

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

ORIGINAL APPLICATION NO: 202/2009

This, the 26th day of November, 2010

HON'BLE SHRI S. P. SINGH, MEMBER (A)

Ram Munijar aged about 39 years, son of Sateshwar Prasad, Resident of Village-Chakra Bhandar, Post Office Katra, District Shrawasti.

Applicant

By Advocate Shri S. K. Tiwari.

Versus

1. Union of India, Ministry of Archaeological Survey of India, New Delhi, through its Secretary.

2. Deputy Superintending Horticulturist, Archaeological Survey of India, Horticulture Division No. 1, Taj Mahal, Agra.

Respondents

By Advocate Shri K.K. Shukla.

ORDER

BY SHRI S.P. SINGH, M(A)

This O.A. has been instituted seeking following relief(s):-

- (i) The Hon'ble Tribunal may kindly be pleased to direct the opposite parties to consider the case of the applicant for appointment on Class IV post and to provide him job under Dying in Harness Rules for which number of representations were made keeping in mind that family of the deceased is in distress, within some reasonable period.
- (ii) The Hon'ble Tribunal may kindly be pleased to respondents to decide the representations made to this effect by a reasoned and speaking order.
- (iii) The Hon'ble Tribunal may kindly be pleased to pass proper order, direction which may be just and proper in the ends of justice.

2. The brief facts of the case are that the father of the applicant late Shri Sateshwar Prasad died in harness on 8.2.2005 while he was working as

42

Garden Attendant. The cause of action therefore arose on or after this date for applying in complete prescribed format for being considered for appointment on compassionate ground.

3. It has been submitted by the respondents that financial position of the family is not indigent. Therefore, there is no ground to entertain the present O.A.

4. The present O.A. is wholly belated and hopelessly time barred. Needless to say that that scheme for compassionate appointment has been framed to provide immediate succour to the deceased family. There cannot be any justification to consider the case of appointment to the heirs after a long time. There are catena of decisions of the Hon'ble Apex Court in this regard. The citations relied upon by the respondents while considering cases of compassionate appointment which are enlisted below:

(a) It is submitted that a number of principles have been laid down/evolved by the Hon'ble Supreme Court of India in the cases of **Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319)** and **Hindustan Aeronautics Limited Vs A Radhika Thirumalai (JT 1996 (9) SC 1997)** regarding Compassionate Appointment .

(b) It is submitted that in case of **State of Rajasthan Vs Chandra Narayan Verma 1994**

52

(2) **SCC 752**, it is clearly mentioned that "it is one thing to say that a family member of the deceased is entitled to appointed on compassionate ground, but is altogether a different thing to say that his appointment should be made regardless of the Rules". Besides, a number of principles have also been laid down by the Hon'ble Supreme Court of India in the case of **Pepsu Road Transport Corporation Vs. Satindra Kumar 1995 Supp. (4) SCC 597**.

(c) That in the case of **Life Insurance Corporation Vs Asha Ram Chandra Ambekar 1994 (2) SCC 718**, it clearly said that "Of late, this court is coming across many cases in which appointment on compassionate ground in directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and Administrative Tribunal cannot confer jurisdiction impelled by sympathetic consideration."

(d) That in the case of **Orissa SEB Vs. Raj Kumari Panda 1999 SCC page 729**, It is clearly said that "Compassionate employment is to be given to the parties satisfying the recruitment only if there are vacancies and not otherwise. To direct the employer create supernumerary

Sp

posts to accommodate such employee is not warranted by the Rules."

5. I have heard the counsel for the parties and perused the material on record, I am of the opinion that proper application under Section 21(3) of the Act for condonation of delay should have been made giving sufficient cause for the delay after the death of the applicant on 8.2.2005. This is also required in accordance with the principles laid down by the Hon'ble Supreme Court in the case of **Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors., 2000 SCC (L&S) 5.** The Hon'ble Supreme Court has held:-

"7. On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secretary to Government of India Vs. Shivram Mahadu Gaikwad)."

6. Therefore, this application is time barred application for which condonation of delay has not been sought under Section 21(3). Therefore the case could not be admitted and disposed of on merit in view of the statutory provisions contained in Section 21 of the Administrative Tribunal Act, 1985, wherein there is bar laid down for time barred application for which condonation of delay

Sp^L

: 5 :

had not be sought for under Section 21 (3). O.A.
is liable to be dismissed on this ground alone.

7. The O.A. is accordingly dismissed as time
barred. No order as to costs.

(S. P. Singh)
Member (A)

Vidya