

Central Administrative Tribunal Lucknow Bench Lucknow.**O.A. 575/2006****This, the 31st day of January 2008.****Hon'ble Mr. M. Kanthaiah Member (J)**

Kaushal Kumar
 Aged about 36 years,
 S/o Late shri Chhotey Lal
 Resident of Village -Kheriya (Chaugawan),
 Post Office-Mahona, and Lucknow.

Applicant.

By Advocate Shri Praveen Kumar.

Versus

1. Union of India,
Through the Registrar General of India,
New Delhi.
2. The Director of Census Operation,
U.P. Lekhraj Market, Lucknow.
3. The Joint Director of Census Operation,
U.P. Lekhraj Markert, Lucknow.

Respondents.

By Advocate: Shri Yogesh Kesharwani.

Order**By Hon'ble Mr. M. Kanthaiah, Member (J)**

The applicant has filed this O.A. to quash the impugned rejection order dated 15.9.2006 (Annexure 1) and issue direction to the respondents for reconsidering his claim for appointment on the post of casual labour.

2. The respondents have filed counter affidavit denying the claim of the applicant for his appointment and also stated that the order of rejection covered under Annexure 1 is reasoned one and thus no interference of this Tribunal is required.

3. The applicant has filed rejoinder affidavit denying the pleas taken by the respondents and also reiterating his stand taken in the O.A.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant is the son of late Chottey Lal who worked as a casual labour in the office of respondents during his life time. The deceased Chottey Lal along with others filed O.A. 582/1992 challenging their discontinuation of services as casual labours and also seeking for regularization of their services. But during the pendency of the above O.A. Chottey Lal died on 03.06.99 and case was abated against him as none of his legal representatives were brought on record. Subsequently, the claim of other applicants in the said O.A. was allowed on 1.5.2000 and as such the benefits for regularization was extended to them. Thereafter, the applicant herein filed O. A. 623/2000 against these respondents on the file of his Tribunal for his appointment on compassionate ground, claiming to extend the benefits of the judgment in O.A. 582/93 dated 16.5.2000 to him and the same was disposed of on 12.1.2001 with a direction to the respondents to decide the pending representation of the applicant and pass reasoned order. In pursuance of the said direction, the respondents have considered the representation of the applicant and passed reasoned order, rejecting the claim of the applicant. Annexure CA 1 is the copy of rejection order.



7. Aggrieved by the said rejection order, the applicant filed another application O.A. 209/2001 before this Tribunal and the same was disposed of on 18.7.2003 with a direction to the respondents to look into the matter of the applicant sympathetically. Annexure CA-3 is the copy of order in O.A. 209/2001 dated 18.7.2003. Thereafter, the applicant was allowed to work as casual labor but subsequently, he was terminated on 16.12.2004. Against the said termination order as casual labor, the applicant filed another application O.A. 164/2005 and also sought appointment on Class IV on regular basis on compassionate ground. But the same was decided with a direction to the respondents to decide the representation of the applicant. Accordingly, the respondents have considered the said representation of the applicant and rejected the claim of the applicant by reasoned order covered under Annexure 1 dated 15.9.2006 which is under challenge in this O.A.

8. The applicant has challenged the impugned rejection Annexure 1 dated 15.9.2006 on the ground that he is entitled for compassionate appointment on the ground that his father died, while working in the office of the respondents. It is also the contention of the applicant that though the services of his father was not regularized, as a son of deceased casual laborer/daily rated employee, he got right and entitle to claim for compassionate appointment.


9. The respondents denied the claim of the applicant for his appointment on compassionate ground stating that his father was not regular employee of the department and further the claim of the applicant has already been decided in earlier application in O.A. 209/2001 and the same has become final and thus this O.A. is not maintainable. In view of

such rival contention, the duty is cast upon the applicant to prove his claim.

10. Admittedly, Chottey Lal, the father of the applicant though worked for considerable period in the office of the respondents as casual labourer, his services were not regularized. When he along with others filed original application, claiming for regularization of their services in O.A. 582/1992, during the pendency of the same, the father of the applicant died and the claims of remaining applicants was allowed and accordingly extended the benefit to them. It is also not in dispute that the said O.A. was abated against the father of the applicant and none of his legal representatives had been brought on record.

