

2/12

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

**Original Application No.424/2012
with
Misc. Application No.204/2012**

Jodhpur, this the 16th April, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Vicky Chhawani S/o late Shri Kishor Chand, aged about 29 years, R/o House No.83/99, Gujrati Colony, Kamla Nehru Nagar, Jodhpur, Rajasthan. The father of the applicant was working on the post of 'Safai wala' in the respondent department.

.....**Applicant**

Mr. J.P. Bhardwaj, counsel for applicant.

Vs.

1. Union of India through the Secretary, Defence Ministry, New Delhi.
2. The Military Engineer Service, (Govt. of India Enterprise) through its Chief Engineer Bhopal Zone, SI Lines, Bhopal.
3. The Garrison Engineer (A), Central Army, Multan Line, Jodhpur.
4. The DG (Pers)E-in-C's Branch (E1 C) DHQ PO, Kashmir House, New Delhi-I

...**Respondents**

Mr. Kuldeep Mathur, counsel for respondents.

ORDER (ORAL)

Per Justice K.C. Joshi, Member (J)

By way of this application, the applicant has challenged the legality of the order dated 18th November, 2009 by which the applicant has been denied the appointment on compassionate grounds in the respondent department.

E/13

2. The short facts of the case as averred by the applicant are that the father of the applicant was appointed in the respondent department on the post of Safaiwala w.e.f. 1985. The applicant's father served the respondent department for a long period of about 20 years with sincerity, honesty and he died on 05.08.2005. The applicant applied for appointment on compassionate grounds on 12.12.2005. But the respondent authority vide order letter dated 18.11.2009 rejected the application of the applicant. Thereafter, the applicant approached, the respondent department requesting them to consider his case sympathetically for appointment on compassionate grounds, and also served a legal notice but all in vain. The applicant being aggrieved of the illegal, unjust and arbitrary action of the respondents has challenged the legality of the letter at Annexure-A/1.

3. The respondent department filed the reply today, and in which they denied any right of the applicant for appointment on compassionate grounds, and also took a specific plea that the order dated 18.11.2009 has been challenged by the applicant in the year 2012, and there is inordinate delay on the part of the applicant in filing of the present OA. Therefore, they prayed to dismiss the OA on the ground of delay alone.

4. Heard both the counsels. Counsel for the applicant contended that the applicant applied for appointment on compassionate grounds vide Annexure-A/4, dated 12.12.2005, that was supported by the application filed by his mother, Nanda Devi. The applicant's mother pursued the case of the applicant vide letter dated

2/14

12.08.2006. And vide letter dated 15.02.2007, the applicant's mother was informed to contact the respondent authority for submission of documents. Further, the applicant was also informed by the respondents vide letter dated 07th September, 2009 to file an affidavit about possession of property and undertaking regarding his/her employment status and another letter dated 8th September, 2007 regarding eligibility/efficiency test for compassionate appointment. The applicant, however, was informed by the impugned letter dated 18th November, 2009 regarding rejection of his application for compassionate appointment only on the ground that the compassionate appointment cannot be offered to a deceased employee whose death has occurred more than three years back. Counsel for the applicant contended that thus the application dated 12.12.2005 was processed in the respondent department till 18th November, 2009, and thus a long time was taken by the respondent department itself to process his application and even to file the documents before the respondent authority, he was asked after more than one year of his filing his application. The applicant in his Misc. Application for condonation of delay has averred that he belongs to a scheduled caste category and also from a poor family and therefore, he could not approach the Court/Tribunal in time to settle his grievance, as he has no money to file any case before any Court/Tribunal.

5. Per contra, counsel for the respondents contended that there is inordinate delay in filing of the present OA, and further the

2

application of the applicant was rejected by the respondent department on a legal ground.

6. We have considered the rival contentions of both the parties.

7. It is a settled position of law that such applications/petitions should always be decided on merits instead of rejecting the application on technical ground of delay, because the condonation of delay is nothing but to hear the party and to decide the case on merits, and for substantial justice the Courts/Tribunals are always required to decide the case on merit rather dismiss the same on technical ground of delay. In the present case, the application of the applicant for appointment on compassionate grounds was processed for nearly four years and a substantial delay was caused by the department itself in considering the application of the applicant, who had applied well within time, and also the applicant being a poor person and belonging to an illiterate family, we find sufficient reason to condone the delay in filing of the OA. Therefore, the Misc. Application No.204/2012 is allowed and the delay in filing of the OA is condoned herewith.

8. Now, turning to the merits of the case, from a bare perusal of the Annexure-A/1 it is clear that the case of the applicant for appointment on compassionate grounds has not been considered and simply his case was rejected merely on the ground that father of the applicant died three years back. In our view, the application of the application cannot be rejected by the respondent department in such a way so as to adversely affect the right of the

2/16

poor dependents, and particularly when the applicant has applied for appointment on compassionate grounds in time and the delay has been caused on the part of the respondent department itself. Therefore, the action of the respondent department is not proper and against the settled principles and spirit of law. Hence, we have no hesitation to quash the Annexure-A/1 order, and allowing the OA of the applicant.

9. Accordingly, the OA is allowed and Annexure-A/1 is quashed, and respondents are directed to consider the case of the applicant for appointment on compassionate grounds, within a period of three months from the date of receipt of a copy of this order, as per relevant rules, and to inform the applicant by passing a speaking order and in case the applicant is found eligible, he may be offered the appointment as per rules. No order as to costs.

**[Meenakshi Hooja]
Administrative Member**

**[Justice K.C. Joshi]
Judicial Member**

rss