

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 484 of 1997

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman

Shri Dipendra Bhusan Chakraborty, s/o
Late Kshitindra Bhusan Chakraborty,
Ex-Machinist, Rifle Factory, Ministry
of Defence, Govt. of India, Ishapore,
24-Parganas(North), resident of Village-
Vivekanandapalli, PO & P.S. Chakdaha,
Dist. Nadia(PIN : 741 222).

..... Applicant

-Vs-

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi - 110 001 ;
2. General Manager, Rifle Factory, Ishapore, P.O. Ichapur-Nawabganj, (PIN-743 144), Dist.24-Parganas(N), W. B.;
3. Works Manager(Admn. - II), Rifle Factory, Ishapore, P.O. Ichapur - Nawabganj(PIN-743 144), Dist.24-Parganas (North), West Bengal.

..... Respondents

For applicant : Mr. P.K. Munsi, Counsel

For respondents : Ms. B. Ray, counsel

Heard on : 7.1.98 & 8.1.98

Order on : 20.1.1998

O R D E R

In this application, the petitioner has prayed for a direction upon the respondents to appoint him suitably on compassionate ground on the death of his father one Kshitindra Bhusan Chakraborty in harness on 22.10.91.

2. The case of the petitioner may be briefly stated as follows:

The father of the applicant Late Kshitindra Bhusan Chakraborty was a Machinist working under the respondent Nos.2 & 3 in the Rifle Factory, Ishapore and he died in harness on 22.10.91.

By a letter dated 30.3.92, as per Annexure 'B', the petitioner's mother i.e. widow of the Late Kshitindra Bhushan Chakraborty was given death-cum-retirement-gratuity of Rs.35,055/- and her family pension was fixed @ Rs.615/- per month up to 22.10.98 and thereafter at Rs.375/- per month plus reliefs as admissible. On the prayer of the mother of the applicant, Smt. Minoti Chakraborty, the office of the respondent No.2 asked her to appear before the Senior Labour Officer on 6.1.92 along with all necessary documentary evidence of her movable and immoveable properties and educational certificate of her son for whom he sought for employment on compassionate ground(vide Annexure 'C') dated 6.12.91. It appears that the application of Smt. Minoti Chakraborty, the mother of the petitioner for compassionate appointment of her son was made on 23.11.91. By an order dated 18.1.92, the office of the respondent No.2 informed the said Minoti Chakraborty that her application was sympathetically considered, but her request for compassionate appointment of her son Sri Dipendra Bhushan Chakraborty, i.e. the present petitioner, could not be acceded to. (vide Annexure 'D'). Thereafter, the said Minoti Chakraborty made another representation dt.20.5.92 to the respondent No.2 to reconsider the matter in view of the circumstances disclosed there and to give appointment to her son, the present petitioner on compassionate ground. It was disclosed there that her younger son was working as a CT in BSF but the said younger son living separately could not contribute anything towards subsistence of the family of the said Minoti Chakraborty(vide Annexure 'E'). This representation was followed by another representation by Minoti Chakraborty dt.14.11.94 to the respondent No.2 for giving compassionate appointment to her son, the present petitioner. By an order dated 25.11.94 issued from the office of the respondent No.2 and signed ,

by the respondent No.2, the mother of the applicant was informed in reference to her representation dated 14.11.94 that no appointment could be given to her son, the present petitioner on the following grounds :-

- a) Her second son Sri Dilip Chakraborty is employed in B.S.F. ;
- b) The said Minoti Chakraborty has received about Rs.1,28,734/- as terminal benefits ; and
- c) She was in receipt of family pension @ Rs.615/- per month plus reliefs.

Thereafter, the said Minoti Chakraborty stopped all correspondences with the respondents and after a lapse of more than 1½ years preferred an appeal to the Secretary, Ministry of Defence, Govt. of India(M.H.A.) on 10.6.96. It is alleged in the petition that the said appeal filed by the mother of the applicant has not been disposed of as yet.

