

Order dated: 07.07.2009

Coram: Hon'ble Mr. Justice K. Thankappan, M(J)

The applicant, an unfortunate son of the deceased Govt. employee, approached this Tribunal by filing this O.A. for a direction to Respondent No.2 to give employment assistance to the applicant under the compassionate appointment scheme. The applicant's father, one Bichitrana Pari, while working in India Government, Mint, Alipore, Calcutta, died on 26.1.1995. Since at the time of death of the father of the applicant and till now the family of the applicant is in indigent condition, the mother of the applicant filed an application for employment assistance on 2.11.1995 with all necessary documents to show that the family of the deceased employee is in indigent condition. However, the said application was not considered by the Respondents for a long time. To the utter dismay of the applicant, the Respondents have passed an order on 25.6.2003 stating that the Respondents are not in a position to accede to the request of the applicant for employment assistance on compassionate ground. Aggrieved by the said order, though the applicant waited for some years, he filed this present O.A.

2. Though this Tribunal admitted the O.A. without

considering the delay caused in approaching this Tribunal, this Tribunal had directed the applicant to file a petition for condonation of delay. Consequently, the applicant filed M.A.262/08. Before considering the merits of the application, this Tribunal is considering the question of limitation.

3. This Tribunal heard Mr. G.Rath, Ld. Counsel for the applicant and Mr. B.K.Mohapatra, Ld. Additional Standing Counsel for the Respondents.

4. Ld. Counsel for the Respondents objects the petition for condonation of delay. It has been averred in the petition for condonation of delay that after the death of the father of the applicant, his mother also died of illness and therefore, the applicant could not take up the matter before this Tribunal or any other authority in time although the family was in financial stringency. Considering the above statement and the plight the applicant and his family faced, this Tribunal feels that it is just and proper to condone the delay in approaching this Tribunal.

5. The case of the applicant put forth before this Tribunal is that while the father of the applicant was working in the India Government Mint, Kolkata, died on 26.1.1995, leaving behind his three children and widow, the mother of the applicant. The mother of the applicant had already filed an application requesting the Respondents to give an appointment to the present applicant under

the compassionate appointment scheme. The applicant's mother also sent an application on 31.5.1998 (Annexure-A/2) stating as follows:

"that my husband Late Bichitrnanda Padhi, T. no.147, DPT, B Malding, I.G.Mint, Alipore, Calcutta was serving under your esteemed organization at Calcutta expired on 26.1.1995. After the demise of my husband I am passing my days through untold financial hardship with my three children. My three grownup sons are sitting idle without any job. Besides my husband has left no fortune for me to lookafter my children. The pension is my only source of income. In order to provide a job opportunity to my eldest son Shri

I had made a sincere prayer to the Calcutta for several times, but your department has yet to be kind enough to consider my request. However, I am still awaiting with full hope and aspiration for justice."

However, the application or the request made by the mother of the applicant has not been considered by the authorities. It is also stated in the O.A. that the mother of the applicant had filed a mercy petition even to the Finance Minister of Central Govt. as per Annexure-A/3 to get an appointment in favour of her son, the present applicant. It is also stated in the O.A. that the only source of income of the family of the applicant is the meager family pension and family has got only a property of Ac. 0.40 decimals of land. However, without considering all these aspects Annexure-A/4 order has been passed by the Respondents.

6. This Tribunal admitted the O.A. and in pursuance to

the notice ordered, no counter affidavit has been filed on behalf of the Respondents. However, Respondents are now defended by Mr. B.K.Mohapatra, Ld. A.S.C. appearing for and on behalf of the Respondents.

7. The scheme for compassionate appointment introduced by the Government of India is being applied to Railway Boards, Public Sector Undertakings and such other institutions, with certain modification or without modification, as the case may be. But the main thrust and the idea of such a scheme being introduced by the Government of India is to render financial assistance to the family of the deceased Government employee dying in harness with a view to getting over the immediate financial crisis due to sudden death of the breadwinner of the family. In order to avail of the benefit under the scheme, various factors have already been considered by the Apex Court hitherto and the concepts those have been inculcated by such judicial pronouncements are - financial condition of the family, belated approach, right to appointment in public service under the scheme and also right to be considered as mandated under Article 16 of the Constitution of India. The very same principle or the object on which the scheme has been introduced is to provide financial assistance or to tide over the sudden financial jerk in the family of a deceased employee for the time being and if so, after lapse of years, the question of considering such applications or approaches for compassionate appointment does not arise as it would defeat the very

