

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 512/2011

Friday, this the 14th day of September, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Joby P Varghese,
S/o Ponnachan,
Kollanvilakath, Kaithakode.P.O.
Kollam-691543. Applicant

(By Advocate Ms Sadhana Kumari E)

v.

1. Union of India represented by the Secretary, Ministry of Communication, Department of Posts, Dak Bhavan, New Delhi-110 001.
2. Chief Post Master General, Kerala Circle, Thiruvananthapuram-695 001.
3. Sr. Superintendent of Post Office, Kollam Division, Kollam-691 001.
4. The Circle Relaxation Committee, O/o the Chief Post Master General, Kerala Circle, Thiruvananthapuram - 695 001. Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 11.09.2012, the Tribunal on 14.09.2012 delivered the following:



ORDER**HONBLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

This is the case of compassionate appointment. The applicant's father, who was working as a Post-man, died in a road accident on 1st August 2005. The mother of the applicant applied for compassionate appointment for her elder son, vide Annexure A-6 dated 28th of December 2005. Vide Annexure A-11 communication dated 20-06-2006, her request was turned down on the ground that the family is not in indigent circumstances. According to the applicant, after the aforesaid rejection order was communicated, he and his mother visited the respondents many times and were given the assurance that the case would be reconsidered (paragraph 8 of the OA). The applicant thereafter on 1 January 2008 renewed the request of his mother for the grant of compassionate appointment to him. Annexures A-13 and 13 A refers. This request was again renewed in 2010 vide Annexure A-14 series. The applicant had also approached certain Central Ministers in this regard.

2. As there has been no positive response, the applicant has moved this OA seeking the following reliefs:-

- (i) Declare that the applicant is entitled to compassionate appointment.
- (ii) Call for the records and files pertaining to the letter No.Rectt/7-56/05 dated 15.6.2006 of the 2nd respondent and quash the letter No.Rectt/7-56/05 dated 15.6.2006 of the 2nd respondent.
- (iii) Call for the records and files pertaining to the letter and quash



Annexure A-11.

- (iv) Call for the minutes and records pertaining to the decisions of the 4th respondent since 1.8.2005 till date and quash the decision on 22.3.2006 in regard to this applicant.
- (v) Declare that the applicant is entitled to get compassionate appointment in the 1st respondent department.
- (vi) Direct the respondents to give appointment to the applicant in the 1st respondent department, forthwith.
- (vii) To pass appropriate order or direction which this Hon'ble Tribunal finds necessary for the ends of justice, and allow costs to this applicant.

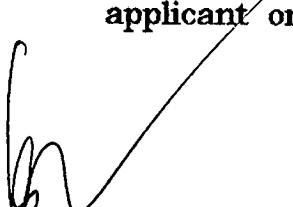
3. Respondents have contested the OA. Para 3 and 4 thereof of their reply succinctly brings out their contention and the same is as under:-

"3. At the outset, it is submitted that the O.A is barred by limitation and is liable to be dismissed on the ground of delay. The request of the applicant was examined by the Circle Relaxation Committee (CRC for short) held on 22.3.2006 but was rejected as the family of the applicant was not found to be in indigent circumstances to warrant consideration for appointment under relaxed standards. The said decision of the CRC was communicated to the applicant vide Annexure A-11 dated 20.6.2006. The applicant has chosen to approach this Tribunal after more than 5 years from the receipt of the impugned letter. It is trite law that belated claims of promotion and appointment ought not to be entertained by the Court of law. This view has been emphasized by the Hon'ble Apex court in *M.L.Cecil D'Souza v. Union of India* [AIR 1975 SC 1269]. In this case, the applicant has been sleeping over his rights and has now approached the Tribunal seeking a review of the decision taken by the CRC more than 5 years before. Delay discernible the applicants for discretionary relief also. Just because the applicants have preferred repeated representations it does not mean that there is no delay in this case. The Hon'ble Supreme Court has in the case of *State of Haryana v. Miss Ajay Walia*, [1997 Lab IC(SC) 286] held that repeated representations to various authorities cannot extend time limit for approaching courts of law. It is therefore clear that the instant case is liable to be dismissed on the sole ground of delay.



4. It is further submitted that on merits also, the applicant has failed to make out a case. While considering a request for appointment on compassionate grounds by the CRC, a balanced and objective assessment of the financial condition of the family is made taking into consideration its assets and liabilities and all other relevant factors such as number of dependents, number of unmarried daughters, number of minor children, annual income from other sources, ownership of house, ownership of land and total liability of the family. This is done to assess the degree of indigence among all the applicants considered for such appointments within the prescribed ceiling of 5% of the Direct Recruitment vacancies. Accordingly, the request of the applicant for compassionate appointment was duly examined by the CRC which met on 22.3.2006 but was rejected as the family was not found in indigent circumstances when compared with the others on the basis of the various criteria mentioned above like the family of the applicant was found to be relatively less indigent compared to other cases that came before the CRC and hence was rejected. A copy of the minutes of the CRC meeting held on 22.3.2006 along with Annexure is produced herewith and marked as Annexure R-1. As evident from therein, five candidates including the applicant were considered for appointment to the post of Postal Assistant against the available nine vacancies by the CRC. After considering all the aspects and evaluating the relative indigence of all the candidates on the basis of the seven criteria mentioned above, the CRC found that indigence has been established only in respect of two cases viz, Ms.S.Shylaja and Smt.A.N.Subhashini and the remaining three cases including that of the applicants were rejected due to lack of relative indigence. The balance 7 vacancies were carried forward to the ensuing year. It is therefore clear that the rejection of the applicant's request for compassionate appointment was made on valid grounds and no malafide can be alleged in the whole process."

