

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 174/2009

Date of order: 17-2-2011

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

Abid Hussain S/o Late Shri Umrao Khan, aged 31 years, by caste Musalman, R/o Village Narlai, Post Narlai, Tehsil Desuri, District Pali (Raj.).

Applicant's father was working on the post of EDDA at Narlai.

...Applicant.

Mr. Bharat Shrimali, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post Master General, Head Post Office, West Zone, Jodhpur.
4. The Superintendent of Post Offices, Pali Division, Pali.
5. The Sub Divisional Inspector, Post Office, Falana, District Pali.

... Respondents

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, Member (J)

Applicant Abid Hussain S/o late Shri Umrao Khan (deceased employee) has preferred this Original Application for grant of following reliefs: -

"(i). By an appropriate writ, order or direction the impugned order dated 15.02.2002 & 02.09.2004

(Annexure A/1 & Annexure A/2) be declared illegal and be quashed and set aside.

(ii). By an order or direction the respondents may be directed to consider the case of the applicant for compassionate appointment.

(iii). Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant in the interest of justice.

(iv). Exemplary cost be awarded for causing undue harassment to the applicant."

2. The brief facts of the case are as follows:

The father of the applicant, Late Umrao Khan, was working on the post of EDDA at Narlai, Tehsil Desuri within District of Pali and while remaining in service he died on 26.05.2001. After the death of applicant's father, the mother of the applicant filed three applications for appointment of the applicant on compassionate ground on two dates i.e. on 05.11.2001 and 22.08.2001 (copy of the applications are Annexure A/6, A/7 and A/8, respectively). The applicant's other three brothers and one sister gave 'no objection' by way of filing affidavit before the respondents. However, the respondents by order dated 15.02.2002 and 02.09.2004 (Annexure A/1 and A/2, respectively) rejected the claim of the applicant for compassionate appointment on the ground that family of the applicant have received terminal benefits of Rs. 54,000/- and has got agricultural land measuring 1.34 hectare situated at village Narlai from which family has annual income of Rs. 12,000/- and besides that the family of the deceased employee has got its own house for living. It is stated that the rejection of

the claim of the applicant for compassionate appointment gave rise to filing of this Original Application.

3. On filing of the Original Application as well as Misc. Application for condonation of delay, the notices were issued to the respondents and in reply to the notices, the respondents appeared through lawyer and filed reply of the Original Application. According to the reply of the respondents, their case in brief is that the application of the applicant for compassionate appointment was duly considered by the competent authority twice and after objective consideration of the same, the application was rejected by the respondents on the ground that the family of the deceased employee was granted terminal benefits amounting to Rs. 54000/-, the family of the deceased employee has got 1.34 hectare agricultural land at Narlai from which it has got yearly income of Rs. 12,000/- besides that the family has got its own house to live. It has further been stated that after 8 years of passing the order by the authority whereby the claim of the applicant for compassionate appointment was rejected, the applicant has preferred this Original Application which is not maintainable in the eye of law. On the above mentioned grounds, prayer has been made by the respondents to dismiss the Original Application.

4. Shri Bharat Shrimali, advocate, appeared for the applicant and argued the case, whereas on behalf of the respondents, Shri M. Godara, proxy counsel for Shri Vinit Mathur, advocate, argued the case.

5. On behalf of the respondents, Shri M. Godara, proxy counsel, raised point of limitation and submitted that the Original Application is not maintainable as the same was filed beyond limitation. He submitted that as per the pleading of the applicant, the first order Annexure A/1 whereby the claim of the applicant for compassionate appointment was rejected by the respondents is dated 15.02.2002 whereas the second order Annexure A/2 is dated 02.09.2004. He submitted that as per Rule, the Original Application should have been filed within one year after the date of last order but the record will show that it was filed in the year 2009 i.e. after a lapse of more than 4½ years period from the last date of passing of the order for which no satisfactory explanation has been given in the Misc. Application filed for condonation of delay and therefore on the ground of delay alone, the Original Application should be dismissed. He further submitted that even on merit, the applicant has got no case as Annexure A/1 and A/2 will show that after due consideration by the concerned authority on the claim of the application for compassionate appointment, the authority passed the order rejecting the claim of the applicant for compassionate appointment and so on merit also the Original Application should be dismissed.

6. Against the above argument of the respondents' lawyer, the applicant's lawyer submitted that the record will show that along with the Original Application, one Misc. Application for condonation of delay was also filed and this Tribunal vide order dated 03.12.2009 after hearing the applicant's lawyer allowed

the Misc. Application bearing no. 107/2009 and condoned the delay in filing the Original Application. He submitted that once the delay has been condoned, the Original Application cannot be thrown on the ground of delay at final hearing. In support of his argument, the learned advocate of the applicant has placed reliance upon the decision of the Hon'ble Allahabad High Court (Lucknow Bench) given in the case of **Nathaniel Masih vs. U.P. Scheduled Caste Finance & Development Corp. Ltd. and another**, reported in 1989 LAB. I.C. 2276.

