

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.

O.A. 1128 of 1996.

Present : Hon'ble Mr. D.Purkayastha, Member (J)

SHRI SABUJ KANTI DUTTA

vs.

The Regional Director, E.S.I.  
Corporation, 5/1, Grants' Lane,  
Calcutta - 700 012.

For applicant : Mr. P.S.Basu, counsel.  
Mr. S. Talukdar, counsel.

For respondents: Mr. T.K.Chatterjee, counsel.

heard on : 11.9.97 :: ordered on : 11.9.97.

O R D E R

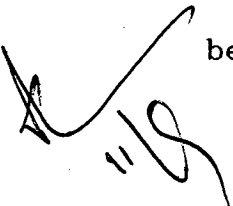
One Shri Sabuj Kanti Dutta has filed this application before this Tribunal seeking direction upon the respondents to appoint him in government service on compassionate ground in view of the scheme formulated by the Govt. of India for the purpose of appointing on compassionate ground in case of dies in harness. The case of the applicant is that his father died in harness leaving his widow mother who was a government employee under the State of West Bengal. He was about 19 years on the date of death of his father. After the death of his father on 20th August, 1993, the applicant made a representation to the competent authority for considering his case for appointment on compassionate ground in the light of the scheme mentioned above. It is also contended by the applicant that his representation for consideration of compassionate appointment was not correctly and properly appreciated by the respondents for which he was denied appointment on compassionate ground and nor his case was examined in the light of the scheme framed by the Govt. of India. It is also averred that the respondents rejected his application by a letter dated 4th October, 1991 stating that

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appointment of the applicant cannot be made on compassionate ground since his father died leaving an earning member. Feeling aggrieved by the said order, the applicant has approached this Tribunal by filing this application for getting appropriate relief or reliefs as sought for in the application.


2. the case has been resisted by the respondents by filing a reply. They deny the claim of the applicant stating, inter alia,, that the father of the applicant was holding a post of Dy. Director (Administration) under the respondents and after his death the pensionary benefits had been granted to the widow in the following heads - DCRG Rs.1,00,000/-; Group insurance Rs.75,000/-; GPF accumulation Rs.11,216/- and monthly family pension Rs.1200/- plus relief. So, according to the respondents the widow was not in economic distress due to sudden death of her husband. It is also averred in the reply that the application of the widow for employment of her son was duly considered and the reasons for rejection of the said application was duly communicated vide office order dated 22.4.92 (annexure-B). They also averred that the application is also hopelessly barred by limitation. It is stated that the plea of subsequent application after rejection of an earlier made by the applicant cannot save the period of limitation in this case. They have, therefore, submitted that the application is liable to be dismissed.

3. Mr. Basu, Id. counsel for the applicant, strenuously argued the case before me stating, inter alia, that the ground for compassionate appointment as stated in the applications of the applicant were not properly considered by the respondents. Secondly, the applicant's prayer for compassionate appointment was rejected by an authority who was not competent to do so. According to the scheme framed by the respondents, it should be considered by the Departmental Secretary to the Govt. of



India of the respective department. He further submitted that the earning of the family member is not the only ground for refusal of compassionate appointment as disclosed in the letter dated 22.4.94 (annexure-B). He also submits that the case cannot be said to be barred by limitation in view of the facts that after rejection of the prayer for compassionate ground, on 24.4.94 the applicant's mother was made another representation to the authorities concerned which was ultimately disposed of by the said authorities by communicating the decision vide letter dated 4.10.95 (annexure-H). So, the case of the applicant cannot be said to be barred by limitation. In short, he submits that Tribunal should examine or ascertain whether the applicant is entitled to get compassionate appointment on the face of the rejection of the representation which are not in accordance with the provisions of the scheme framed by the respondents.

4. Mr. Chatterjee, ld. counsel for the respondents, submitted that the case is hopelessly barred by limitation because the cause of action in this case, as it appears from the letter dated 22.4.94, has arisen when his prayer was rejected with ground disclosed therein. It is apparent on the face of the record that said reason was, as disclosed, in accordance with the scheme formulated by the govt. of India on 22.4.94. So, subsequent representation which was disposed of by the respondents on 4.10.95 could not save the period of limitation in this case. Mr. Chatterjee further submitted that the grant of compassionate appointment was duly considered by the appropriate authority and that has also been communicated to the applicant. The Tribunal should not substitute its own view to come to a different conclusion when there had been proper appreciation of the fact and in this case applicant's prayer was rejected after proper appropriation of the fact. He further submitted that in the



judgement of this Tribunal delivered in O.A. 1203 of 1993 (Tarun Kanti Bhadra Vs. UOI) on 8.12.93 similar dispute had been decided by the Division Bench of this Tribunal and in view of the said judgement the applicant is not entitled to get his relief as sought for in this application.

5. Mr. Basu, ld. counsel for the applicant, cited the decision of the Hon'ble Apex Court in the case of Jeti Devi Vs. UOI, reported in 1995(6) SCC 61 and also another decision of the same Hon'ble Court reported in 1989 SCC L&S 662 (Susma Gosain Vs. UOI) and relying on these two decisions he submits that it is a fit case for consideration of compassionate appointment and the respondents may be directed to refer the case to the Secretary concerned for consideration of the compassionate appointment of the applicant afresh.