11. It is the contention of the applicants that the applicants in O.A. 582/1992, who have filed along with his father was allowed and subsequently, some of the children of deceased employees secured jobs on the ground of compassionate appointment. Based on such claim, the applicant claims that his claim has to be considered for appointment on compassionate ground.

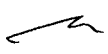
12. It is also the case of the applicant that if his father was alive, his services would have regularized and in such event, he being the son of deceased regular employee, entitled for appointment but because of death of his father during pendency of their O.A., claiming for regularization, rejecting his claim for compassionate appointment is not at all justified. It is the main case of the respondents that then the scheme for appointment on compassionate ground is meant for regular employees and when no



such facility was extended to his father, extending of such benefits of the scheme to the applicant is not at all maintainable in the eye of law.

13. The respondents have also taken objections that this O.A. is not maintainable as this claim of the applicant was rejected on earlier occasion in O.A. 209/2001 and as such it is not open to the applicant to reargue such claim for compassionate appointment by way of this fresh O.A. Annexure CA-3 is the copy of order in O.A. 209/2001 dated 18.7.2003 and the said application was filed for his appointment on compassionate ground as his father died in harness, while working as casual labourer with the department.

14. In respect of the benefit claimed by the applicant on the basis of the decision in O.A. 582/1992, in Para 8 of its judgment in O.A. 209/2001, stated that so far as the representation of the applicant in respect of his claim for appointment on compassionate, the Tribunal opined that, the same has been decided in accordance with law on the subject and supported with reasons thereof and as such, the same calls for no interference by the court. Further, the Tribunal observed that taking into consideration that applicant's father has served with respondents for about 17 years, the applicant is at liberty to make representation to the authorities for his appointment as casual labour otherwise within a period of 2 weeks from today and the concerned respondents is directed to decide the representation while giving the sympathetic consideration to the prayer of the applicant for the reasons that his father has served the department for about 17 years and with such observation and direction, the said O.A. was disposed of.




15. From the above decision of the Tribunal, it is clear that the applicant made his representation for his appointment on compassionate ground but the same was rejected and aggrieved by the same, when he filed O.A. 209/2001, the said claim of the applicant was negated by the Tribunal stating that the respondents department has decided the representation of the applicant in accordance with law and the same is a reasoned order and thus no circumstances are there for interference of the tribunal and when such finding was given by the Tribunal in earlier O.A. 209/2001, it is not open to the applicant to again claiming such relief by way of this present application which is barred under the principles of resjudicata.

16. The learned counsel for he applicant relied on the following decisions of the Apex Court stating that the kith and kin of the deceased employees who died before reinstatement are entitled for compassionate appointment.

(i) 2001 (2) S.C. Service Law Judgments Page 54. Food Corporation of India (FCI)

17. The matter pertaining to the said FCI, relating to the retrenched workers whose matter was pending for several decades for reimbursement and in the instant case, the claim of the applicants father was for regularization of his services as casual labourer and as such both are entirely with different facts and circumstances. Further, the Hon'ble Apex Court allowed the claim of such claim basing on its earlier and peculiar circumstances of the said case. As such, the said decision is not at all applicable to the facts and circumstances of this case on hand.




18. The applicant also relied on the following decisions of coordinate bench. 2004 (2) Administrative Tribunal Judgments Page 429 Smt. Santhosh/ICAR and Others.

19. The Tribunal allowed the claim of the applicant Smt. Santosh, following its earlier judgment in the case Smt. Meena Devi in O.A. 303/99 dated 8.12.2000, on the ground that mere grant of stay of the judgment by appellate court, does not bar the Tribunal to follow such decision. From the reading of the said decision of coordinate bench, appeal was pending against the decision of the Tribunal in the case of Smt. Meena Devi, which is the basis for allowing the claim of the applicant Smt. Santhosh. Further stay was granted by the Hon'ble High Court in its appeal on 22.8.2001.

20. The applicant has not filed the final decision of the appeal in O.A. No. 303/99 and as such, the decision of the coordinate bench is not helpful at this stage.

21. In view of the above circumstances, there are not merits in the claim of the applicant for giving any direction to the respondents for reconsideration of his claim for appointments on th post of casual labour .

22. In the result, O.A. is dismissed and no costs.


(M. Kanthaiah)
Member (J)
31-01-2008

v.