

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 110/2007

This, the 3rd day of October, 2008.

Hon'ble Shri M. Kanthaiah, Member (J)

Waheed Ahmad aged about 36 years son of late Sri Sharif Ahmad resident of House no. 535 Ka/62, Indira Nagari , Daliganj Railway Crossing, Lucknow.

Applicant.

By Advocate: Shri B.M. Sahai

Versus

1. Director General, Council for Scientific Research Anusandhan Bhawan, Raki Bhawan, New Delhi.
2. Director of Central Drug Research Institute, Chhatar Manzil , Lucknow.

Respondents.

By Advocate: Shri Pankaj Awasthi for Sri A.K.Chaturvedi

ORDER

By Hon'ble Shri M. Kanthaiah, Member (J)

The applicant has filed the O.A. with a prayer to appoint the applicant on the post of helper or any other suitable post and also to quash the impugned order dated 10.9.2005 (Annexure A-5) alternatively to treat him in service on daily wages and regularize his services on the following grounds:-

- a) The applicant is entitled for appointment on compassionate ground in view of the orders passed by this Tribunal in O.A. No. 541/93 dated 29.9.2003 on the file of this Tribunal.
- b) The applicant is also entitled for the relief in view of the orders in O.A. No. 596/94 dated 26.10.1994 on the basis of assurance/undertaking dated 24/28.2.1994 given by the respondents that there is every likelihood of the

applicant be allowed ^{to} continue in service in C.D.R.I. and as such the O.A. No. 596/94 was dismissed.

c) When once the respondents have given an impression by order dated 24/28.2.1994, they cannot be allowed to retract their stand after dismissal of O.A. 596/94 on 26.10.94 and discontinuing the applicant from service.

2. The applicant also filed M.P. No. 752/2007 along with O.A. to condone the delay in filing the O.A. on the ground that after dismissal of his earlier O.A. No. 596/94, he was discontinued by the respondents in early part of 1995 but there was delay in pursuing his grievance.

3. The respondents have filed counter reply denying the claim of the applicant stating that it cannot be interlinked his claim for appointment on compassionate ground with engagement on daily wages which are two separate issues and as such his claim is barred under Rule 10 of the CAT (Procedure) Rules, 1987. They have also taken plea that this Tribunal has no jurisdiction to entertain the present O.A. in view of the judgment and order dated 26.10.94 in O.A. No. 596/94 by this Tribunal ^{and} ~~an~~ thus the claim of the applicant is barred by limitation. Respondents have also filed objection for condoning the delay application stating the same is not at all maintainable.

4. The applicant has filed Rejoinder Reply denying the stand taken by the respondents and reiterated the pleas taken in the O.A.

5. Heard both sides.

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

7. The admitted facts of the case are that father of the applicant late Sri Sharif Ahmad, while working as Helper (unskilled) in the office of the respondents, died on 22.3.1988, leaving behind his wife, the applicant and two

younger brothers of the applicant. Thereafter, when the ^{mother} ~~brother~~ of the applicant made an application for appointment of the applicant on compassionate ground and subsequently, the applicant filed O.A.No. 541/93, which was disposed of on 20.9.93 with a direction to the respondents to consider the claim of the applicant for his appointment on compassionate ground within a period of 45 days from the date of receipt of copy of the judgment. Annexure-1 is the copy of the judgment dated 20.9.93. In pursuance of the said direction, the respondents authorities have considered the claim of the applicant and passed rejection order dated 24/28.2.94 (Ann.A-2), rejecting the claim of the applicant for his appointment on compassionate ground. Aggrieved by such rejection order dated 24/28.2.1994 (Ann.A-2) the applicant filed O.A. No. 596/94 and the same was also dismissed on 26.10.1994. Annexure A-3 is the copy of said order. Thereafter, the applicant get issued legal notice to the respondents dated 23.8.2002 (Annexure A-4) stating that the authorities have disengaged the applicant from the post of Helper after dismissal of the O.A. on 26.10.94 and expressed his intention to take appropriate legal action against the respondents. on receipt of such notice, the respondents have informed the applicant in respect of rejection of his claim vide order dated 24/28.2.1994 and also dismissal of his O.A. 596/94, vide letter dated 10.9.2002 (Ann.5). Thereafter, the applicant has filed this O.A. under which he challenged correctness of such letter dated 10.9.2002 (Ann.5) and also claimed compassionate appointment and other reliefs.

8. While rejecting the claim of the applicant for compassionate appointment, the respondent authorities have passed order dated 24/28.2.1994 (Ann.A-2) stating that the applicant is being engaged as and when required on daily wages since July 1990 with break and there is every possibility of his continuing as such in CDRI. Further, the earning of the applicant plus the family pension of Rs. 907/- will be sufficient to maintain the family. Therefore, the family cannot be considered to be in economic distress and thus rejected his claim.

