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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.555 OF 2006

Cuttack, this the 15th Day of November, 2007

Smt. Ichhamani Swain Applicant

Vs.

Union of India & Others Respondents

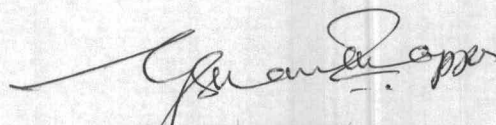
FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?

Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Yes


(G. SHANTHAPPA)

MEMBER(J)

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ORIGINAL APPLICATION NO.555 OF 2006

Cuttack, this the 15th Day of November, 2007

CORAM:

HON'BLE SHRI G. SHANTHAPPA, MEMBER(J)

.....

IN THE CASE OF:

Smt. Ichhamani Swain, aged about 69 years, W/o Late Sarat Chandra Swain,
At/P.O-Khandol, Via-Sundagram, Dist-Cuttack **Applicant**

By the Advocate(s) **M/s.B.B. Biswal,**

D.K.Biswal,

P. Parija,

A.K. Mallick

Vs.

1.Union of India, represented through the Secretary, Department of
Telecommunication, Government of India, New Delhi. - 110 001.

2. Chief General Manager, Telecommunication (BSNL), Orissa Circle,
Sachivalaya Marg, Bhubaneswar.

3. Deputy Director of Accounts (P&A), Postal Accounts, At/P.O./Dist-
Cuttack. **Respondent(s)**

By the Advocate(s)..... **Mr. S.B. Jena**

ORDER

(ORAL)

SHRI G. SHANTHAPPA, MEMBER(J)

Yesterday i.e., 14.11.2007 this case was finally heard for some time from both sides. The Learned Counsel for the applicant was directed to produce the ration card of the applicant to know whether the son of the applicant is married or not. Today neither the Learned Counsel for the applicant is present nor produced any kind of documents to show that, the son of the applicant is married or not. Today the clerk of the Learned Counsel for the applicant files some documents along with a memo in Court which are taken on record. The said documents are, voters list for the year 1988 and another document P&T OM dated 30.6.1987, but the document which was asked is not produced.

2. Case called, today none appears from either side I proceed to pass final order.

3. The above application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“ This Hon’ble Tribunal may graciously be pleased to allow the Original Applciation and direct the Respondents to absorb the applicant’s son Sri S.K. Swain in any post even if as a call man under the concern organization on the compassionate ground or under rehabilitation Assistance Scheme within a specific period or pass any such other order/orders direction/directions as deem fit and proper in the interest of justice so as to give complete relief to the applicant.”

gr.

4. The brief facts of the case according to the applicant are that the applicant aged about 69 years. The husband of the applicant was an employee of the Telcom. Department died in harness on 24.07.1957. Immediately, the applicant had approached the respondents to provide an employment on compassionate ground, but the respondents did not bother to give any heed to her request and she was totally depend upon her husband's younger brother's income. Her husband's younger brother could not maintain her any further, she adopted Sri S.K. Swain as her son who happens to be the son of her late husband's younger brother. The applicant submitted an application to provide an employment on compassionate ground to her adopted son Sri S.K. Swain. The applicant submitted her representation to the the Hon'ble Union Minister for Communication, Hon'ble Prime Minister of India, Govt. of India, the President, Janata Dal Labour Cell, Orissa, Udyan Marg, Bhubaneswar on different dates as per Annexure A-1 series. A letter was given to the Hon'ble Memembr of Parliament in turn the Hon'ble M.P. has informed the Chief General Manager, Telecom., Orissa Circle, Bhubaneswar to provide an employment to the son of the applicant. The applicant had also submitted a legal heir certificate to show Sri S.K. Swain as son of the applicant. The applicant had registered an adoption deed on 29.10.1994. When the rerspondents did not consider the request of the applicant. She has approached this Tribunal for a direction in the relief as sought for.



5. Per contra the respondent No.3 filed reply statement. The main ground for dismissal of the O.A is for non joinder of party as the respondent No.3 who is neither the appointing authority nor controlling authority. Unnecessarily the 3rd respondent i.e. the Deputy Director Accounts(P&A) he has been made a party.

6. The 1st respondent has filed a counter by refuting the averments made in the O.A. The O.A. is not maintainable since the BSNL has not been notified under Sub-Section 2 of the Section 14 of the A.T. Act, 1985. The application is not maintainable in the eye of law as it barred by limitation. The husband of the applicant died on 24.07.57 and after 49 years now she has filed this O.A. seeking for a direction to absorb her son on compassionate ground, which is not maintainable. Since the husband of the applicant died in the year 1957 no record is available to this effect of herself seeking compassionate appointment after the scheme of the same was conceived in 1987. Her representation dated 23.07.96 while applying compassionate appointment in favour of her son, no where she has mentioned about her applying for herself earlier. She has not produced any evidence in support of such application seeking appointment on compassionate ground. The case of the applicant was duly considered and regretted on the ground of non submission of application within a prescribed time limit of 05 years. The scheme of compassionate



