

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 515 /2007

This the 5th day of May, 2010

Hon'ble Mr.Justice Shiv Charan Sharma, Member (J)

Sunita Sharma aged about adult wife of late Shri Arun Kumar Sharma resident of 549-192, Arjun Nagar, Alambagh, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the Chief Post Master General, U.P. Lucknow.
2. The Senior Superintendent , RMS 'O' Division, Lucknow.

Respondents

By Advocate: Sri Deepak Shukla for Sri A.P. Usmani

ORDER

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)

By way of this O.A. applicant has prayed to quash the order dated 28th April, 2004 (Annexure No.1) passed by the respondents and further prayer has also been made for a direction to the respondents for making appointment of applicant on compassionate ground.

2. Pleadings of the parties summarized as follows:-

That the applicant's husband namely Arun Kumar Sharma was an employee and working on the post of Dak Rakshak under the respondent No.2. Unfortunately, the husband of the applicant died in harness due to prolong illness Cancer on 24.2.2001, that as the husband of the applicant was suffering from severe illness hence no money could be saved by him for the family. As he remained absent for a long period, hence salary was not paid regularly to him.

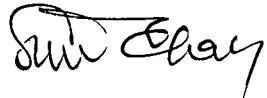
3. For the treatment, he has also taken loan from the bank as well as from the respondents. After the death of the husband , applicant was in dire need of money as there was no other bread earner of the family and hence an application was moved to the respondents for compassionate appointment on 5.4.2001. Annexure A-2 is the copy of application. At the time of death of the



husband of the applicant , there was liability of two minor children namely Vivek Sharma aged about 8 years and Km. Richa Sharma aged about 6 years besides the applicant also.

4. After the death of the husband of the applicant, liability shifted to the applicant. On the letter of the respondents, a certificate of Income was issued by the Tehsildar on 16th May, 2002 and according to the certificate (Annexure -7), Rs. 1600/- , the amount of family pension is the income of the applicant. Applicant is facing great difficulty due to paucity of funds. The husband of the applicant has no agricultural land in his possession but the respondents surprisingly rejected the application of the applicant on 28.4.2004 in an arbitrary and discriminatory manner. Thereafter, on the advice of the officials, applicant preferred an appeal dated 27th April , 2004 (Annexure 8) . That the order passed by the respondents suffered from non-application of mind as they failed to consider the responsibility of applicant of two minor children and having no source of income. The respondents ought to have consider the hardships of the applicant in the 2001. A sum of Rs. 54,912/- was paid to the applicant by the respondents after the death of the husband but this amount was adjusted towards the repayment of loan advanced to the applicant's husband due to illness . At this time, the applicant is getting only 1600/- as family pension and it is difficult for the applicant to manage the affairs of the house and also the education of the minor children and thereafter marriage of the daughter. As the family required immediate assistance to meet the financial crisis and hence the applicant deserves for appointment on compassionate ground after the death of the husband.

5. Respondents contested the case and filed separate counter reply. Further alleged that there are several legal lacuna in the O.A. including the point of limitation as well as jurisdiction. The impugned order dated 28.4.2004 was passed by the respondents after proper application of mind and the same is speaking and reasoned. That the O.A. is not based on relevant documents and after the death of Arun Kumar Sharma, ex-Male Guard, RMS, Lucknow on 24.2.2001, applicant moved an application for appointment on compassionate



ground in the application dated 9th April, 2001. This application was forwarded to the higher authorities on 26th May, 2001. The grounds were not considered sufficient by Circle Relaxation Committee (CRC) under the provisions of DGPT O.M. and other instructions issued from time to time. That 5% quota of DOP&T applied in the case of compassionate appointment. There are several judgments of the Hon'ble Apex Court on this point that the family of a deceased employee is not entitled for appointment on compassionate ground. There are other criteria for consideration of appointment. Further alleged that the question of appointment on compassionate ground must be considered on the availability of vacancy within a year and that to be upto the ceiling of 5% , that amount was paid to the applicant after the death of the husband and she is also getting pension of Rs. 1600/- per month + D.A. and she is also living in her own house. After considering various instructions by CRC, the application was rejection. ^{ed} That there are no sufficient ground for appointment. That the O.A. is liable to be dismissed.

6. I have heard learned counsel for applicant , namely Sri Praveen Kumar for applicant and Sri Deepak Shukla brief holder of Sri A.P. Usmani for respondents. I have also considered entire facts of law.

7. At the outset , learned counsel for the respondents agitated the point of limitation. It has been argued that as per the averment of applicant, the application for compassionate appointment was rejected on 28.4.2004 . Annexure A-1 is the copy of the order passed by the respondents on 28.4.2004. Learned counsel for the respondents also argued that the O.A. ought to have been instituted within a period of one year from the date when the cause of action arose. Hence the limitation will run from 28.4. 2004 whereas the instant O.A. was instituted on 12.12.2007. There is a considerable delay in filing the O.A. and no explanation has been advanced for the delay. Learned counsel for applicant also argued that no separate application has been moved for condonation of delay but delay has been properly explained in the O.A. itself and considering the circumstances in which the O.A. could not be



instituted within limitation , there was no delay at all and that's why separate application for condonaiton of delay was not moved.