7. We have perused the decision given by the Hon'ble Allahabad High Court (Lucknow Bench) in the case of **Nathaniel Masih vs. U.P. Scheduled Caste Finance & Development Corp. Ltd. and another** (supra), para 4 of the said decision, which is relevant in this case, is incorporated hereunder: -

"4. So far as the question of delay is concerned, the termination order was passed on 17th March, 1982 and the writ petition was preferred by the petitioner on 14th November, 1983. It appears that the writ petition was admitted. It seems that the Bench condoned the delay and that is why the writ petition was admitted and delay and laches have been explained by the petitioner. In the rejoinder affidavit it has been averred by the petitioner that the writ petition having already been admitted, the question of delay and laches does not arise. It has further been stated that the petitioner is a very poor person and could not manage for the expenses required for the filing of the writ petition. Obviously, the petitioner being out of service if he filed the writ petition at a belated stage, it cannot be said that the petition is to be thrown out on the ground of delay and laches in view of the circumstances mentioned by the petitioner."

After going through the above mentioned decision, we are also of the view that once the delay in filing the Original Application is condoned, on the same ground the Original

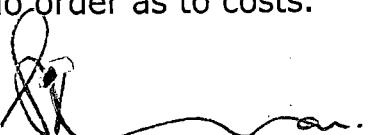
Application cannot be thrown out at the time of final hearing and therefore we hold that at this stage the ground of delay is not available to the respondents.

8. As regards the merit of the case, we find that the respondents have rejected the claim of the applicant because of the fact that the family of the deceased employee has got its own house, the family was given terminal benefit of Rs. 54,000/- after the death of the deceased employee, the family has got annual income of Rs. 12,000/- from agricultural land measuring 1.34 hectare and that there is no other dependent of the deceased employee except the applicant and widow. In this regard, the contention of the learned advocate of the applicant is that as per the decision of the Hon'ble Rajasthan High Court (Jaipur Bench) given in the case of **Suresh Kumar Sharma vs. Union of India & Ors.** reported in 2003 Western Law Cases (Raj.) UC 317, compassionate appointment cannot be denied on the ground that widow of the deceased employee had received retiral benefits on the death of her husband or that family of the deceased employee possessed some landed property. He has further relied upon the decision of the Hon'ble Apex Court in the case of **Balbir Kaur and another AND T.K. Meenakshi (Smt.) and another vs. Steel Authority of India Ltd. and Others** reported in (2000) 6 Supreme Court Cases 493 in support of his argument that compassionate appointment cannot be denied on the ground that certain beneficiary scheme was available to the family of the deceased employee.

9. We have perused both the decisions cited by the learned advocate of the applicant, and we are of the view that the decision of the Hon'ble Rajasthan High Court (Jaipur Bench) given in the case of **Suresh Kumar Sharma vs. Union of India & Ors.** (supra) is relevant in the context of this case. From the above mentioned decision, it appears that although the court found that the widow of the deceased employee had received a substantial amount towards retiral benefits i.e. Rs. 4,84,000/- and that the family of the deceased employee had 3½ bighas of land but even then the Hon'ble Rajasthan High Court (Jaipur Bench) held that the retiral benefits received by the heirs of deceased cannot be made ground in rejecting the application for compassionate appointment, and thereafter the court issued direction to the concerned department to consider the petitioner's case for compassionate appointment. The judgment given by the Hon'ble Rajasthan High Court (Jaipur Bench) in the abovementioned case is very relevant in this case in view of the fact that a very meager amount of Rs. 54,000/- of retiral benefits was paid to the family of the deceased which might have been spent on the last rite of the deceased, likewise the meager amount of annual income of Rs. 12,000/- from agricultural source cannot be held to be substantial amount for maintenance of family and therefore we are of the opinion that rejection of the claim of the applicant for compassionate appointment by the respondents was not fair; rather it was unjust and improper. We are of the view that the applicant has

got a good case for reconsideration of his claim for compassionate appointment by the respondents.

10. In the result, this Original Application is allowed and the impugned order dated 15.02.2002 (Annexure A/1) and impugned order dated 02.09.2004 (Annexure A/2) are hereby quashed and set aside. The respondents are directed to reconsider the case of the applicant for compassionate appointment along with the other deserving cases for future vacancy within a period of one year from the date of production / receipt of a copy of this order, and if the applicant is found fit, he may be offered appointment on compassionate ground, and if not, then the respondents shall pass a detailed speaking order comparing the case of the applicant along with the other deserving candidates. In the circumstances of the case, there will be no order as to costs.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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दिनांक 21/6/16 के आदेशानुसार
मेरी उपस्थिति में दिनांक 9/6/16
को अम-II व III संड किए गए ।

अनुशासन अधिकारी
केन्द्रीय प्रशासन का अधिकारण
जोधपुर न्यायपीठ, जोधपुर