

†

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**  
**ALLAHABAD**

PRESENT:

**HON'BLE MR. A.K. GAUR, MEMBER-J**

Allahabad this the 3.. day of <sup>April</sup>~~March~~, 2009

**Original Application No. 1038 of 2007**

Bhudev, S/o late Shri Nathu Lal,  
R/o Village Hamnagla P.O., Rohilkhand,  
University Bareilly (U.P.). ...Applicant.

By Advocate : Sri R.C.Pathak

**Versus**

1. Union of India, through the  
Defence Secretary, Ministry of Defence,  
Government of India, South Block,  
DHQ P.O., 110011, New Delhi.
2. Director General of E.M.E. (EME),  
M.G.Os Branch, Army HQ DHQ PO New Delhi.
3. E.M.E. Directorate, HQ Central Command  
(EME Branch), Lucknow-226002.
4. E.M.E.Branch, HQ Uttar Bharat Area,  
Bareilly (U.P.)
5. The Officer Commanding Station,  
Workshop E.M.E.,  
Bareilly U.P. 243001. ...Respondents.

By Advocate : Shri S. Singh

**ORDER**

**HON'BLE MR. A.K.GAUR, MEMBER (J)**

By filing this Original Application the applicant has claimed the following main reliefs:

- i. Issue suitable order or direction by way of CERTIORARI quashing the impugned order dated 19.7.2003 issued by the respondent No.5 shown as Annexure No.A-1 to this O.A.
  - ii. Issue suitable order or direction by way of MANDAMUS directing the respondents to appoint the applicant on the basis of compassionate ground with all consequential benefits in service.
- ✓



2. While working on the post of Vehicle Mechanic the father of the applicant died on 8.12.1997. The mother of the applicant was granted family pension by the respondents No.5. The case of compassionate appointment of the applicant was processed through the 5<sup>th</sup> respondent. The application for compassionate appointment was accompanied with the details of movable/immovable property belonging to the deceased employee. As the documents filed by the applicant along with the application for appointment on compassionate grounds were inadequate, the 5<sup>th</sup> respondent directed the applicant to provide certain more necessary documents. The applicant has been sending representation after representation to various authorities upto the level of Petroleum Minister, Union of India, for giving him appointment on compassionate grounds. After the death of the mother of the applicant on 8.1.2001 the applicant submitted a representation to the competent authority for considering his case for appointment on compassionate grounds. Finally the case of the applicant was rejected by the competent authority vide order dated 19.7.2003.

3. Denying the claim of the applicant the 5<sup>th</sup> respondent filed his reply and submitted that there is an inordinate delay in filing the O.A. and the O.A. is, therefore, to be dismissed on the ground of delay. It is also submitted on behalf of the respondents that, successive representations will not suffice to condone inordinate delay in filing the O.A. In support of this contention, reliance has been placed on the decision of the Hon'ble Supreme Court rendered in Gian Singh Mann Vs. High Court of Punjab and Haryana & another -AIR 1980 SC 1894. According to the respondents the case of the applicant was considered by the Board of Officers in four consecutive Boards, i.e. October 2000, March 2001, June 2001 and September 2001 in accordance with the provisions contained in the Department of Personnel &



Training and Public Grievances O.M. No.1404/6/94-Estt(D) dated 8.10.1998 as amended from time to time. On consideration of the case, the applicant was placed at Sl. No.43, 80, 71 and 100 and obtained 29 marks out of 60 marks in the Board of Officers Meeting held in Oct.2000 and 47 marks in the remaining three Board Meetings. According to the respondents the case of the applicant was considered in the light of the guidelines issued by the DOP&T and in the light of the decisions rendered by the Hon'ble Supreme Court.

4. The applicant has filed a rejoinder affidavit reiterating the same facts as indicated in the O.A.
5. I have heard the parties' counsel. It is seen from the records that the case of the applicant for appointment on compassionate grounds was considered in four consecutive Board Meetings in accordance with the provisions contained in DOP&T O.M. dated 8.10.1998 as amended from time to time. Merits of the cases were decided by the Board of Officers by allotting points to the applicants based on various attributes like family pension, terminal benefits, movable/immovable property, No. of dependents, No. of minor children, No. of unmarried daughters and left over service. The competent authority after considering the case of the applicant and the marks allotted to him, found him not eligible for appointment on compassionate grounds.
6. Mr.R.C.Pathak, learned counsel for the applicant argued that the case of the applicant was not properly considered by the officers sitting in the Board and the respondents have arbitrarily rejected the claim of the applicant.



7. The counsel for respondents on the other hand submitted that, the findings of the statutory authority regarding entitlement of the applicant to compassionate appointment is not open to judicial review. In support of this contention he placed reliance on 2006 (7) SCC 350 (D) Union Bank of India Vs. M.T.Latheesh. Learned counsel for the respondents also submitted that the compassionate appointment can be granted only under a scheme, to widow or son and the same cannot be granted after a long lapse of death of an employee. In support of this plea 2007 (1) SCC (L&S) 668, National Institute of Technology Vs. Niraj Kumar Singh was relied upon. Learned counsel for respondents also vehemently argued that, once it is proved that in spite of the death of the sole bread winner the family survived, no appointment on compassionate grounds could be ordered. In support of this contention the respondents have placed reliance on 2005 (7) SCC 206 Commissioner of Public Instructions Vs. K.R.Viswanath. Learned counsel for the respondents would further contend that the discretion of limiting or ceiling of 5% of the vacancies is purely an administrative discretion and not open to judicial review. 2002 SCC (L&S) 1111 Union of India Vs. Joginder Sharma has been cited on behalf of the respondents.
- Lastly, learned counsel for the respondents submitted that, in view of State of Jammu & Kashmir and Ors. Vs. Sajad Ahmed Mir (2006) 5 SCC 766 *"The compassionate appointment is an exception to general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other."* This general rule should be departed only in compelling circumstances, such as death of the sole bread winner of the family; and likelihood of the family suffering because of the setback."
8. Once it is proved that inspite of the death of bread winner, the family survived and substantial period is over, there is no necessity to say good-bye

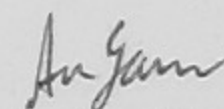


to the normal rule of appointment and to show favour to one at the cost of several others ignoring the mandate of Article 14 of the Constitution of India.

9. In the instant case, the applicant has preferred several representations one after the other and it is the settled principle of law that, 'repeated representations preferred by the applicant will not give him the benefit of limitation and condone the delay.' The Hon'ble Supreme court has already held in the following cases the series of representations will not confer the benefit of limitation to the applicant. The cases are as follows:

1. Shiv Das Vs. U.O.I. & Ors.--2007 (2) Scale 325
2. State of Jammu & Kashmir Vs. A.K.Gupta- AIR (1996) SC 2882
3. Gian Singh Mann Vs. The High court of Punjab and Haryana and another -AIR (1980) SC 1894

10. In view of my above observations, I find no merit in the O.A. The O.A. is accordingly dismissed. No order as to costs.

  
Membr (J)