8. Learned counsel for respondents attracted my attention towards averment of applicant and stated that on 28.4.2004, application for compassionate appointment was rejected by the respondents . After the order dated 28.4.2004, applicant preferred an appeal on the advice of the officials to the higher authority but surprisingly despite lapse of one year , no decision whatsoever was communicated to the applicant. Annexure A-8 is the copy of appeal. Several reminders were sent to the respondents for expediting the decision of the appeal and when no decision was taken by the respondents on the appeal then the O.A. was instituted and under these circumstances, there is no delay .

9. It is an undisputed fact that the impugned order was passed on 28.4.2004 by the respondent whereas the O.A. was instituted on 12.12.2007. It is not within one year from the date of order but it has also been alleged that after the order , the applicant preferred an appeal before the higher authorities and Annexure A-8 is the copy of appeal. Annexure A-8 is on record. Although , it cannot be called a departmental appeal in a strict sense but the matter was agitated before the Communication Minister , Govt. of India after the order dated 28.4.2004. Thereafter, reminders were sent by the applicant to the higher authorities on various dates. There is nothing on record to show that the so called appeal was ever decided by the respondents and the order was communicated to the applicant. In this context, learned counsel for applicant cited a judgment of Hon'ble High Court of Allahabad , Lucknow Bench Lucknow passed in W.P. NO. 275 (SB) of 2006 Avdhesh Kumar Vs. Central Administrative Tribunal and others and on the strength of this judgment , the applicant's counsel argued that the Hon'ble High court condoned the delay in this matter and further commented that the Tribunal has observed on the one hand that the O.A. was filed delayed but at the same time dismissed on merit at admission stage.



10. Learned counsel for respondents in this context argued that the facts of the judgment of the Hon'ble High Court are distinguished from the present case. In that case, before the Hon'ble High Court, separate application was moved by the applicant for condonation of delay and that application was not decided by the Tribunal separately and there was only observation that on the one hand hold that the application is delayed but on the other hand the case was dismissed on merits but even then the Hon'ble High Court condoned the delay and allowed the application for condonation of delay and thereafter merit of the case was considered whereas in the present case , no separate application was moved by the applicant.

11. Although separate application ought to have been moved by the applicant for condonation of delay and moreover it is practice to move a separate application for condonaiton of delay but it is not mandatory to move a separate application for condonation of delay. Even a prayer can be made for condonation of delay with the explanation of delay and by showing the circumstances in which the delay occurred due to laches on the part of the respondents in the O.A., then this matter may be considered . I disagree with the arguments of the learned counsel for the respondents that at this stage ^{not P} the point of limitation ^{not P} can be considered, but it is also relevant that the matter was agitated by the respondents counsel himself and hence this matter of condonation of delay is relevant while considering the point of delay then the prayer of the applicant is also relevant for condonation of delay and the applicant has explained the circumstances in O.A. in which the delay occurred. That after the order dated 28.4.2004, the applicant preferred an appeal to the higher authorities for consideration and this appeal was not considered in spite of several reminders. Although Annexure A-8 cannot be called an appeal in a strict sense but when a layman moved an application to the Minister concerned without knowing the implication then it will not be justified for not treating this application as an appeal and if there is a provision of filing an appeal, then the period consumed in deciding the appeal or subsequent representation in that connection must be considered in

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order to condone the delay. In the present case, several reminders were sent to the higher authorities for taking a decision in the matter but as no decision was taken up to the date of filing of O.A., hence in my opinion, on the one hand, there is no delay and if there is a delay, the same stands explained hence I disagree with the arguments of learned counsel for respondents that the application deserves to be dismissed on the point of limitation.

12. The application for compassionate appointment was rejected vide order dated 28.4.2004. The order was passed by the respondents without assigning any specific reasons. It has been stated in the order that "the case of appointment of Smt. Sunita Sharma on compassionate ground was considered by Circle Relaxation Committee under the provisions of DOP&T O.M. No.14014/6/95 Esttt (D) dated 26.9.95, 14014/6/94-Estt (DA) dated 9.10.98 and 14014/23/00-Estt (D) dated 3.12.99 and other instructions issued from time to time on the subject and was not recommended for appointment by the Committee taking into account the liability of the family like education of minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailment of a member availability of dependable and secure shelter and financial condition and other relevant factors after inter-se-consideration of all the cases and also keeping in view the prescribed ceiling for appointment on compassionate ground."

