

7/7

11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

Original Application No. 73/2005 with  
Misc. Application No. 41/2005 (In OA 73/2005)  
Jodhpur : this the 27<sup>th</sup> day of April, 2006.

CORAM :

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER**

Nimbdan S/o Shri (late) Aasudan by caste Charan resident of Village Sangad Tehsil Fatehgarh, Distt. Jaisalmer – His father was working Ex. Vidhyut Operator under respondent No.2.

.....Applicant.

Mr. M.S.Bhati, Advocate, for applicant.

**Versus**

1. Union of India through Secretary,  
Min. of Urban Development, Nirman Bhawan, New Delhi.
2. The Chief Engineer (Vidhyut) Central Public Works Department,  
Kanat Place(Nr. Shanker Market) New Delhi.
3. The Chief Engineer Anchal 05 – EC 3 Central Public Works  
Department, Vidhyut Bhawan, Kanat Palace, New Delhi.
4. The Superintending Engineer (Vidhyut) Delhi Central Vidhyut  
Circle – 4, Central Public Works Department,  
AWH Compound, Netaji Nagar, New Delhi.
5. The Director General (Nirman), Nirman Bhawan,  
Central Public Works Department, New Delhi.
6. The Superintending Engineer (P&A)  
Delhi Central Vidhyut Circle-4, Central Public Works  
Department, AWH Compound, Netaji Nagar, New Delhi.
7. The Executive Engineer (Vidhyut),  
Hotmix Esfalt Plant Mandal (ITPO), Central Public Works  
Department, B-4/9, Fourth Story, IP Estate, New Delhi.

.....Respondents.

Mr. Girish Joshi, Advocate, for respondents.

**ORDER**

Shri Nimbdan has assailed the order dated 24.6.2003

(Annex.A/6) and has, inter alia, sought for setting aside of the same in

2

48  
12

addition to seek a mandate to the respondents to consider his case and provide appointment on compassionate ground.

2. I have heard both the learned counsel for the parties at a considerable length and carefully perused the pleadings and records of this case. The abridged facts of this case are that applicant is the son of late Shri Aasudan Charan. The said Shri Aasudan was employed as Operator in the respondent - department and died while in active service on 1.11.1985. It has been averred that the widow of the deceased Government servant could not undertake the employment being illiterate and orthodox. The applicant was minor at that time. He attained the majority in the year 2001 and immediately applied for consideration of his appointment on compassionate grounds vide application dated 19.10.2001. He also fulfilled the requisite formalities as per the directions given to him by the concerned authorities. The case of the applicant has been turned-down on the ground that the matter relates to a period of seventeen years ago and the family has 55 bighas of land. Numerous grounds have been adduced in support of the claim as indicated in para 5 and its sub paras.

3. The respondents have contested the case and have filed an exhaustive reply to the O.A. Two preliminary objections have been taken: one is regarding limitation and the other one is regarding non-applying for appointment by the mother of the applicant at the relevant time. It has been averred that as per the rules, the maximum time limit for considering the compassionate appointment is five years and the father of the applicant expired seventeen years back, therefore, the case has rightly been rejected. The family of the deceased Government servant possesses 55 bighas of land and



22

179  
13

receiving handsome amount of family pension. The grounds raised in O.A. have been generally denied.

4. A Misc. Application No. 41/05 has also been filed for condoning delay in filing the O.A. It has been averred that the respondents rejected the case of the applicant on 24.6.2003 and the representation was moved to clarify the position indicating that the family was in very bad condition on 30.10.2004. The contents of the M.A. have been refuted by the respondents in their reply with the prayer that the O.A. is highly belated and the same should be dismissed.

5. I have considered the rival submissions put-forth on behalf of both the parties. I advert first to clear the peripheral issues relating to the preliminary objections. The first objection is regarding limitation. The cause of action arisen to the applicant on 26.4.2003 and the O.A. has been filed on 11.3.2005. In normal course, the O.A. ought to have been filed by 24.12.2004 as per Section 21 of the Administrative Tribunals Act but, the same has been filed on 11.3.2005. Thus, there is a delay of about two and a half years in filing of the O.A. I am satisfied that the reasons adduced for condonation of delay are good and sufficient for condoning the delay hence delay in filing the O.A. is hereby condoned. The M.A. for condonation of delay stands accepted.