appointment envisaged over the immediate financial stringency and crisis occurring after the bereavement of the incumbent which cannot be acceded to after lapse of 40 years, of demise of the incumbent. Such belated submission of the applicant amounts that the family had some other means of subsistence and was in a position to over-come the crisis resulting from the death of the earning member. The representation of the applicant dated 23.07.96 was considered and rejected on 18.11.97. The same was communicated to the applicant as per Annexure R/1. The said communication was made in the year 1997 itself. In a similar case the Hon'ble High Court in a Writ Petition (C) No. 1456/05 has been dismissed on 21.02.05. It was held that the claim of the applicant by stating that about a gap of about 13 years the applicant approached for appointment on compassionate ground which we are not inclined to interfere in the matter. Finally the respondents request for rejection of the O.A.

7. The applicant has filed rejoinder in which she has clarified that her husband was an employee under Telecom Department and subsequently it has been converted to BSNL for which the averments made in Para-2 of the counter is not applicable to the case of the applicant. The applicant submitted her representation to the Chief General Manager on 12.12.05 within six months the O.A. is filed. Hence there is no delay in filing this O.A. which is presumeably under Section 20 of Sub-Section (a) of the AT Act, 1985. So, the O.A. is filed within time. The applicant has enclosed

[Signature]

a communication dated 24.7.97 a copy was marked to her in which an enquiry was made to know the indigent financial condition of the family. As per sub rule (d) of Rule 9 the scheme of 1958 for compassionate appointment, scheme provides to the son/daughter/near relative of deceased employee can be appointed to a group 'C' post for which the son is educationally qualified.

8. I heard the Learned Counsel for the applicant and the respondents on 14.11.07. It is an admitted fact from both sides, that the husband of the applicant died in harness on 24.07.57. The applicant submits that she had approached the respondents for employment on compassionate grounds for herself, when that was not considered, she submitted her application for appointment on compassionate ground to her adopted son. The applicant has not produced a copy of the said representation, the respondents are denied such a representation was submitted. According to the adoption deed, the document was registered on 29.10.94. As per the order of rejection at Annexure R-1 which is produced by the respondent No.1 in which it is referred, the applicant had submitted her representation for compassionate appointment to her adopted son on 23.07.96, the said representation was rejected on 18.11.97, a copy of which was also sent to the applicant. In her rejoinder the applicant has not been denied the fact of receipt of the order of rejection (Annexure-R/1). The limitation is considered from December, 1997 till the O.A. is filed on 26.07.06, there is a delay of 09 years. The applicant has not filed M.A. for condonation of delay. Accordingly, the O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

lyr.

9. The applicant has not produced any kind of documents to show that she had approached the respondents for compassionate appointment immediately after the death of her husband or immediately after settlement of pensionary benefits. The applicant has produced the representation without the acknowledgement which are submitted to the Union Ministers and the M.Ps. She has also not produced any kind of application to the Department to provide an employment to her son. I have to consider, that the representation dated 23.07.96 was only the request of the applicant, which is referred in the order of rejection (Annexure R/1). From the date of death of the husband of the applicant i.e., on 24.7.1957 till the date of adoption of her son on 29.10.94, there is a gap of about 37 years and from the date of adoption till the date of representation dated 23.07.96 for compassionate appointment to her son, there is a gap of nearly 2 years. To consider the limitation from any angle there is an inordinate delay for asking for compassionate appointment under the scheme issued by the DOP&T O.M. 14014/6/86-Estt.(D) dated 30.06.87. Under the said scheme the adopted son is not mentioned for compassionate appointment, only son/daughter or near relatives of the deceased Govt. Servant were eligible. In her rejoinder, the applicant refers, the scheme of compassionate appointment, 1958, but the same is not produced for reference. Annexure A-3 to the rejoinder refers to communication dated 24.7.1997, in which SDE (HRD) has been nominated for inquiry into the indigent financial condition of the family. Even if I consider the adopted son is nearest relative of the deceased Govt.



servant, the son of the applicant is eligible for appointment on compassionate grounds, para 7 of the said scheme deals with belated request for compassionate appointment. The Ministry/Department can also consider the request for compassionate appointment even when the death took place long ago in the year 1957 or so. While considering the cases of belated compassionate appointment the applicant has to prove the need for immediate financial assistance to the family on the passing away of the Govt. servant in harness. The very fact that the family has been able to manage some how on all these years.

10. When the object of the scheme provides the family in immediate need of assistance to the family on the passing away of the Govt. servant in harness. In the present case the husband of the applicant died on 24.07.57. To know whether the applicant has proved the object of the scheme the applicant has not produced the scheme of 1958, I have to refer the object and to whom the scheme was applicable at the relevant point of time.

11. The scheme issued by Government of India, Department of Personnel and Training OM No.14014/6/86-Estt.(D) dated the 30th June 1987.

