

Order dated 11-05-2011

C O R A M

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

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Heard Learned Counsel for both sides and perused the materials placed on record.

2. Instead of unnecessary details it would suffice to state that the Applicant's elder brother (Late B.N.Jena) was a Constable in the RPF. He died prematurely on 22.4.1995. He applied for appointment on compassionate ground which was rejected by the letter dated 19.6.1996. The said order of rejection was challenged by him in OA No. 425 of 2004 which was disposed of by this Tribunal on 02-07-2004 with direction to the Respondents to consider the case of the Applicant as per the policy prevailing at the time of death of the brother of the Applicant. In compliance of the order of this Tribunal, the Respondents considered the case of the applicant but rejected and reason of rejection was communicated to the Applicant in letter dated 16.9.2004. The said order of rejection dated 16.09.2004 was challenged by the Applicant before the Patna Bench of the Tribunal in OA No. 101 of 2007. The Patna Bench of the Tribunal in order dated 21-09-2007

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dismissed the said OA for non prosecution. Relevant portion of the order is quoted herein below:

"3. The present OA is filed on 10.04.2007 without any application for condonation of delay. When the OA was taken up for issuance of notice, the Counsel for the Respondents raised an objection that as the applicant's brother was a constable in the RPF and the RPF is an armed force of Union of India, this Tribunal has no jurisdiction.

4. None appeared for the applicant on 18.6.2007 and the Tribunal observed that as a last indulgence, let this case be listed under the appropriate head on 21.09.2007. Even today neither the applicant nor his counsel is present even on second call. The OA is dismissed for non prosecution with no order as to costs."

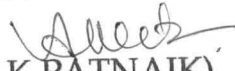
As it further appears from the record, the applicant impugned the said order of rejection dated 16.09.2004 in WP ( C) No.5508 of 2010 filed before the Hon'ble High Court of Orissa, possibly without disclosing the order of the Patna Bench of the Tribunal dated 21.09.2004. The Hon'ble High Court of Orissa disposed of the matter on 17.5.2010 with the following orders:

"17.05.2010. Against the order of rejection dated 16.9.2004 the petitioner has got alternative remedy to file Original Application before the Central Administrative Tribunal under Section 19 of the Tribunal's Act. If there is delay in filing of the Original Application, petition for condonation of delay may be filed along with the Original Application. In the event such an application is filed, the same shall be considered keeping in mind the observation made by the Hon'ble Supreme Court in the case of State of Bihar and others vrs Kameshwar Prasad Singh and another, reported in AIR 2000 SC 2306.

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With the above observation, the writ application is disposed of."

3. In view of the above, instead of approaching this Bench of the Tribunal, as the Applicant had earlier approached the Patna Bench of the Tribunal he should have filed Writ Petition before the Hon'ble High Court of Patna challenging the order of the Tribunal. For the reasons stated above, I have no other alternative or option except to dismiss this OA and ultimately this OA is dismissed by leaving the parties to bear their own costs.

  
(A.K.PATNAIK)  
Member (Judicial)