

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 203 of 2010

Reserved on 29.2.2012

Date of Decision 1st the March, 2012

Hon'ble Mr. Navneet Kumar, Member-J

Raj Kumar, aged about 39 years, S/o late Cook Ram Prasad, R/o House no. 535/30 Kha Nepal Ganj, Vishnudeji Ka Hata, Telebagh, Lucknow

.....Applicant

By Advocate : Sri S.P. Singh

Versus.

1. Union of India through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Indian Army, Sena Bhawan, New Delhi.
3. GOC-IN-C Central Command, Cantonment, Lucknow.
4. DGMS, Integrated Headquarter of Mod (Army) Adjutant General's Branch, Dte. Gen of Medical Services (Army) 'L' Block, New Delhi.
5. The Officer Commanding, Head Quarter, AMC Centre & School, Lucknow.

..... Respondents.

By Advocate : Sri Rajendra Singh.

ORDER

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 with the following main relief(s):-

“(i) issue order or direction quashing the impugned order dated 30.4.2009, contained in Annexure no.1 to the Original Application.

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(ii) issue a order to the respondents to consider the applicant's case for compassionate appointment on a suitable post as per his qualification /eligibility."

2. The facts of the case are that the applicant's father died in harness on 14.2.1979 while he was in service. The applicant submitted that at the time of death of his father, he was minor and studying and after attaining the majority i.e. 18 years, the applicant's mother submitted a representation to the respondents in October, 1985 for considering the case of his son for appointment on compassionate grounds. As per the applicant, an assurance was given to the applicant and his mother that the respondents would consider his case for appointment on compassionate ground and the applicant kept on waiting till filing of the present O.A. The applicant submits that his case is covered under the principles of legitimate expectation as such waited for 30 years in filing the present O.A. It is also submitted that in 1988 the respondents sent a letter to the applicant's mother requiring for certain information which was subsequently remained undisposed of. It is also pleaded that the applicant's mother gave another application in June, 1995 before the authorities concerned for compassionate appointment in favour of her son. It is also pointed out by the applicant that due to non decision of applicant's representation for appointment on compassionate grounds, he was put to heavy financial loss and his case is covered under the principle of Promissory Estoppel and legitimate expectation.

3. Learned counsel appearing on behalf of the respondents filed a detailed Counter Reply

controverting the averments made in the O.A. and the arguments advanced by the applicant's counsel were vehemently opposed by the respondents by categorically stating that the case of the applicant was duly considered by the authorities concerned and it has been decided that the applicant's case is of belated request, therefore, the compassionate appointment could not be offered to the applicant. The respondents also submitted that the deceased family has managed somehow even after death of a bread earner and as such there is no need of urgent financial assistance. The aforesaid order was passed by the respondents on 13.12.1996 and the same was duly communicated to the applicant. The respondents also pointed out that prior to 1996, the case of the applicant was earlier considered in 1986 but the same was rejected by the competent authority and was duly communicated to the applicant (Annexure CR-1). On this count, the respondents submit that the present O.A. is highly barred by limitation and O.A. is liable to be dismissed on this score alone. The respondents also submitted that there has been no violation of any Article of Constitution of India and the application submitted by the applicant was after a gap of 8 years as such in terms of various landmark decisions of Hon'ble Supreme Court, the applicant is not entitled to any financial assistance from the respondents. However, keeping in view full sympathy with the applicant, his case was forwarded to the higher authorities despite lot of delay in filing the same, but the same was considered and rejected by means of order dated 13.12.1996 (Annexure CR-2).

4. On behalf of the applicant, Rejoinder Reply has also been filed wherein the applicant has tried to bring out his case once again under the principle of legitimate expectation and principle of promissory estoppel by reiterating the averments made in the O.A and refuting the contentions made in the Counter Reply.

5. The applicant has also relied upon two decisions rendered by Hon'ble High Court in the case of **Union of India & Others Vs. Phool Chand Pal & Another reported in (2011) (4 ESC 2626 (All)(DB) and Hari Ram Vs. Food Corporation of India & Others reported in (2009) 3 UPLBEC 2212).**

6. I have heard the learned counsel for the parties and perused the material available on record.

7. Admittedly, the applicant's father died in February, 1979 and after attaining the age of majority, the applicant's mother moved an application in 1985 for appointment on compassionate ground in favour of her son. A bare perusal of Annexure CR-1 to the Counter Reply shows that the case of the applicant was considered in 1987 and the same was rejected. Subsequently, the case of the applicant was again considered in December, 1996, but again it was rejected by the competent authority. It is also an admitted fact that after the said rejection, the applicant ought to have approached to this Tribunal by filing Original Application for redressal of his grievance, but he failed to do so and as such the present O.A. is clearly hit by Section 21 of Administrative Tribunals Act, 1985. The decisions so

