the 15th day of July, 2004.

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

Vishwanath,
S/o Late Bansh Gopal,
R/o H. No.99/306,
Colonel Ganj Gadariana,
Kanpur Nagar.

.....Allahabad.

(By Advocate : Shri Moti Lal
Shri R.K. Shukla - Absent

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence,
Dept. of Defence Production,
Govt. of India, New Delhi -11.

2. The Addl. D.G. D.F.
O.E.R. Group Fys HQrs.,
G.T. Road, Kanpur.

3. The General Manager,
Ordnance Equipment Factory,
Kanpur.

.....Respondents.

(By Advocate : Shri V.V. Mishra)

O R D E R

There was a request for adjournment on behalf of Shri R.K. Shukla but perusal of the order sheet shows that right from 08.05.2003 this case has been adjourned on the request made by Shri R.K. Shukla counsel for the applicant. 4 adjournments



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have already been taken and even today he had sent request for adjournment. Since this was a short matter, his request for adjournment has not been acceded to and the matter is being decided on merits by attracting rule 15(1) of CAT Procedure Rule 1987.

2. By this O.A. applicant has sought a direction to the respondents to decide his representation dated 25.02.2002 and 31.05.2002 whereby he had given an appeal to the Additional Director General, Ordnance Factories for compassionate appointment and the appeal dated 31.05.2002 is addressed to the Secretary, Ordnance Factory Board.

3. It is submitted by the applicant that his father died on 16.03.1989 leaving behind his widow and 3 sons. The mother gave an application for compassionate appointment as the amount of family pension was being ^{spent} ~~expended~~ on illness. Since she was suffering from chronic decease but since nothing was being done, applicant filed O.A. No. 51/92, which was disposed off by giving certain directions.(Annexure A-3). He kept on waiting but no reply was given. He gave a representation on 25.05.1999 when he was replied vide letter dated 23.07.1999 that the case for compassionate appointment cannot be considered. At this stage applicant's mother also died on 23.12.2000. Applicant No.2 then represented again on 25.02.2002 but since no reply was given, he gave another representation to the Secretary, Ordnance Factory Board, Kolkata on 31.05.2002 but none of the representations have been replied to. He has, thus, prayed that the O.A. may be allowed.

4. Respondents on the other hand have opposed this O.A. by submitting that Hon'ble Supreme Court has repeatedly



held that courts can only give directions for consideration of the case. In the instant case, direction was already given by the Tribunal in O.A. No.51/1992. Thereafter, applicant's case was duly considered by the respondents and a detailed speaking order dated 25.01.1994 was also passed thereon under intimation to the applicant (Annexure CA-I). Applicant did not challenged either the said order or the judgment dated 09.02.1993 passed in O.A. No.51/92. Therefore, the present O.A. is barred by doctrine of res-judicata.

5. On merits they have submitted that as per the revised policy of Government, an application for compassionate appointment can remain alive only for one year and after one year the name of aspirant has to be deleted. In the instant case applicant's father had died in the year 1989 and his request for compassionate appointment was finally rejected by the competent authority in 1994. Therefore, even otherwise his claim for compassionate appointment is not sustainable at this juncture as already observed by Hon'ble CAT, Chandigarh Bench in its order dated 22.08.2001 passed in O.A.No.792/HR/2001 Budh Prakash Vs. Union of India & Others. They have further submitted that compassionate appointment cannot be sought as a matter of right specially where one of the children is already in service. In the instant case, applicant's two brothers are already in service in Government Nationalised Bank and third brother is employed in Tailoring Job. Therefore, he is not eligible for grant of compassionate appointment. They have, thus, submitted that the O.A. is devoid of merit, the same is liable to be dismissed. They have further submitted that applicant has filed this application after 8 years after the order dated 25.01.1994 was passed by respondents that too without filing an application for condonation of delay and it has been held in the case of



Ramesh Chandra Sharma Vs. Udhamp Singh reported in 2000(L&S) SCC 53 that if the claim is barred by limitation, Tribunal cannot go into the merits of the case, unless separate application for condonation of delay is filed. Therefore, the O.A. is liable to be dismissed on this ground as well. They have further submitted that applicant had filed a Contempt Petition No.2176/93 for wilful disobedience of the order dated 09.02.1993 but that was also dismissed on 08.05.2000, which fact has been concealed by the applicant. Thus, he has not come to the court with clean hand and the O.A. is liable to be dismissed on this ground as well.