13. Perusal of the contents of the letter shows that the CRC has taken into account the liability of the family like education of minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailment of a member, availability of dependable and secure shelter and financial condition and other relevant factors and no specific order has been passed that due to these reasons the case of the applicant is not covered in the guidelines. It has not been mentioned in the order that the financial condition of the applicant is sound even after the death of husband or that the children of the deceased are major and they are not to be brought up and not required to be managed for education. It is an undisputed fact that there are 2 minor children of the deceased one is aged about 8 years and the daughter was aged about 6


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years. It cannot be said that these children were major or there will be no liability of the applicant for their maintenance. It has also not been averred on behalf of the respondents that the financial condition of the applicant was sound and no assistance was required by her. Certificate of Tehsildar has been filed and as per the certificate of Tehsildar, the monthly income of the applicant was Rs. 1600/- P.M. + D.A. as family pension. There was no other source of income of the applicant. It has been alleged by the respondents that after the death of the husband, an amount of Rs. 54912/- was paid to the applicant whereas the applicant alleged that after the death of the husband, a sum of Rs. 54,912/- was paid to the applicant as terminal benefit and instead of actual payment of this amount, it had been adjusted towards repayment of loan taken by the applicant's husband due to his illness. It will be significant to mention that the application was not at all rejected on the ground that there are sufficient means of the livelihood of the applicant. Unless otherwise alleged by the respondents, it will be presumed that there was no other source of livelihood for the applicant and moreover this fact of adjustment of the amount was also not disputed. Only it has been alleged that the applicant had taken loan from the various banks and hence the amount was adjusted. Although, there is no material on record that applicant's husband was carrying on any business besides serving with the postal department but on the basis that the loan was advanced to the applicant by the various banks, hence respondent counsel argued that he was running a business while serving as an employee and he was guilty of misconduct. It will not be justified to draw any inference against the applicant without any substance. If the applicant's husband was carrying on any business after obtaining the loan from the bank then who restricted the respondents for initiating disciplinary proceedings against him in his life time. As no inquiry was initiated against him for misconduct for carrying on any business, hence it will not be justified to draw this inference against the applicant

14. Learned counsel for the respondents also argued that compassionate appointment is not a matter of right. He also pointed out certain judgments of



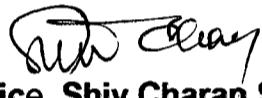
the Hon'ble High Court and Supreme Court and on the basis of the judgment of the Hon'ble Supreme Court, learned counsel for the respondents argued that the appointment on compassionate ground must be subject to availability of post in the cadre and it must not exceed beyond specific quota. Learned counsel also persuaded me to draw this inference that the application for compassionate appointment was rejected due to non- availability of post in the cadre although this fact was not mentioned in the order dated 28.4.2004 and in this context learned counsel for applicant cited case law in JT 1996 (9) SC page 197 Hindustan Aeronautics Ltd. Vs. Smt. A Radhika Thirumalai , JT 1994 (2) SC page 183 , Life Insurance Corporation of India Vs. Mrs. Asha Ramchhandra Ambekar and others .

15 I have considered the judgment of the Hon'ble Apex Court and in view of the judgment of the Hon'ble Apex Court, the appointment on compassionate ground are subject to availability of post and there must be study of comparative hardships with of other persons but these judgments of the Hon'ble Apex Court are not applicable to the facts of this case. As I have stated above that the impugned order dated 28.4.2004 is silent on the point that on what ground the application was rejected. If the case of the respondents might have been that the application of the applicant for compassionate appointment was rejected on the ground of non-availability of the vacancy in the cadre or it exceeded the quota earmarked of making compassionate appointment after considering the comparative case of individual persons. It has not been alleged on behalf of the respondents that who others were appointed on compassionate ground in the year 2004 and 2001 considering the case of those persons on better footing in comparison to applicant. Because the order is silent on any of the ground hence it cannot be inferred that all the grounds which must be considered for appointment on compassionate ground had been considered and the case of the applicant was not found fit. The judgment of the Hon'ble High Court of Allahabad pronounced in Avdhesh Kumar vs. Central Administrative Tribunal as mentioned above is also relevant.



16. For the reasons mentioned above, as the impugned order dated 28.4.2004 passed by the respondents is non-speaking and shows non application of mind hence it deserves to be quashed and I think it just and proper to direct the respondents to consider the case of the applicant for appointment on compassionate ground a-fresh and a speaking and well discussed order be passed.

17. As a result of above, the O.A. is allowed and the impugned order dated 28.4.2004 Annexure A-1 is quashed. Respondents are directed to reconsider the application of the applicant for appointment on compassionate ground in the light of the observations made above. It is expected that the respondents shall pass a well reasoned and speaking order in the matter. The application of the applicant shall be disposed of within a period of 3 months from the date of receipt of copy of this order. No order as to costs.


5-5-2010
(Justice **Shiv Charan Sharma**)
Member (J)

HLS/-