"1. To whom applicable

(a) To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family. (underlining by me)

(b) xxxx

(c) To a son or daughter or near relative of a Government servant who dies during the period of extension in service but not re-employment.



xxx

xxx

7. Belated requests for compassionate appointments.

Ministries/Departments can also consider the requests for compassionate appointment even where the death took place long ago, say five years or so. While considering such belated requests it should be kept in view that the concept of compassioante appointment is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. The very fact that the family has been able to manage somehow all these years should normally be adequate proof to show that the family had some dependable means of subsistence. Therefore, examination of such cases calls for a great deal of circumspection. The decision in those cases may be taken at the level of Secretary only." (underlining by me)

As the applicant referred in her rejoinder para 9(d), which is the same para 9 (d) of Scheme dated 30.6.1987. The said para is also extracted hereunder.

"(d) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government such as the following which have made a significant difference in the financial position of the families of Government servants dying in harness. The benefits received by the family under these schemes may be kept in view while considering cases of compassionate appointment."

12. The order of rejection issued on 18.11.1997, as on that date scheme O.M. No.14014/20/90-Estt.(D) dated 9.12.1993 was in force. Para 1 of the said scheme relates, to whom applicable.

"(a) To a widow or son or daughter (or adopted son or adopted daughter) of a Government servant who dies in harness including death by suicide,



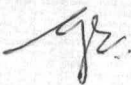
leaving his family in immediate need of assistance, when there is no other earning member in the family. (underlining by me)

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13. The applicant adopted Shri S.K. Swain as her son on 29.10.94 and submitted her application for compassionate appointment on 23.07.96. Under the above facts and circumstances the judgement referred to by the applicant in Writ Petition No. 1456/05 in the case of D.P. Sahoo and another Vs. BSNL is applicable to the present case. In respect of belated claims the Hon'ble Apex Court has time and again held such applications cannot be considered. In this aspect I gain knowledge from the judgment of Hon'ble Apex Court in the case of **State of J&K and others v. Sajad Ahmed Mir** reported in JT 2006 (6) SC 387.

The facts of the said case are, the father of the applicant was in service died in harness in March 1987 and for the first time the application was made by the applicant after more than four years i.e., September 1991. The family thus survives for more than four years after the death of the applicant's father. Even at that time the



applicant, under the relevant guidelines could not have been appointed and hence relaxation was prayed. Department took a decision and communicated to the respondents in 1996. That decision was unchallenged but in 1999 a writ petition was filed. Learned Single Judge dismissed the writ petition holding that no case was made out for any interference. The Division Bench allowing the appeal holding that the respondent was entitled for compassionate appointment. The Hon'ble Apex Court while allowing the appeal, a period of 15 years had passed when the appeal was considered by the High Court and that clearly showed that the family survived inspite of the death of the employee. Rejection of the application in 1996 not having been challenged by the respondent then, it was not open to him to question rejection letter based on inter departmental communication of 1999. Order passed by the Division Bench set aside and the writ filed by the respondent directed to be dismissed. While deciding the said appeal the Hon'ble Apex Court has referred to the judgment of the Hon'ble Court in the cases of

(a) Commissioner of Public Instructions & others v. K.R. Vishwanath [JT 2005(8) SC 33]

(b) State of Haryana and others v. Rani Devi and another [JT 1996 (6) SC 646]

(c) Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs.) and another [JT 1994(2) sc 183].

(d) Umesh Kumar Nagpal v. State of Haryana & others [JT 1994(3) SC 525].

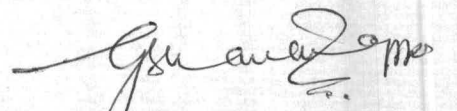
(e) Smt. Sushma Gosain and others v. Union of India and others [JT 1989(3) SC 570]

14. In the present case, the applicant has not proved immediate need of financial assistance, when there was no other earning member in the family as mentioned in the object of the scheme for compassionate appointment.

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But some how she has managed to live after the death of her husband from 24.07.1957 till adopting her son on 29.10.1994 and submitted her application to the respondents for compassionate appoint in the year 1996 (i.e., 23.7.1996). By suppressing the fact of receipt and without challenging the order of rejection dated 18.11.1997 (Annexure R-1) the present O.A. was filed on 24.4.2006, on premises mentioned above and the application of the provision of Section 21(1)(a) of A.T. Act, 1985, the O.A. is barred by limitation. The applicant has not proved her case for grant of relief. In the facts of this case the claim of the application is belated and I am of the view the application is barred by limitation under Section 21 of AT Act, 1985. The respondents are justified in rejecting the application while issuing order that was not challenged by the applicant. The applicant has not proved the object of the said scheme to provide immediate financial assistance after the death of her husband. The ratio of the said judgment of the Hon'ble Apex Court is applicable in the present case.

15. Accordingly the O.A. is dismissed. No costs.


(G. SHANTHAPPA)

MEMBER (J)

Kalpeswar