6. As regards the second preliminary objection – I find that the very preliminary objection is misconceived and is an after thought exercise. This position can be conveniently inferred from the very impugned order dated 24.6.2003 wherein specific ground for rejection of his case has been adduced and there is no such ground of non-applying for such appointment by the widow of the deceased



D/10  
14

Government servant at the relevant time exist. As per the verdict of Apex court by its Constitution Bench in case of **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi (AIR 1978 SC 851)**, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court because of a challenge, get validated by additional grounds later brought out. In this view of the matter, this preliminary objection stands over-ruled.

7. Now, adverting to the merits of this case, at the relevant time, the position regarding applying for compassionate ground in delayed cases was as under :-



"4. Where the death took place long ago - It will no longer be necessary for Departments to refer to Department of Personnel and Administrative Reforms cases of compassionate appointments of the wards of Government servants merely because a long time, say 5 years, has elapsed since the death of the Government servant. The Ministries/Departments may consider such cases themselves on merit but while admitting claim of such applications, Ministries / Departments may please keep in view the important fact that the concept of compassionate appointments is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. When several years have passed after the death of a Government servant, it would appear prima facie that the family has been able to manage somehow all these years and had some means of subsistence. Ministries / Departments will no doubt deal with such requests with a great deal of circumspection in order to give due allocation to more deserving cases, if any. The decision in such cases of belated appointments may be taken after the Secretary has approved of the proposal."

A bare reading of the aforesaid rule quoted under Chapter 25 - 'Compassionate Appointments' of Swamy's Manual on Establishment and Administration by P. Muthuswamy, 1987 Edition, at page 212, indicates that one could apply for appointment on compassionate ground even beyond a period of five years. However, a presumption was to be drawn that if the family has survived for four or five years, it

2

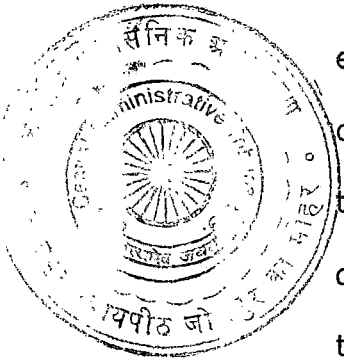
11  
15

has some source of subsistence and great care was to be required to be taken. In the instance case, a very specific query was made to the applicant as to how the family has survived for a long period but no specific reply was given. A perusal of the pleadings also do not disclose as to with what was the source of income, that family has survived for a period over twenty long years. The similar was the position when the respondents also wanted to know the similar details.

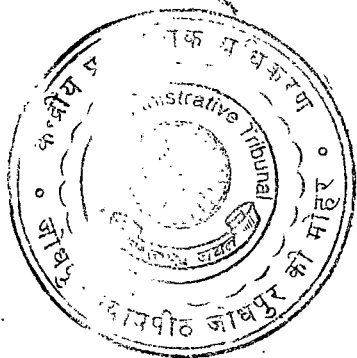
8. As far as legal aspect of the matter is concerned, it is fairly settled by now by the Apex Court that in such cases appointment would not be justified. I may refer a decision of Apex Court in **Jagdish Prasad Vs. State of Bihar** reported in 1996 (1) SLR 7, wherein the question of appointment on compassionate ground to an applicant who was four years old at the time when his father an ex-employee died in harness, came up for consideration. It was contended before the Court that since the appellant was minor when the father died in harness, the compassionate circumstances having continued till the date he made an application for appointment, therefore, he was entitled to be appointed on compassionate ground. Such contention was not accepted. Their Lordships of Supreme Court have observed as under:

"The very object of appointment of a dependant of the deceased employee, who die in harness, is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependant of a deceased Government servant which cannot be encouraged de hors the recruitment rules."

9. In another case of Umesh ~~Kumar~~ **Nagpal Vs. State of Haryana** reported in 1994 (4) SCC 138 where the Hon'ble Supreme Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the



Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case, the Apex Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories. It was observed as under:-



"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., the relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception of the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Similar is the position from the verdict in another case of **Sanjay Kumar Vs. State of Bihar** reported in 2000 SC 2782 wherein their Lordships have dealt with the similar controversy relating to a minor at the time of death of the deceased Government servant and have held that there can be no reservation of vacancy after number of years in such matters.

10. Keeping in view the aforesaid position, I am of the considered opinion that no fault can be fastened with the action of the respondents and their decision is, therefore, upheld. The O.A. stands dismissed but with no order as to costs.

  
(J.K. KAUSHIK)  
JUDICIAL MEMBER

jrm

COPY of the order/purchase  
dt. 27/4/06 received  
on 28/4/06  
Per.  
31/5/06

Received on  
4/5/06  
Custodian