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purpose behind it. However, there are exceptional circumstances where applications supported with convincing materials for compassionate appointment may be considered even after the lapse of some years. Also it is the settled position of law that the object of compassionate appointment is defeated by the efflux of time which can be taken as a ground to reject the application for such appointment. Further, it is to be noted that if the family has been surviving and/or continuing for years together after the death of the deceased employee, hardly there exists indigent condition unless it is established by material evidence. Be that as it may, the point to be considered is that the matter had been reconsidered by the CRC even though there was no vacancy to accommodate the applicant. Further, it is to be noted that as per the notification of the Department of Personnel & Training, 5% of Direct Recruitment quota is fixed under the scheme for compassionate appointment and this is not applied in case of promotion. IN the above circumstances, the findings of the Department that there exists no vacancy to accommodate the applicant cannot be brushed aside. The applicant has not made any attempt to show that there was any vacancy coming under the 5% quota fixed by the DoP&T before this Tribunal. In the above circumstances, the limited quota has to be filled up by such candidates coming under the compassionate appointment scheme. Further, it has to be noted that as per the

orders of the DoP&T dated 5.5.2003, the applications of such applicants coming under this category can be considered for three

times where it is found that such applicants are entitled for consideration for such appointment. Three times mean in respect of three consecutive Direct Recruitment years. In this context, it has to be noted that the application of the applicant has already been considered two times. Prior to the order dated 5.5.2003, the DoP&T had issued another instruction in 1998 directing that such applications shall be circulated among other Departments for exploring the possibility of providing employment assistance within one year and this instruction has been superseded by order dated 5.5.2003 by the reason that each Department will have such applications and this is why that circular is of no avail. It is also to be noted that it is the settled position of law enunciated by the judgments of the Hon'ble Supreme Court from time to time that compassionate appointment cannot be claimed as a matter of right and it is an exceptional appointment to public posts. Hence the prescription of time limit, the financial conditions and other allied conditions will determine the justifiability of a claim.

8. The fact that the father of the applicant was working in the India Government Mint, Kolkata and died on 26.1.1995 and the applicant's mother filed an application subsequent to the death

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of the father of the applicant on 2.11.1995 has not been disputed before this Tribunal. Then the question comes firstly with regard to the delay, if any, caused in approaching the Department in getting appointment under the compassionate appointment scheme. Admittedly, the application filed by the mother of the applicant requesting the Respondents to give an appointment to the applicant was within a reasonable time. However, it is seen that Respondents did not consider the said application in time and they have waited till 2003. Hence, this Tribunal is of the view that such an attitude of the Respondents cannot be justified.

9. The next question to be considered is with regard to the financial position of the family. In this context, Ld. Counsel for the Respondents has submitted that the applicant had not filed any document to show that the family of the applicant was or is in any financial indigency. If so, the rejection of the application is justifiable. But the question that the mother of the applicant had already stated in her representation that source of income is only from pension which is around Rs.3000/. Further it is stated that the family of the applicant owns only Ac. 0.40 Decimals of land and there is no other source of income for the family and the family is still in indigent condition. However, this question has not been considered by the Respondents properly as it would reveal from the impugned order that the Respondents have not stated any reason



for rejection of the application.

10. The other question to be considered is whether limited quota of 5% allowed for appointment under the compassionate appointment scheme is enough to give appointment to the applicant under above quota or not. With regard to this query, this Tribunal is in darkness as there is no evidence by way of counter that the Department is not having enough vacancy within the prescribed quota to give appointment to the applicant under the compassionate appointment scheme. In this context, it is to be noted that even as per official memorandums issued by the Department of Personnel and Training during 1994 and 2003, the compassionate appointment shall be considered for at least three times in three consecutive chances even for 5% of limited quota. It is also to be noted that the delay which occurred in approaching this Tribunal has already been condoned by this Tribunal and in the above circumstances, delay, if any, cannot be taken as a ground for rejecting the same.

11. In the light of discussions made and the reasons given in this order, this O.A. is allowed by quashing Annexure-A/4 and directing Respondent No.2 to consider the application filed by the mother of the applicant afresh by giving an opportunity to the applicant to file any document to show the indigent position of the family. This exercise shall be done within a period of three months

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from the date of receipt of a copy of this order. Ordered  
accordingly.

12. Accordingly, the O.A. as well as M.As. are allowed.

No costs.

Kappan  
Member (JUDL.)

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