

In the Central Administrative Tribunal
Calcutta Bench

* CA No.282 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Mangru Presad Kahar

.... Applicant

- VS -

- 1) Union of India, through the Secretary, Deptt. of Science & Technology, N.Delhi.
- 2) Director General, Council of Scientific and Industrial Research, New Delhi.
- 3) The Controller of Administration, CG&CR.-I, Calcutta.

.... Respondents

For the Applicant : Mr. P.K. Guha, Advocate

For the Respondents: Ms. U. Bhattacharya, Advocate

Heard on : 9-7-1999

Date of Judgement : 9-7-99

ORDER

The unemployed son of the late Ram Presad Kahar, who died in harness while he was under the service of CSIR, filed this application before this Tribunal challenging the purported order of review dated 17.9.96 (Annexure B) which was communicated to the applicant in pursuance of the direction given by the Tribunal in CA No.622 of 94 dated 15.4.96. According to the applicant, deceased employee died in the year of 1985 and wife of the deceased employee made an application for appointment on compassionate ground in favour of the applicant. But respondents did not consider the case of the applicant appropriately. Thereby, the applicant had to approach the Tribunal by filing the application bearing No.622 of 1994 seeking direction upon the respondents to consider the case of the applicant for appointment on compassionate ground and the said application had been disposed

Contd. . .

of on 15.4.96 by the Tribunal after setting aside the impugned order dated 17.9.96 with a direction upon the respondents to conduct a fresh enquiry, if necessary, and freshly review the case of the applicant in the context of the relevant rules/regulations and instructions on the subject and to communicate the same and to pass appropriate speaking order within five months from the date of communication of the order. It is alleged by the applicant that as per direction of the Tribunal, the impugned order dated 17.9.96 has not been passed by the authority. The respondents passed the order dated 17.9.96 arbitrarily without considering the material facts in question in the matter of appointment on compassionate ground. Feeling aggrieved by and dissatisfied with the said order dated 17.9.96 (Annexure B) the present application has been filed by the applicant.

2. Respondents filed written statement denying the claim of the allegation and stating, inter-alia, that the respondents, after considering the material facts, freshly reviewed the prayer of the applicant and passed the reasoned and speaking order dated 17.9.96 vide Annexure A-III to the reply. The reason has been discussed in the said order for not making appointment of the applicant on compassionate ground. Thereby, applicant is not entitled to get any appointment on compassionate ground.

3. Lt. Advocate Mr. Guha for the applicant contended that respondents had violated the direction of the Tribunal contained in the judgement dated 15.4.96. He further submits that no enquiry as per direction of the Tribunal was held and the impugned order of review dated 17.9.96 was passed by the authority and respondents did not consider the material facts that the family is still in distress. Thereby, it was a fit case for appointment on compassionate ground by the respondents. Thereby, the impugned order is arbitrary and is liable to be quashed.

4. Lt. Advocate Ms. Bhattacharya on behalf of the respondents contended that the impugned order dated 17.9.96 (Annexure R-III to the reply) which is also Annexure B to the application was passed

by the authority after consideration of the material facts and after enquiry made by the authority as per direction of the Tribunal and the reasons disclosed in the order dated 17.9.96 (Annexure B to the application) are valid in accordance with the law of the scheme. Thereby, applicant is not entitled to get fresh consideration for appointment on compassionate ground. She further submits that the application is also a belated one as the father of the applicant died in the year of 1985 and the application has been filed by the applicant in the year of 1997 i.e. after lapse of 12 years approximately. So, belated application should not be entertained by the Tribunal since appointment on compassionate ground is not a enforceable right in the Court of Law. Thereby, application is devoid of merit and is liable to be dismissed. It is also stated by the Lt. Advocate of the respondents that the educational qualification certificates as produced by the applicant was neither recognised by the State of West Bengal nor by the District Employment Exchange.

5. I have considered the divergent arguments advanced by the Lt. Advocates of both the parties. The facts remain undisputed in this case is that the deceased employee died in the year of 1985 and applicant approached the Tribunal by filing application in the year of 1994 and that application had been disposed of by the Tribunal on 15.4.96. It is found that as per direction of the Tribunal, respondents passed the impugned speaking order on 17.9.96 (Annexure B) and feeling aggrieved by the said speaking order, the applicant presently filed this application. But respondents assigned four reasons in the impugned order dated 17.9.96 for which the respondents did not find applicant's candidature as suitable for appointment on compassionate ground. One of the grounds as stated in the order is that at present there is no vacancy in Group 'D' non-technical category. It is also stated by the respondents that the applicant is not in distress condition which needs relaxation of the educational bar. In view of the said matter, the dispute regarding matter of appointment on ~~compassionate~~ compassionate ground is no longer res-integra as per catena judgement of the Hon'ble Appellate Court reported in AIR 1994 537 (U.K. Nagpal - Vs - State of Haryana) and reported in AIR 1998 SCC(I&S) 570 (Uttar Pradesh

-Vs- Paresh Nath). In the case of Paresh Nath the Hon'ble Appex Court opines that -

"the purpose of providing employment to a dependent of a government servant dying in harness in preference to anybody else is to mitigate the hardship caused to the family on account of unexpected death while still in service and such appointments are permissible on compassionate ground provided there are rules providing for such appointment. The purpose of the scheme is to provide immediate financial assistance to the family of the deceased government servant; none of the consideration can operate when the application made after a long period of time".

In Umesh Kumar Nagpal's case the Hon'ble Appex Court opines that -

"The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over".

In view of the aforesaid decision of Hon'ble Appex Court, I find that respondents assigned four reasons for non-consideration of the case of the applicant. But facts remain undisputed in this case that the deceased employee died in the year of 1985 and present application has been filed in the year of 1997 and earlier application was filed in the year of 1994, after a lapse of 9 years. It is found that from the date of death of the applicant's father till filing the application in the year 1994 (OA No.622 of 1994) the applicant ~~had been able to manage somehow and he did not require any financial assistance for maintaining himself. Such fact normally would show that he has some dependable means of income to maintain himself.~~ Since compassionate appointment is not enforceable right, rather it is a matter of discretion of the authority in deserving the case, therefore, I find that it would be unwise on the part of the Tribunal

to entertain such belated application after lapse of so many years. The object is not now operative. In view of the aforesaid circumstances, application is devoid of merits and accordingly, it is dismissed awarding no costs.

4/1/99
(D. Purkayastha)
Member(J)