

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

**Original Application No. 246/2006
&
Misc. Application No. 122/2006**

Date of order: 29th August 2007

Hon'ble Mr. Tarsem Lal, Administrative Member.

Girwar Singh Shekawat, S/o late Shri Surjan Singh Shekawat, aged about 32 years, resident of Ward No. 2 Near Sacred Heart convent school, Suratgarh. Father of the applicant Group D Civilian working under respondent No. 3

: applicant.

Rep. by Mr. Y.K. Sharma : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Directorate General of Supplies, and Transport Quartermaster, General's Branch, Army Headquarters, DHQ, PO New Delhi.
3. The Commanding Officer, 494, Coy. ASL (Sup.) Type 'D' C/o 56 APO.

: Respondents.

Rep. By Mr. M. Godara proxy counsel for
Mr. Vinit Mathur, :Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

Mr. Girwar Singh has filed this Original application for quashing and setting aside the impugned order dated 21.07.2000 (Annex. A/1) passed by the Quartermaster General's Branch, Army Headquarters, DHQ, New Delhi, vide which his request for compassionate appointment has been rejected. He has prayed

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that the respondents be directed to consider his case for providing him appointment on compassionate grounds.

2. The facts of the case as alleged by the applicant are as under: His father late Shri Surjan Singh was working as regular Industrial labour under the respondents and he died on 06.01.99 (sic. 05.01.99) [Annex. A/2].

3. On the death of his father there was no earning member to shoulder the economic burden of the family and the applicant is only eligible son who could play the role of bread earner of the family as his elder brother Bhagwan Singh is living separately from the family and rendering no assistance to the family. He is in private occupation in a Hotel at Jaisalmer. His two sisters are already married they reside separately. The family details certificate given by the Suratgarh Police station is annexed with this Application (Annex. A/3). He has submitted representation dated 10.07.2000 before the authority for appointment on compassionate grounds but to no avail (Annex. A/4).

4. The case of the applicant for appointment on compassionate grounds was rejected by the respondents vide impugned order dated 21.07.2000 (Annex. A/1) which is arbitrary, unconstitutional, illegal, unwarranted and against the rules. The impugned order is not a speaking order and therefore the same is liable to be

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quashed and set aside. Therefore, he prayed that he may be granted the appointment on compassionate grounds.

5. On the other hand the respondents have filed a detailed reply and not agreed to the relief asked for by the applicant. They have pleaded that the applicant's father expired in the year 1999 and after the death of his father, the applicant applied for appointment on compassionate grounds. On receipt of the representation, the same was submitted to the higher authorities for consideration but it was rejected after objective consideration as per the policy guidelines issued by the Government of India from time to time. It is settled legal position that unless biasness or malafide on the part of considering authority is proved the Court would not like to interfere with the orders passed by the competent authority.

6. The respondents have also raised a preliminary objection that the O.A is suffering from delay and laches and the grounds enumerated for condonation of delay are not bona fide and therefore the O.A is liable to dismissed on this ground alone. The respondents have also averred that on the date of the death of the applicant's father, the applicant was more than 25 years of age and hence he is not entitle for getting appointment on compassionate grounds as he is not dependent.

7. The board proceedings were initiated for considering his case and the board had observed that the applicant had one elder

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brother, who is a earning member and the applicant being a major and graduate he is capable of helping his family by earning. The respondents have further pleaded that the applicant has no case in his favour and he is not entitled to get any relief from this Tribunal. Therefore they have prayed that the O.A may be dismissed with costs.

8. The applicant has filed a rejoinder stating that the reply filed by the respondents is not very cogent. In reply, the respondents have raised the grounds of limitation. In this connection, the applicant has stated that he has filed Misc. Application No. 122/2006, for condoning the delay, if any, in filing the O.A. As regards the plea taken by the respondents relating to the over age of the applicant, the applicant has stated that in the case of appointment on compassionate grounds, the authorities are required to see only the penury condition of the family of the deceased government servant and not the age of the dependent claimant. The applicant has averred that he will shoulder the responsibility of looking after his widowed mother. He therefore stated that the averment of the respondents that the applicant being over-aged for claiming appointment on compassionate grounds has no validity in the eyes of law. The applicant has therefore submitted that in view of the facts mentioned above, the reply filed by the respondents may be dismissed and this Original Application be allowed with costs.

