

Rudrakanta Mishra Applicant
Versus
Union of India & Ors. Respondents

Order dated: 05-01-2010

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
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Seeking employment on compassionate ground due to the premature retirement on medical invalidation on 31.03.1999 in favour of son, the Applicant has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985. Heard Learned Counsel for both sides and perused the materials placed on record.

2. There has been no explanation offered either in this Original Application or by filing separate application explaining the delay in making application seeking the relief claimed in this OA. Applicant has produced no material to show the mode of the representations allegedly submitted by him. He has also not stated or produced any rules or departmental instructions showing that voluntary retirement is preceded by providing employment to one of the dependent family members. No document has also been produced showing the acceptance of the voluntary retirement by the department. The so called representations are at Annexure-A/1 series on perusal of which it reveals the first representation is undated one, the second representation is of dated 15.7.2005 and the third one is dated 17.12.2007. According to the applicant he retired voluntarily w.e.f. 31.3.1999. No explanation has been offered for the delay in seeking employment on compassionate ground if at all any such rule or instructions exist. Except bald allegation that the family is in distress, no document has been produced showing the dependent family

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members and income of the family as also the pension which he is receiving in support of his contention that the family is in distress.

3. Time without number by following the decisions of the Hon'ble Apex Court, this Tribunal has held that there should be no departure from the general rule except under compelling circumstances such as death of the sole bread earner and the livelihood of the family suffering as a consequence. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to ignore the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. The Tribunal should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The appointment on compassionate ground cannot be a source of recruitment. The object is to enable the family to get over the sudden financial crisis. Such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. In the present case according to the Applicant the premature retirement took place on 31.3.1999 and he has made representation seeking employment only from the year 2005 and approached this Tribunal on 30th October, 2009 i.e. after passage of ~~after~~ ^{about} one decade. This itself proves that the family was solvent. Though it is not necessary to quote but for the sake of brevity, it is submitted that in the case of *Indian Drugs and Pharmaceutical Ltd v. Devki Devi*, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of *State of J& K v Sajid Ahmed Mir*, 2007 (1) AISLJ 219 the Apex Court observed that when the family could survive in spite of the death of the employee at a belated stage the family

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should not get employment on compassionate ground. For the reasons stated above, we see no merit even to admit this OA. Hence, the OA stands dismissed by leaving the parties to bear their own costs.

Kappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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(C.R. MOHAPATRA)
MEMBER (ADMN.)