3. It is curious to note that the present applicant never moved the authorities for his appointment on the death of his father in harness on compassionate ground. But the present application has been filed by him to which his mother, the said Minoti Chakraborty is not a party.

4. In the reply filed on behalf of the respondents, it is the defence that the present application is barred by limitation and the same is defective as the mother of the applicant has not been made a party. It is also stated that on merits, there was no reason to give any appointment to the present petitioner on compassionate ground in the light of the relevant rules in this regard and considering the financial condition of the applicant's mother. It is the specific case of the respondents that

the petitioner had no right to be appointed on compassionate ground and there was no discrimination on the part of the respondents in refusing such appointment.

5. In the rejoinder given by the petitioner, it is stated, inter alia, that an appointment on compassionate ground has been given by the respondents to one Pratik Bhattacharjee on the death of his father in harness on 7.1.92 while working as Filer in the same Rifle Factory at Ishapore. In that case also, total amount of terminal benefits so made was Rs.1,64,000/-.

6. ^{Before} ~~While~~ considering the merit of this application, I think it necessary to consider the point of limitation and of the competence of the petitioner to file the instant application in the facts and circumstances of the case.

7. It has been urged by Ms. Bharati Ray, Ld. Counsel appearing for the respondents that the instant application is hopelessly barred by limitation u/s.21 of the Administrative Tribunals Act, 1985. An application u/s.19 of the Act is to be filed within one year from the date on which final order has been made as contemplated in Clause(a) of Sub-section(2) of Section 20. In a case where an appeal or representation as mentioned in Clause(b) of Sub-Section(2) of Section 20 such application is to be made within one year from the date of expiry of a period of six months without such final order having been made. It is provided in Section 21 that such application shall be entertained by the Tribunal if it is made within the period referred to in Clause(a) or, as the case may be Clause(b), of Subsection(1) or within a period of six months from the said date, whichever period expires later. It is also provided in the said section 21 of the Act that an application may be admitted by the Tribunal beyond the prescribed period

of limitation on the applicant having satisfied the Tribunal that he had sufficient cause for not making the application within such period. Ms. Ray has rightly contended that in the application itself, there is no prayer for condonation of delay, nor it is stated that the petitioner had sufficient cause for not making the application within the prescribed period of limitation. On the other hand, impression has been given in the instant application that the said application has been filed within the period of limitation taking into consideration the fact that the appeal preferred by the applicant's mother to the Secretary, Ministry of Defence, Govt. of India dated 10.6.96 is still pending. Under the rules of compassionate appointment, there is no provision for preferring any appeal against the order of the competent authority refusing such appointment on compassionate ground.

8. Mr. P.K. Munshi, Ld. Counsel appearing for the petitioner tried to submit that the respondents should have referred the matter to the Secretary, Ministry of Defence for consideration of appointment of the applicant on compassionate ground, but no such rule has been produced before me.

9. The broad facts stand that the prayer of the applicant's mother for compassionate appointment of the present petitioner was rejected by the respondents for the first time on 18.1.92 (vide Annexure 'D'). After two representations having been filed by the said Mineti Chakraborty dated 20.5.92 and 14.11.94 as noted above, the respondent authorities for the second time by their order dt. 25.11.94 (vide Annexure 'G') intimated her that such appointment could not be given on the grounds stated therein, which I have already quoted above. So, the cause of action arose on the part of the petitioner or for her mother to approach this Tribunal at least from 25.11.94. They should have preferred an application