4. The applicant has filed his rejoinder. He has contended that the respondents have not appreciated properly the financial conditions of the family of the applicant and thus the rejection of the applicant's request for compassionate appointment was illegal and invalid. It has also been contended that the rejection letter of CRC was not communicated to the applicant on time. Subsequent requests of various others have been

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favourably considered.

5. Counsel for the applicant argued that the applicant has been representing to the respondents but the same have not been considered. As regards limitation, there is scope for condoning the delay in respect of meritorious cases. In this regard counsel for the applicant relied upon the decision of the Apex Court in **State of Nagaland vs Lipokao and others (2005) 3 SCC 752**, wherein it has been held that Court should decide the case on merit and should be liberal in condoning the delay. The Apex Court has referred to the decision in the case of **N. Balakrishnan vs M. Krishnamurti (1998) 7 SCC 123**. As regards financial conditions, the applicant has a house and 39 cents of land, which yield Rs 10000 per annum. Apart from the family pension of less than Rs 3000/- there is no other income. The applicant is well qualified to be considered for compassionate appointment to the post of Postal Assistant. There are individuals who have been granted appointment on compassionate grounds on the basis of their declaration of nil income, which is too hard to believe, as no one could survive without any income.

6. Counsel for the respondents submitted that the scheme of compassionate appointment has been framed to mitigate the immediate hardship that the family would face when the breadwinner of the family dies in harness. In the instant case applicant's father expired as early as in 2005 and when the mother of the applicant submitted an application, the same was considered but no appointment could be granted in view of



the fact that it is found that the applicants family was not in indigent circumstances. It is against the said order of 20-06-2006 that this application has been filed as late as June, 2011 and no explanation has been offered for the inordinate delay in filing this O.A.

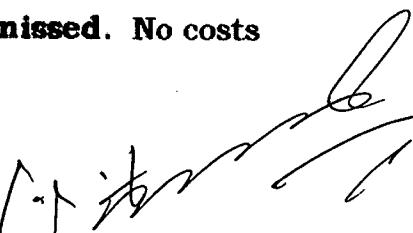
7. Arguments were heard and documents perused. First, as to the legal aspect of limitation. Law provides for a limitation to ensure that by lapse of time no vested rights are created with the other side and that the party seeking relief should not be indolent. When the order of rejection was of 2006, the applicant ought to have approached the Tribunal within one year therefrom. Though it has been stated that the order did not reach on time, there is no clear mention about the date of receipt of the same. In any event, from communication addressed to the Ministers, it is evident that the rejection order had reached the hands of the applicant earlier than May 2010. Provision exists for filing application for condonation of delay and if sufficient cause is shown, the Tribunal has the discretion to condone the delay involved. No application for condonation of delay has been filed; rather the applicant, in paragraph 3 of the Original Application has stated that the case is well within Limitation. When an order of 2006 is challenged, the same cannot be within the limitation period. For condoning the delay application is a must. In the absence of an application for condonation of delay, the Tribunal cannot of its own condoned the delay. The Apex Court in the case of **D.C.S.Negi v. Union of India & others** [S.L.P.No.7956/2011] has held that it is the duty of the Tribunal to ensure that the application



is filed within the limitation periods (and not the same is accompanied by an application for condonation of delay). In the instant case there being no application for condonation of delay, the respondents having also raised the question of limitation, the Tribunal cannot marginalise the objection on limitation. Obviously the application is time barred. There is no provision to consider the OA without an application for condonation of delay. In this regard, reference is invited to the decision of the Apex court in the case of **Dipak Chandra Ruhidas vs Chandan Kumar Sarker** (2003) 7 SCC 66, wherein the Apex Court has held as under:-

"18. Learned counsel then urged that this special leave petition may be treated as an appeal under Section 116-A of the Act. An appeal is required to be filed within 30 days of the order and judgment of the Tribunal (High Court) and the power has been given to the Supreme Court to condone the delay in case of the appeal having been filed after 30 days. In the present case no application for condonation of delay has been filed in terms of the proviso appended to sub-section (2) of Section 116-A of the Act. As the appeal would have otherwise been barred by limitation, we are not in a position to treat this appeal as an appeal under Section 116-A of the Act. We are, therefore, of the opinion that the said special leave petition was not maintainable and leave under Article 136 of the Constitution of India was wrongly granted. It is, accordingly, revoked. The special leave petition is dismissed."

8. Thus, in view of the fact that the application has been filed belatedly and without an application for condonation of delay, the **Original Application fails and hence the same is dismissed. No costs**



Dr K.B.S. RAJAN
JUDICIAL MEMBER