

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

Original Application No. 532 of 2010

Reserved on 1.3.2012

Date of Decision 2nd March, 2012

Hon'ble Mr. Navneet Kumar, Member-J

Anoop Kumar, Aged about 18 years, S/o late Ram Sumer, R/o Hazratganj, PMG Office, Tanki Ke Pass, Hazratganj, Lucknow

.....Applicant

By Advocate : Sri A. Mishra

Versus.

1. Union of India through Secretary, Department of Posts & Telegraph, Government of India, New Delhi.
2. CPMG, U.P. Circle, Lucknow.
3. Post Master General, U.P. Circle, Lucknow.
..... Respondents.

By Advocate :Sri S.K. Awasthi .

O R D E R

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

“(i) to issue a writ, order or direction in the nature of mandamus commanding the Opposite parties to give appointment to the applicant according to his qualifications under the compassionate appointment of dependents Rules forthwith without any further delay.”

2. The brief facts of the case are that the applicant's father died in harness 15.3.2000 while he was working as Group 'D' employee in the canteen of Chief Post

Master General, Lucknow. It is said that the applicant was minor at the time of death of his father, hence the mother of the applicant gave a representation to Opposite party nos.2 & 3 for giving her appointment on compassionate ground, but the respondents instead of giving appointment to the applicant's mother, kept pending the representation. It is averred in the O.A. that on attaining the majority, the applicant gave an application to the respondents in the year 2010 for appointment on compassionate ground under dying-in harness rules.

3. On behalf of the respondents, a detailed Counter Reply has been filed denying the averments made in the Original Application by stating that after the death of the deceased employee, the family of deceased employee was given terminal benefits and is also in receipt of monthly family pension as well. It is pleaded that the mother of the applicant applied for appointment on compassionate ground and prayed for relaxation of normal recruitment rules. The case of the applicant's mother was considered by the Circle Relaxation Committee (In short CRC) in its meeting held on 26.2.2002, 27.2.2002, 20.1.2004, 22.1.2004 and 23.1.2004, but the case could not be recommended for appointment on compassionate grounds by the CRC. Learned counsel appearing on behalf of the respondents also taken a ground of limitation by stating that since the case of the applicant's mother was considered in 2004 and further the death of the deceased employee took place in the year 2000, whereas the present O.A. has been filed before this Tribunal in the year 2010 without

filed before this Tribunal in the year 2010 without disclosing any cogent and valid grounds and as such the O.A. is clearly barred by limitation and is liable to be dismissed.

4. The learned counsel for the applicant filed Rejoinder Reply and mostly reiterated the averments made in the O.A. The applicant also submitted that the respondents may consider the case of the applicant after relaxing the age and qualification.

5. Learned counsel appearing on behalf of the respondents also filed Supplementary Counter Reply in which most of the averments made in the Counter Reply have been reiterated. It is once again pleaded by the respondents that the case of the applicant's mother for appointment on compassionate ground was duly considered by the CRC, but the appointment could not be offered to the applicant's mother due to limited number of vacancies under 5% direct recruitment quota and has also annexed a copy of decision of CRC dated 28.4.2004 as Annexure no. SCR-1 to the Supplementary Counter Reply.

6. Heard the learned counsel for the parties and perused the material available on record.

7. It is an admitted fact that the applicant's father who was working in Postal Department died in harness in the year 2000. The applicant's mother made a representation before the authorities concerned for appointment on compassionate grounds in her favour as at the time of death of the deceased employee, the applicant was minor. The case of the 

applicant's mother was duly considered by the CRC and finally it was rejected by means of order dated 28.8.2004. Admittedly, the present O.A. has been filed in the year 2010 by the applicant when the representation made by the applicant for appointment on compassionate ground was not considered by the competent authority. As per Section 21 of Administrative Tribunals Act, 1985, the O.A. should have been filed within a period of one year from the date of impugned order is passed. In the instant case, it is ~~apparently~~ clear that the impugned order has been passed on 28.4.20004 when the case of the applicant's mother was considered and rejected by the CRC and as such the present O.A. is clearly hit by Section 21 of A.T. Act, 1985. Apart from this, the appointment on compassionate ground cannot be treated as vested right and in terms of various decisions of Hon'ble Supreme Court that if the family members of the deceased employee could survive for a longer period, the claim for compassionate appointment becomes stale.

8. As such, the present original application is hit by Section 21 of Administrative Tribunals Act, 1985. In the case of **Ramesh Chandra Sharma v. Udhamp Singh Kamal** reported in **2000(2) SLJ SC 89** the Hon'ble Supreme Court has held as under:-

“21. Limitation – (1) A tribunal shall not admit an application:

(a) *In a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made,*

within one year from the date of which such final order has been made;

(b) In a case where an appeal or representation such as is mention in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) xxx xxx xxx

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal, that he had sufficient cause for not making the application within such period." Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udhamp Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside."

9. The Hon'ble Supreme Court in another case reported in **1995 Supplementary (3) SCC 231** in the case of **Secretary to Govt. of India v. Shivram Mahadu Gaikwad** has held as under:-

"2. When we turn to the judgment of the Tribunal we find that there is no mention about the question of limitation even though it stared in the face. It would immediately occur to anyone that since the order of discharge was of 7-10-1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made under Section 21(3) of the Administrative Tribunals Act. No such

application was in fact made. Even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under sub-section (3) of Section 21 of the said statute. Even otherwise without insisting on the formality of an application under Section 21 (3) if the Tribunal had dealt with the question of limitation in the context of Section 21 we may have refrained from interfering with the order of the Tribunal under Article 136, but it seems that the Tribunal totally overlooked this question which clearly stared in the face. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. In the circumstances, there is no doubt that the application was clearly barred by limitation. It is also difficult to understand how the Tribunal could have awarded full back wages even for the period of delay for which the employee was solely responsible. However, since application itself is barred by limitation under Section 21 of the Administrative Tribunals Act, it deserves to be dismissed."

10. Apart from above, since the family of the applicant could survive for a period of 6-7 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, dehors 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." W

11. 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."

12. 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 Selections 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."

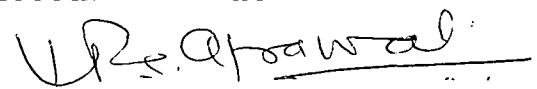
13. In the case of **Umesh Kumar Nagpal v. State of Haryana and Ors.** reported in **JT 1994(3)SC 525** it has been observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution 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."

14. From the aforesaid, it is explicitly clear that the present original application has been filed after a period of 6 years from the date of rejection of the applicant's mother case and 10 years from the date of death of the deceased employee. As such, it is clearly hit by Section 21 of the Administrative Tribunals Act, 1985 and the same is liable to be rejected on this score only. Apart from this, the case of the applicant's mother was duly considered and rejected and in terms of dying-in-harness rules, the case of one of the deceased family members can be considered. In the instant case, once the case of the applicant's mother was duly considered and rejected then there is no occasion to consider the case of the applicant again on very companionate grounds. In addition, since the family of the deceased employee could not get the financial help immediately after the death of the deceased employee, now it cannot be said that they cannot manage the family for a long period. As such, the present O.A. lacks merits and is liable to be dismissed.

15. Accordingly the O.A. is dismissed. No order as to costs.



(Navneet Kumar)
Member-J