

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A.1419 of 1996

Present: Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

Hon'ble Mr. M.S. Mukherjee, Administrative Member.

SMT. GITA RANI BANERJEE & ANR.

-VS-

UNION OF INDIA & ORS.

For the petitioners: Mr. N. Bhattacharjee, counsel.

For the respondents: Mrs. B. Ray, counsel.

Heard on: 28.11.97.

Ordered on: 27.11.97.

O R D E R

M. S. Mukherjee, A.M.

1. This is a petition seeking compassionate appointment in favour of the petitioner no. 2, Amrita Kumar Banerjee, son of petitioner no. 1, Smt. Gita Rani Banerjee on the ground of the death-in-harness on the part of the petitioner no. 1's husband.

2. Briefly speaking, the husband of the petitioner no. 1, Late Kali Prasad Banerjee, Ex-EDEPM, Jamuri Branch Post Office, expired on 28.6.90. Prior to his death, as a result of disciplinary proceeding, he had been removed from service. However, the order of penalty was subsequently quashed by this Tribunal by an order dated 22.11.91 in O.A. no. 753 of 1989 with the liberty given to the disciplinary authority that they could freshly conduct the disciplinary proceedings subject to certain other specific direction from the Court. But before, the disciplinary authority could freshly decide upon the imposition

of a penalty, the petitioner, late Kali Prasad Banerjee, expired. Subsequently, the petitioner No.1, widow of Late Kali Prasad Banerjee, by a representation dated 13.2.92, sought compassionate appointment in favouf of her son, the petitioner no.2 herein, on the ground that her husband had died in harness. Another representation was sent by her on 31.5.95 to the Chief PMG, but the petitioner submits that none of the representations has been replied to by the respondents. The petitioners, have therefore, prayed for the aforesaid reliefs.

3. The respondents have contested the case by filing a written reply. They have taken a preliminary objection that the case is hit by limitation, as the death took place in 1990, whereas the prayer for compassionate appointment was ~~fixed~~ first made about more than a year and a half after the death. Mrs. Ray, ld.counsel for the respondents, submits that this affects the limitation under section 21 of the Central Administrative Tribunal Act, 1985 and also that this being a case of compassionate appointment, the claim of the petitioners is ~~liable~~ to be ~~regis-~~ ^{rejected} ~~tered~~ in terms of the Hon'ble Supreme Court's ruling in the case of Jagadish Prasad-VS-State of Bihar (1996 SC, SLJ pg.93). She has, therefore, urged that the petition be ~~rejected~~.

4. We have heard the ld.counsel for the parties and have gone through the documents produced. Since this concerns compassionate appointment, in view of the urgency, we propose to dispose of the application at the stage of admission itself.

5. First, about the objection of the respondents regarding limitation, We find that there is nothing on record to show that successive representations by the petitioner seeking compassionate appointment, has been processed by the respondents either way at all. Nor any decision in this regard

has been communicated by the respondents to the petitioner. Employment implies continuing benefit. We do not, therefore, consider it appropriate to deny the petitioners' right to adjudication on her grievances or at the threshold itself on the technical ground of limitation that the instant petition has been filed before this Tribunal a little later than one year.

6. The other objection of the respondents is that the representation for compassionate appointment was made too late but that any compassionate appointment ~~was made~~ is to be considered only when to give immediate relief to the hardship caused by the death of a deceased applicant. But in our view this objection is also not tenable because only about 18 months after the expiry, the petitioner no.1 made the first representation for compassionate appointment before the respondents; but, the respondents, at least as the records say, did not even process the same. When the respondents have not even factually verified the case of the petitioner, it does not lie in their mouth to say that the case should be rejected on the technical ground that the representation has been made rather late. In the particular Apex Court ruling, ~~xxx xxxxxx~~ quoted by Mrs. Ray, learned counsel for the respondents, the prayer for compassionate appointment was made many years after the death of the deceased employee. But there is no such delay ^{in the instant case}. The facts of that case are, therefore, clearly distinguishable from the instant case.

7. Under the circumstances, we dispose of the petition with the order that the respondent authorities shall, within 3 months from the date of communication of this Order, consider the representations of the petitioner in terms of the relevant rules and decide the case suitably and given the compassionate appointment to the petitioner no.2, if found suitable or eligible for the job, under the rules, in