u/s 19 of the A.T. Act within the prescribed period of limitation. Curiously enough without doing so, the applicant's mother, not the applicant himself, without moving this Tribunal thought it fit to file another representation or appeal before the Secretary, Ministry of Defence by a petition dated 10.6.96(vide Annexure 'E'). Such filing of representation or appeal, which is not warranted by the rules, cannot save the limitation as has been rightly submitted by Ms.Ray. Mr.Munsi has referred to a decision, reported in(1991) 15 A.T.C. pg.274(Gautam C. Meshram -vs- Divisional General Manager, S.E. Railway, Nagpur & Ors.), where the Nagpur Bench of CAT, New Bombay held that denial of appointment is a continuing cause of action and on this finding entertained an application after a period of six years. This case, in my view, has no application to the present case on factual matrix. That was a case in respect of appointment in a reserved quota for physically handicapped person. Mr.Munsi has also referred to a decision of the Supreme Court, reported in A.I.R. 1996 SC (Special Tehsildar, Land Acquisition, Kerala vs. K.V.Ayisumma) in the matter of condonation of delay of a time-barred appeal preferred by State Government. This reported case also has no manner of application to the present case. Ms. B.Ray has referred to a reported decision of the Principal Bench of the CAT at New Delhi - 1993(2) A.T.J. 202(Dr. B.S.Attri -vs- Union of India & Ors.), wherein it has been held that repeated representations or non-statutory representations after rejection of the earlier one cannot save the limitation.

10. In view of the above facts and circumstances and the materials on record, I am of the view that the present application is hopelessly barred by limitation.

11. Ms. Ray's 2nd contention is that without impleading the mother of the applicant, who made several representations to the respondent authorities for appointment of the applicant, her son, on compassionate ground, which has been rejected by the respondent authorities, such application filed by the petitioner alone should not have entertained. In support of her submission, Ms. Ray has referred to an unreported decision of a Division Bench of this Tribunal, Calcutta Bench(O.A. No.776 of 1994 - Rajan Raghavan -vs- Union of India & Ors.), wherein an application filed by a person was dismissed on the ground that the person, who made representation to give compassionate appointment to her son was not impleaded. There is some force in the contention of Ms. Ray about the formal defect of the application, but I do not think it necessary to decide this aspect of the matter when it is found that the application is hopelessly barred by limitation.

12. Now I come to the merit of the case. The main ground of refusal on the part of the respondents to give employment to the petitioner on compassionate ground as prayed for by his mother is that the widow got substantial terminal benefits and was given a family pension @ Rs.615/- per month plus reliefs and furthermore, his second son Sri Dilip Chakraborty is employed in B.S.F. This position is admitted. The receipt of terminal benefits by the widow of the deceased employee is no ground refusing appointment on compassionate ground. It is undisputed that such terminal benefits were inherited and shared by the heirs of the deceased employee including the mother of the applicant. In order to get an appointment on compassionate ground, the authorities are to be satisfied that in order to save the family from starvation and penury, such appointment is necessary. In other words, the

indigent conditions of the family have got to be proved. It is now the case of the petitioner that his brother Dilip Chakraborty, who is employed in BSF has been living separately from the family. It is not known whether this fact was disclosed in the first representation made by the mother of the applicant dated 23.11.91. No copy of the said application has, however, been annexed. It appears from the first representation dated that 20.5.92/this fact relating to the second son Sri Dilip Chakraborty was perhaps brought to the notice of the authorities for the first time. In the 2nd representation dated 14.11.94, same facts have been reiterated. Considering this aspect of the matter, the authorities rejected the subsequent representation of the applicant's mother dt:14.11.94 on the ground, *inter alia*, that her second son was employed in B.S.F. Under the circumstances, I do not find any reason to interfere with the order of rejection dt.25.11.94. It has been submitted by Ms.Ray that there is nothing to show that the family is in indigent condition. From the materials on record, I agree with such contention of Ms.Ray.

13. In the rejoinder, the petitioner has mentioned a case, where a person has been given appointment on compassionate ground, even though higher terminal benefits were granted on the death of the employee concerned. This fact, in my view, does not give any strength to the petitioner's case. It has been submitted by Ms.Ray on the basis of the departmental records that such appointment was given as the family was larger than the petitioner's family and there was no serving member in the family. So, on merit also, I do not find any case on the side of the petitioner.

14. The application is dismissed but no order as to costs.

S.N. Mallick
(S.N. Mallick)
Vice-Chairman