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9. The applicant has also stated in the Misc. application for condonation of delay, that he had handed over all the papers for filing the O.A. before this Bench of the Tribunal in the month of June 2001 and at that time the counsel of the applicant was residing at Polo I, Paota, Jodhpur. The learned counsel kept those papers in a bag. Subsequently, the counsel shifted his residence in July 2001 to his own house and at the time of shifting of the house, the papers handed over by the applicant were misplaced and therefore the counsel has forgotten to file O.A. in time. When the applicant contacted his counsel in August, 2006, he came to know that the counsel has not yet filed the O.A. The counsel immediately retrieved the papers and filed the present O.A on 10.10.2006 along with M.A for condoning the delay in filing the O.A, if any.

10. In reply to the M.A, the respondents have pleaded that the rejection of the request of the applicant for appointment on compassionate grounds was communicated on 21.07.2000 and the present O.A has been filed only in the year 2006 and therefore the O.A suffers from delay and laches for more than four and a half years. It is stated that the reasons for condoning the delay are also not bona fide and satisfactory. It is also stated that shifting of house by the counsel cannot be ground for condoning the delay. The respondents have therefore prayed that the M.A is not sustainable and the same is liable to be dismissed.

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11. Heard the learned counsel for both parties. Perused the pleadings and records carefully. The learned counsel for the applicant has reiterated all the arguments given in the O.A and rejoinder. He made me to traverse the various documents filed by him.

12. The learned counsel for the applicant has emphatically pleaded that it was his fault that he misplaced the papers given to him by the applicant while shifting to his own house from the old house. He, therefore, pleaded that this O.A may be allowed and the applicant should not be made to suffer because of the lapse on his part. The learned counsel relied on a judgement in Gautam C. Meshram vs. Divisional General Manager, South Eastern Railway, Nagpur and ors. {[1991] 15 ATC 274 } wherein the Bombay Bench of this Tribunal at Nagpur has held as under:

" **Administrative Tribunals, Act 1985- Section 21 – Continuing cause of action – Wrongful denial of appointment gives rise to continuing cause – Hence where the applicant was all along pursuing the matter, his application though filed after a long period of six years, entertained – Appointment.**"

13. The learned counsel also relied a judgement of Principal Bench in the case of Smt. Angoori Devi and anr. Vs. Union of India through Secretary, Ministry of Defence and ors. [1991] ATJ Vol. 10-336] wherein it was held as under:

" **Appointment – On compassionate grounds – pray made after a period of 9 years - Appointment denied on the grounds that the family somehow managed to live during all these nine years and the family is having a house and some land for cultivation – Further family has got the terminal benefits including pension- Delay satisfactorily explained –Direction given to consider the case for appointment on compassionate ground as the grounds taken by the respondents were not justified.**"



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14. The learned counsel further relied on a judgement of the Chandigarh Bench of this Tribunal in **Pushpa Bhalla and anr. Vs. UOI and ors.** [1991 (1) ATJ Vol. 10-592], wherein it was held as under:

" Appointment - On compassionate grounds - Request made for - Rejected on the ground that applicant did not possess the requisite educational qualification and his elder brother was already employed and could support the family after the death of his father - Challenged - Elder brother living separately and he (applicant) was not considered for Group 'D' post for which he was eligible and for which he was asked to give his willingness by respondents - Direction given to consider the case of the applicant for appointment as Mail Guard or any other Group 'D' post on compassionate ground."

15. The learned counsel also relied on the judgement of the Apex Court in the case of **Collector Land Acquisition, Anantnag and another vs. Mst. Katiji and others.** [AIR 1987 SC 1353] wherein their Lordships have held as under while dealing with condonation of delay:

3. " And such a liberal approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. " Every day's delay must be explained " does not mean that a pedantic approach should be made. Why every hour's delay. Every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non -deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or an account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.