6. Coming down to the diverse contentions of both the parties, it remains undisputed that the applicant's father had died on 20.8.93 leaving behind widow who was in State Govt. service and she was also the earning member of the family of the deceased employee. It also remains admitted from both the parties that the instant applicant, who is the son of the deceased employee, was 19 years old on the date of death of his father. The scheme in question, as produced by the ld. counsel for the applicant, has been notified by the Govt. of India under OM No.14014/6/86-Estt.(D), dated 30.6.87 on the subject compassionate appointment of son/daughter/near relative of deceased govt. servant with consolidated instructions. Clause 1(a) of the said scheme shows that compassionate appointment can be given to a son or daughter or near relative of a govt. 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. Clause 1(b) emphasizes that in exceptional cases, when a department is satisfied that the condition of the

family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a govt. servant retired on medical grounds under Rule 38 of CCS(Pension) Rules, 1972. Clause 4(e) emphasizes that in deserving cases even where there is an earning member in the family, a son/daughter/near relative of the deceased govt. servant leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession will be justified having regard to the number of dependents, the assets and liabilities left by the deceased govt. servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased govt. servant and whether he should not be a source of support to the other members of the family. During argument Mr.Chatterjee, ld. counsel, produced the OM dated 23.3.94 issued by the Employees' State Insurance Corporation, New Delhi. This OM has been issued after perusing the judgement of the Hon'ble Supreme Court on the matter of grant of compassionate appointment. Clause (iii) of the said OM shows that where any member of the family of the deceased employee is already in employment, the request for providing such appointment should not be considered on the grounds that the earning member is not supporting the family. Law is now well settled by the Hon'ble Apex Court by a catena of judgement that the consideration for appointment on compassionate ground is not an enforceable right. Hon'ble Apex Court in Umesh Ch. Nagpal case reported in 1994(27) ATC 537 had held that consideration for compassionate appointment is not a vested right which can be exercised at any point of time in future. The object being to enable the family to get over the

financial crisis which it faces at the time of the death of the sole bread winner, the compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. I find in the instant case that reasons for rejection of the prayer of the applicant was communicated to him by a letter dated 22.4.94 which disclosed that the case has been not found fit for consideration on judicial ground as well as on the ground that it is contrary to the instructions issued by the Central Government because the family of the deceased has an earning member. Subsequently, the respondents by another letter dated 11.4.94 addressed to Shri H. Pathak, MP, which was produced by the applicant at the time of hearing, intimated the reason for rejection in details where it is mentioned that the dependant family has also received lump sum amount of rupees three lacs as pensionary benefits besides family pension Rs.1200/- per month plus DR. Subsequently, by another letter dated 7.3.95, the respondents intimated the applicant that his request for compassionate appointment could not be acceded to. The letter dated October, 1995 also discloses the reasons for which his case for grant of compassionate appointment was not found fit by the respondents. In order to appreciate the reason it is to be seen by me whether the reasons disclosed in the reply are inconsonance with the provisions of the scheme issued by the Govt. of India. The applicant contended that economic condition of the family was not considered at the time of rejection. This submission of the ld. counsel is not tenable in view of the fact that clause 1(a) of the scheme itself clearly indicates that where there is an earning member in the family the scheme would not be applicable. In exceptional cases only the appointing authority can exercise his power if person can satisfy the authority that due to death in harness his family is indigent and in great distress. Admittedly, the


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wife of the deceased was an earning member of the family on the date of death. It is true that court can substitute its own view if the reasons disclosed by the authorities is found arbitrary and based on extraneous consideration and not based on records and evidence. In the instant case I find that there is no reason to interfere with the decision taken by the authorities concerned for the purpose of rejection of the prayer of the applicant. It is the duty of the applicant to satisfy the authority for getting appointment on compassionate ground in exceptional cases as per sub-clause (b) of the said scheme. It is found from the said scheme that authority competent to make compassionate appointment is the Joint Secretary in-charge of the Administration or Secretary of the Ministry or Department concerned. If para 2 is read with para 4(e) of the said scheme it is found that if it is decided by the appointing authority or concerned authority, the case of a particular employee comes within the purview of exceptional circumstances as deserving case then the matter may be referred to the Secretary who will consider the application for grant of compassionate appointment afresh with reference to the assets and liabilities, income of the earning member as also liability including the fact that the earning member is residing with the deceased government servant and source of support etc. In view of the aforesaid, I do not find any justification to entertain the contentions of the ld. counsel for the applicant that question of granting compassionate employment only to be considered by the Secretary and not by any other authorities. Considering the circumstances of the case, I do not find any reason to interfere with the action taken by the respondents.

7. Regarding the question of limitation raised by the ld. counsel for the respondents, it is found that cause of action in this case has firstly arisen on 22.4.94. Thereafter,

admittedly the applicant made subsequent representation to the different authorities including the appointing authority and which has been rejected by a letter dtd 4.10.95. Admittedly the applicant did not file any application for condonation of delay explaining the reasons for such delay in filing the O.A. Section 19/21 of the A.T.Act, 1985 is a special provision and it will be guided by the Act itself and not by the general Law of Limitation. In order to save the period of limitation the applicant has to satisfy the court disclosing sufficient reason for which he could not file application within time as prescribed by the Act itself. It is well settled law that repeated representations after rejection of earlier one cannot save the period of limitation. In Mahesh Prakash case reported in 1995 SCC L&S 278 the Hon"ble apex Court took the similar view in respect of extension of the period of limitation. In Rattan Samanta case, reported in 1993(suppl) SCC 67, the Hon"ble Supreme Court also held that delay itself deprives a person from his remedy available in law. In view of the settled position of law it is found that cause of action in this case arose as early as on 22.4.94 when his representation was rejected by the authorities concerned disclosing the reason for such non-appointment. Therefore, I am of the opinion that the application is hopelessly barred by limitation.

8. In view of the above analysis, I do not find any merit in this application. The application is dismissed without awarding any order as to costs.

  
(D Purkayastha)

MEMBER(J)