relied upon by the learned counsel for the applicant are not applicable in the instant case as the facts of the cited case with that of the present case are quite different. On the other hand, the learned counsel for the respondents placed reliance on the decisions of **Ramesh Chandra Sharma Vs. Udham Singh Kamal reported in 2000 (2) SLJ SC 89 and Secretary to Government of India Vs. Shivram Mahadu Gaikward reported in 1995 (Suppl) SCC 231** which provide for jurisdiction of the Tribunal in regard to entertaining the Application under Section 21 of Administrative Tribunals Act, 1985. The counsel for the respondents also placed reliance on the decisions rendered by Hon'ble Supreme Court in the cases of **Haryana State Electricity Board Vs. Hakim Singh reported in (1997) 8 SCC 85, Jagdish Prasad Vs. State of Bihar reported in (1996) 1 SCC 301, Life Insurance Corporation of India Vs. Smt. Asha Ramchandra Ambekar (Mrs.) & Another reported in JT 1994 (2) SC 183 and Umesh Kumar Nagpal Vs. State of Haryana & Others reported in JT 1994 (3) SC 525** wherein the Hon'ble Supreme Court has been pleased to observe that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased family from financial destitution and to help it to get over the emergency.

8. Apart from above, since the family of the applicant could survive for a long period of more than 31 years from the date of the death of the applicant's father, the case is clearly hit by the decision rendered by the Hon'ble Supreme Court in the case of **Haryana**

State Electricity Board v. Hakim Singh reported in (1997) 8 SCC 85. The relevant portion is reproduced below:-

“12. We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crises befallen the dependants on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in **Haryana SEB v. Naresh Tanwar**. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in *Umesh Kumar Nagpal v. State of Haryana*, the other in *Jagdish Prasad v. State of Bihar*. In the former, a Bench of two Judges has pointed out that “the whole object of granting compassionate employment is to enable the family to ride over the sudden crises. The object is not to give a member of such family a post much less a post for the post held by the deceased.” In the latter decision, which also was rendered by a Bench of two Judges, it was observed that “the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family”. The learned Judge pointed out that if the

claim of the dependant which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased government servant "which cannot be encouraged, de hors the recruitment rules".

14. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. The respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

15. We, therefore, allow the appeal and set aside the impugned judgment of the High Court."

9. In another decision in the case of **Jagdish Prasad v. State of Bihar (1996) 1 SCC 301** the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules.

4. The appeal is accordingly dismissed."



10. In the case of **Life Insurance Corporation of India v. Smt. Asha Ramchandra Ambekar(Mrs.) and Another** reported in **JT 1994(2)SC 183** the Hon'ble Supreme Court has been pleased to observe that the court and Tribunals cannot give direction for compassionate appointment on the ground of sympathy disregarding the instructions on the subject, but can merely direct consideration of the claims for such an appointment. Relevant portion of the judgment reads as under:-

“Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar v. M.P.S.R.T. Corpn.* it is stated as under :

“The provisions of the Motor Vehicles Act and in particular Sections 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorized trafficking in permits. Therefore the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his bus as nominee of the Corporation on the route in respect of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee.”

11. In the case of **Umesh Kumar Nagpal v. State of Haryana and Ors.** reported in **JT 1994(3)SC 525** it has been observed that the whole object of granting

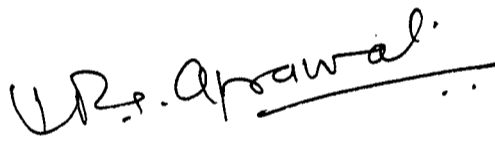
compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Relevant portion of the said judgment is reproduced below:-

“The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

12. From the aforesaid, it is clear that first of all the present original application has been filed by the applicant after a gap of 23 years from the date of first rejection in the year 1987 (Annexure CR-1). Even if it is not taken into consideration then 13 years from the date of second rejection order passed on 13.12.1996 (Annexure CR-2) whereas the death of the applicant's father took place in February, 1979 and as such the present O.A. is grossly hit by Section 21 of Administrative Tribunals Act, 1985. Since the family of the deceased employee could not get the financial assistance immediately after the death of the deceased employee, now it cannot be said that they cannot

manage the family for a long period i.e. 24 years from the date of rejection and 31 years from the date of death of the employee and as such now it cannot be said that they cannot manage for a long period. Therefore, there appears to be no infirmity or illegality in the impugned order dated 13.4.2009, which is under challenge in the instant O.A. However, the applicant has not challenged the orders passed in 1987 and in 1996, which are already annexed with the Counter Reply filed by the respondents despite this fact that the applicant is aware of the same when the Counter Reply was filed by the respondents.

13. In view of the aforesaid, the O.A. lacks merits and is liable to be dismissed. The O.A. is dismissed. No costs.


(Navneet Kumar)
Member-J

Girish/-