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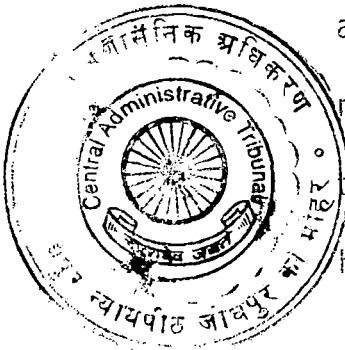
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6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. "

The learned counsel for the applicant pleaded that it is an admitted fact that on the date of death of applicant's father, the applicant was more than 25 years of age. He, however, pleaded that in view of the penury condition of the family, the respondents may be directed to give the compassionate appointment to the applicant.

16. The learned counsel for the respondents reiterated his arguments advanced in the replies to the O.A and M.A. for condonation of delay. He averred that the request of the applicant for compassionate appointment has been considered in the year 2000 by competent board of officers. All the relevant facts have been taken into consideration. There is no bias in this case and therefore the present application is devoid of merits.

17. The applicant, at the time of death of his father, was aged above 25 years and he does not fall within the ambit of dependent. The learned counsel for the respondents also averred that the case of compassionate appointment cannot be treated as continuing cause of action as per DOPT O.M. No. 14014/6/94 - Estt. D dated 29.10.98, wherein it has been stated that compassionate appointment cases can be considered within one year and maximum upto three years. The learned counsel therefore pleaded that the O.A is barred by time and the grounds on which the delay has been sought to be condoned are not very cogent. In this



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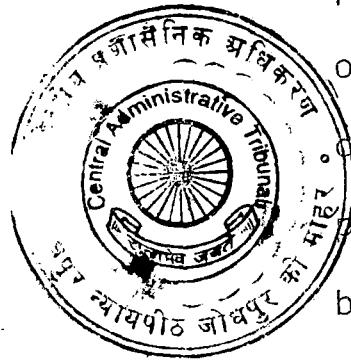
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regard, he relied on a decision of the Apex Court in the case of **Bhoop Singh vs. UOI and ors.** [(1992) 21 ATC 675] wherein it has been held as under:

" 8. In ordinary and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief, This is more so in service matters where vacancies are required to be filled promptly. "

18. The learned counsel for the respondents further pleaded that as the applicant was more than 25 years of age at the time of the death of his father, is not dependent in terms of Rule 54 of the CCS (Pension) Rules, 1972. In this regard he cited a decision of this Bench of the Tribunal in **Abdul Jabbar Pathan vs. UOI and ors.** [O.A. No. 236/2001 decided on 03.05.2002] wherein it was held that the applicant (Abdul Jabbar Pathan) therein was not entitled to claim compassionate appointment since he was more than 25 years of age.

19. This case has been considered carefully and documents perused. It has been observed that the father of the applicant died on 06.01.99 and the representation of the applicant seeking compassionate appointment was rejected on 21.07.2000, and the present application has been filed only on 10.10.2006, which is beyond the period of limitation prescribed under Sec. 21 of the Administrative Tribunals Act, 1985. However, the learned counsel for the applicant has explained that the applicant had given him



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the papers for filing the O.A in June 2001, but it is he who has forgotten to file the O.A in time and the papers were mis-placed by him on account of shifting of his house and the applicant should not be penalized for the fault on his part. In my considered opinion, the reasons given by the learned counsel for the applicant, for filing this O.A after much lapse of time, are not cogent and the case laws cited by the learned counsel for the applicant does not help him.

20. In the case of Gautam C. Meshram (supra), the Tribunal has observed that the applicant therein was all along pursuing the matter relating to his appointment under the scheme of employment assistance to the physically handicapped and hence the application filed by him after a period of six years was entertained, whereas in the instant case, the applicant as well as his counsel both had completely forgotten to file the O.A in time.

21. As regards the case relating to Smt. Angoori Devi and anr. (supra) the delay has been satisfactorily explained and therefore the O.A was accepted though it was filed after 9 years. In the above case the applicant waited for till he became major to file application for compassionate appointment. But in the instant case, the delay in filing the O.A has not been properly explained. Hence this case is not much help to the applicant.