6. Applicant has filed rejoinder wherein he has stated that all the elder brothers are residing separately from the time his father was alive and they are not rendering any assistance to his mother and other members of the family. Since the mother was also suffering from chronic disease, the family was in a distressed condition, therefore, applicant could have applied for compassionate appointment. As far as the order dated 21.05.1994 is concerned, he has submitted that it was never served on the applicant. He has further submitted that all the judgments, which have relied upon by the respondents counsel are not at all relevant. He has however, conveniently ignored about the dismissal of the contempt petition as mentioned by the respondents and has relied on the order dated 09.02.1993 passed in O.A. 51/92.

7. I have heard respondents counsel and called for the file of Contempt Petition No.2176/1993 wherein it is clearly seen that the contempt petition was filed by the applicant alleging disobedience of the order dated 09.02.1993 passed in O.A. No.51/92. Admittedly applicant had filed O.A. No. 51/92 for claiming compassionate appointment. This Tribunal disposed off the said O.A. on 09.02.1993 with some directions. dt. 25.1.94 B
This order was placed on record by the respondents in C.P.

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No.2176/93 that is why the contempt petition was dismissed. Therefore, the contention of applicant that he was never served with the order dated 25.01.1994 is absolutely wrong and is rejected.

8. ~~Thereafter~~, Respondents have stated that his case was rejected by the registered letter dated 25.01.1994 on the ground that his case ^{was} reconsidered but since there are no grounds, it is not possible to give him compassionate appointment as he has already been paid more than 50,000/- by way of terminal benefits. Two sons of the deceased employee are in Government service and third son is working as tailor and even applicant is a major. The deceased employee had not left behind any unmarried daughter nor any other such liability, therefore, it is not possible to give him compassionate appointment. The reasoning given in this order are absolutely valid and I find no illegality in the said orders.

9. Applicant has not even bothered to mention about this aspect in his O.A. Once the contempt petition was dismissed by this Tribunal, wherein applicant had alleged disobedience of the order dated 09.02.1993 passed in O.A.51/92, applicant could not have filed the present O.A. once again seeking compassionate appointment and by relying on the order dated 09.02.1993 that too after a period of over 9 years because the earlier order was passed on 09.02.1993 while the present O.A. was filed only on 21.08.2002.

10. This O.A. is not supported by any application for condonation of delay, ~~even though~~, ^{O.A. 51} Apart from the fact that is barred by principle of resjudicata, It is barred by limitation as well. In the case of Ramesh Chandra Sharma as referred to in para supra, Hon'ble Supreme Court has made it clear that if the claim is barred by limitation, Tribunal cannot even go into



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the merits of the case unless delay ~~has~~ sought to be condoned by way of a separate application. Therefore, this O.A. is liable to be dismissed as per the decision of Hon'ble Supreme Court.

11. On the preliminary objection taken by the respondents, I am convinced that applicant has not even come to the court with clean hand as he has suppressed the basic facts with regard to the order passed in contempt petition. Even otherwise, the law is well settled by Hon'ble Supreme Court that nobody can claim compassionate appointment as a matter of right and courts can only give directions to reconsider the case at best. That direction had already been given by this Tribunal in O.A.51/92 and his case had already been reconsidered by the Tribunal also. Therefore, the present O.A. filed by the applicant with prayer to decide his subsequent appeal and representations are not sustainable in law. The O.A. is accordingly dismissed.

12. In view of the ^{above} discussions, this O.A. is dismissed with no order as to costs.



Member (J)

shukla/-