9. By way of this O.A., the applicant has questioned the impugned order dated 10.9.2002 (Annexure A-5) by which the respondent authorities have intimated about rejection of his claim for his appointment on compassionate ground vide order dated 24/28.2.1994 (Ann.A-2) and also dismissal of his O.A. and also claimed for his appointment on the post of Helper on any other suitable post. He also sought alternative relief to treat him in service on daily wages and regularizations of his service. Thus, from such claim the applicant, sought two reliefs, one is in respect of his claim for compassionate appointment and another to treat him in service on daily wages and regularize his service. Admittedly, Annexure A-5 is the intimation to the applicant that his claim for compassionate appointment does not arise in view of the dismissal of his O.A. No. 596/94 on 26.10.1994 under which rejection order dated 24/28.2.1994 (Ann.A-2) was challenged. In pursuance of the directions of the Tribunal in O.A. No. 541/93, the respondents have considered the claim of the applicant for compassionate appointment and rejected his claim by order dated 24/28.2.1994(Ann. A-2) and the same was challenged by the applicant in O.A. No. 596/94 but the same was dismissed on 26.10.1994.

10. When once the claim of the applicant for compassionate appointment was dismissed on 26.10.94, again considering his claim for compassionate appointment and also questioning the intimation order dated 10.9.20-02 (Annexure A-5) issued by the respondents is not at all maintainable. Admittedly, the applicant has not filed any review or any writ petition against the order of the Tribunal in O.A. No. 596/94 and after a lapse of more than 9 years, re-agitating the same claim, basing on intimation letter dated 10.9.2002 (Annexure A-5) for his legal notice Ann-A-4 dated 23rd August 2002 is not at all maintainable and as such, the applicant is not entitled for any claim in respect of relief for compassionate appointment and further no justified grounds are there in questioning the correctness and validity of letter dated 10.9.2002 (Ann. A-5).

11. The applicant also sought the relief to treat him on daily wage and regularize his services on the ground that in the earlier rejection order dated 24/28.2.1994 (Ann-A-2), the respondents have given an assurance that there is possibility of continuation of service of the applicant in the respondent's office since he is being engaged as and when required on daily wages since July 1990. It is also the case of the applicant that by giving such assurance after dismissal of O.A. No. 596/94, the authorities have disengaged him from daily wages which is against their assurance and on that ground he sought relief to treat him in service on daily wages and for regularization.

12. Admittedly, the respondents have mentioned in their rejection order dated 24/28.2.1994 (Ann. A-2) stating that the applicant is being engaged as and when required on daily wages since July, 1990 with break and there is possibility of his continuing as such in CDRI. In spite of such orders, the applicant has challenged the same by filing O.A. No. 596/94 but the same was dismissed on 26.10.1994. It is the case of the applicant that after dismissal of the O.A. No. 596/94 dated 26.10.94, he was disengaged from daily wages. In the judgment and order dated 26.10.94, there was no observation that the claim of the applicant was dismissed in view of assurance given by the authorities, expressing possibility of his continuing as daily wager in the office of the respondents. Similarly, it is also not the case of the applicant that because of such assurance given by the respondent authorities, he did not ^{insist} ~~strike~~ on to his claim for compassionate appointment in O.A. No. 596/94. Without any of those things, it is not open to the applicant that he got legal right to demand the respondents seeking continuation of his engagement as daily wager in the office in pursuance of such assurance given in their rejection order dated 24/28.2.1994.

13. If the applicant was dis-engaged from the work of daily wager immediately after dismissal of O.A. No. 596/94 dated 26.10.94, it was open to

the applicant to bring it to the ^{notice of the} respondents in respect of their promise or assurance ~~to him~~ given in the rejection order dated 24/29.2.1994 or approach the Tribunal immediately but admittedly the applicant did not take any such steps and kept quite for about 9 years and thereafter got issued legal notice on 23.8.2002 (Ann.A-4) stating that he was disengaged from the work of daily wages because of dismissal of O.A. No. 596/94. Without taking any such steps, approaching the Tribunal after a lapse of more than 10 years and asking the respondents to continue his service as daily wager and also to treat him in service and for regularization on the ground of any assurance given in 1994 is not at all maintainable.

14. Applicant also not at all furnished any sufficient reasons for condoning the delay in filing the O.A. after more than 10 years for questioning for his dis-engagement as daily wager and also claiming the relief to continue him in service and also for regularization ^{and the same} is not at all maintainable and ~~the same is~~ also barred by limitation and thus, there are no merits in the claim of the applicant for allowing any of his reliefs and as such, the same is liable for dismissal.

15. In the result, O.A. is dismissed without any order as to costs.

HLS/-

(M. KANTHAIAH)
MEMBER (J)

03-10-2008