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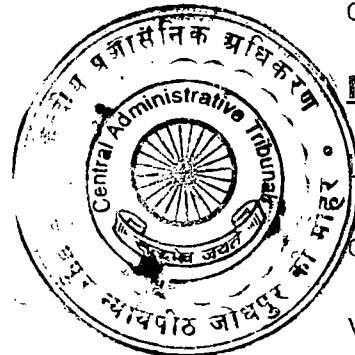
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22. As regards the case relating to Pushpa Bhalla and anr. wherein the applicant's case was not considered for Group D post for which he was eligible as he did not possess the requisite qualification for the post of Postal/Sorting Assistant at the time of death of his father whereas in this case the applicant is already a graduate and was over 25 years of age at the time of death of his father.

23. In regard to the case of Collector Land Acquisition, Anantnag and another (supra), that case relates to land acquisition and not related to service matter that too with regard to compassionate appointment.

24. However, in my considered view, Bhoop Singh's case (supra) quoted by the learned counsel for the respondents is relevant on the subject.

25. It is established law that an application for redressal of a grievance should be filed within the period stipulated under Sec. 21 of the Administrative Tribunal's Act, 1985. In the case of State of Nagaland vs. Lipokao and ors [(2005) 3 SCC 752], their Lordships of the Apex Court have held proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.



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What constitutes sufficient cause cannot be laid down by hard and fast rules. In the above case, the Apex Court has further held

"that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bonafide or was merely a device to cover an ulterior purpose."

(emphasis supplied)

26. The Hon'ble Supreme Court in the case of **P.K. Ramachandran vs. State of Kerala and another** [(1997) 7 SCC 556] have held as under:

" Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the court have no power to extend the period of limitation on equitable grounds. The discretion exercised by the high Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained "

27. In **Ramesh Chand Sharma vs. Udhamp Singh Kamal and ors.** [1999 AIR SCW 3911] the Apex Court has held as under:

" In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the Statutory provision contained in Sec. 21 (1) of the Administrative Tribunals Act 1985. The law in this behalf is now settled. See. **Secretary to Government of India vs. Shivram Mahadu Gaikwad** [1995 Supp (3) SCC 231]

28. As regards the dependency of the applicant for claiming the compassionate appointment is concerned, the rule relating to the period for which family pension is payable would be relevant, which reads as under:

Sub-Rule 6 of Rule 54 Family Pension, 1964

The period for which family pension is payable shall be as follows:-

- i. in the case of a widow or widower, upto the date of death or re-marriage, whichever is earlier;



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- ii. in the case of a son, until he attains the age of [twenty five] years; and
- iii. in the case of an unmarried daughter, until she attains the age of [twenty five] years or until she gets married, which ever is earlier ;

29. It would be relevant to quote here para 9 of the order in O.A. No. 236/2001 **[Abdul Jabbar vs. UOI and ors.]** - decided on 03.05.2002].

Para 9

In order dated 05.02.2002, in O.A. No. 250/2000, this Hon'ble Tribunal has given his findings as under:-

" 5. As we have stated in the beginning, this Bench has held a very definite view that a married son cannot be considered as a dependent for the purpose of seeking employment on compassionate grounds. We are further fortified by the decision of the Government, communicated vide memorandum dated 05.03.98, which in para -3 clarifies that :

"It is further clarified that the family pension to the sons/daughters will be admissible till he/she attains 25 years of age or upto the date of his /her marriage/re-marriage whichever is earlier

(emphasis supplied)

If a married son is not entitled to receive family pension he certainly cannot become a claimant for appointment on compassionate grounds".

30. The applicant himself admits that his request for compassionate appointment was rejected on 21.07.2000 and this O.A has been filed only on 10.10.2006, i.e. after a lapse of six years, which is beyond the time limit prescribed under Sec. 21 of the Administrative Tribunals Act, 1985. The delay in filing the O.A has not been properly explained. The reasons given for condoning the delay in filing the O.A are not cogent. Hence the Misc. Application seeking condonation of delay cannot succeed and therefore M.A No. 122/2006 is hereby rejected.

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31. On merits also, the applicant has already crossed 25 years of age on the date of death of his father and hence he was not eligible to claim family pension as well as appointment on compassionate grounds as per Rule 54 of the CCS (Pension) Rules, 1972. As pointed out in O.A. No. 236/2001 quoted above, the applicant is not entitled to get appointment on compassionate grounds.

Therefore the O.A is also dismissed. No costs.

Tarsem Lal
(Tarsem Lal)
Administrative Member.

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