

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH : LUCKNOW

This the 28th day of September, 2012

Present :

Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.06 of 2011

Abhishek Banerjee, aged about 26 years, Son of Late S.K. Banerjee, Resident of House No.10/259, Indra Nagar, Munshi Puliya, Lucknow.

...Applicant.

By Advocate : Shri P.K. Srivastava

Versus

1. Union of India, through its Secretary, Ministry of Post Department, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Chief Post Master, Office of the Chief Post Master, G.P.O., Lucknow.

...Respondents.

By Advocate : Shri S.P. Tripathi

O R D E R

Under challenge in this OA is the order of Respondent No.2 dated 21.3.2007 in which the claim of the applicant for appointment on compassionate ground has been rejected. The applicant is seeking quashing of this order and is also praying for the direction to the opposite party to reconsider the case of the applicant for appointment on compassionate ground after taking into consideration the financial position



of the family. Prayer has also been made to condone the delay in filing the O.A. In addition, issuing of any other direction which this Hon'ble Tribunal may deem fit is also sought as one of the reliefs.

2. The facts as stated in the OA briefly are as under :-

The applicant's father namely S.K. Banerjee died on 11.4.2006. The mother of the applicant filed one affidavit dated 24.7.2006, stative of No Objection from the other members of the family, requesting for appointment on compassionate ground to her son Abhishek Banerjee (Applicant in this OA). The financial condition etc. was also given therein. The respondents have, after considering the application, passed the impugned order which is under challenge in this OA. The impugned order is alleged to be illegal and arbitrary in view of the letter dated 16.8.2001 issued by Post Master General. The case was considered by Circle Relaxation Committee in its meeting held on 16/18.1.2007 and was not recommended for compassionate appointment due to limited number of vacancies etc. The mother of the applicant, after the impugned order was passed, moved one representation dated 'Nil' (Annexure-6) for reconsideration of the case on the grounds given in the application. It is alleged in the averments that the competent authority has not assigned any reason while

passing the impugned order of rejection and it has been passed in a causal manner and hence it is non speaking order against which the applicant's mother has moved the application to reconsider the case. But the case has not been reconsidered by the respondents. The family does not have enough income to sustain the right and reasonable life of human being. It has only pension as the source of income but the liabilities are many which has not been properly appreciated before passing the impugned order. Hence the order should be quashed and direction be given to the respondents to reconsider the case of the applicant.

3. The respondents have contested the case by filing the counter affidavit. The claim of the applicant is countered preliminary and empathetically on the ground of delay in filing the OA, that is about four years from the date of impugned order i.e. 21.3.2007. It is alleged that delay should be explained day by day as per settled law of the land. The impugned order has been justified in the counter affidavit stating that at the time of considering the case of the applicant there was more than 307 candidates before the Circle Relaxation Committee on 16.1.2007 and 18.1.2007 but the vacancies were very limited and taking into the comparative position of the applicant vis-à-vis other candidates, he was not found fit for appointment even on



merit points. The financial condition of the family was also such as it could not be said to be facing financial destitution status because Rs.4,24,076/- was paid to the family of the deceased as terminal benefit and Rs. 4,312/- + DAR as admissible from time to time per month was granted as family pension to the widow.

4. In the Rejoinder affidavit filed by the applicant the contentions of the respondents have been denied and some of the points already made in the OA have been repeated.

5. I have heard Shri Alok Kumar holding brief of Shri P.K. Srivastava, learned counsel for the applicant and Shri S.P. Tripathi, learned counsel for the respondents and perused the record as well.

6. Before considering the case on merit both the counsels are heard on the preliminary point of limitation for which delay condonation application No. 18/11 has been preferred by the applicant and reply to that has been given in the counter affidavit. It is a fact that this OA has been filed after about four years from the date of impugned order. In the delay condonation application, supported with an affidavit, it has been stated that the mother of the applicant has been seriously ill and on account of continuous illness he had to attend the ailing mother for about 6 to 7 months.

Copies of Medical Certificates of ailing mother have been submitted with the delay condonation application. Another ground for delay as explained in the application is paucity of necessary funds due to which the applicant could not approach the court within the period prescribed. In support of delay condonation application, the counsel for the applicant has stated that the applicant, being a poor person could not file the OA because he was enjoined upon him the responsibility to look after his ailing mother which was the more pressing reason and he could not contact the Advocate to file the OA. Due to illness of his mother the applicant did not have enough income so he could not file the OA within time. In this connection, he has placed reliance on the judgment of Hon'ble High Court in Writ Petition No.295/06 in which the judgment/order dated 26.10.2009 was passed. He has also submitted that in this judgment of Hon'ble High Court the law settled in the various judgments of the Hon'ble Supreme Court are referred to. Learned counsel for the respondents has contended that the delay in filing this OA for about four years has not been properly explained as per the law settled by the Hon'ble Supreme Court. In such cases where the case is bared by limitation, the delay must be explained day to day which has not been done in this case. He has also

contended that there is no right available to a person who is sleeping over his right and cannot raise his claim within the limitation period as provided for under Section 21 of the Act, 1985. Learned counsel for the respondents has placed reliance on the judgments of Hon'ble Supreme Court in the case of ***Union of India & ors. VS. Shashank Goswami and another reported in 2012 (30) LCD 1248*** and Hon'ble High Court in the case of ***Santosh Kumar Vs. Rent Control and Eviction Officer/A.D. and others reported in 2012 (30) LCD 1717***. Learned counsel for the respondents has also drawn my attention to various judgments of the Hon'ble Supreme Court referred to in the judgment of 13.7.2012 passed by Allahabad High Court (supra). In ***S.S. Balu and another Vs. State of Kerala and others, 2009 (2) SCC 479*** the Apex Court held that it is well settled principle of law that delay defeats equity. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on account of delay and laches irrespective of the fact that they are similarly situated to other candidates who have got the benefit. In ***Yunus Vs. State of Maharashtra and others, 2009 (3) SCC 281*** the Court referred to the observations of Sir Barnesdelay Peacock in



Lindsay Petroleum Company V. Prosper Armstrong Hurde etc., (1874) 5 PC 239 and held as under :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material..... Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

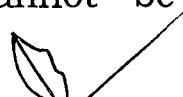
7. I have given thoughtful consideration of the pleadings of the parties and their arguments. Looking to the different facts of this case no benefit is available, due to the dissimilarity of the facts, to the applicant out of the judgment on which reliance has been placed by the counsel for the applicant (supra). Before entering into the merits of the case, I propose to deal with the question of delay and laches in this case, as per the mandate of the Section 21 of A.T. Act, 1985, the order under challenge in this OA is of dated 21.3.2007 whereas the OA was filed on 3.1.2011 and delay has been explained in the manner that the applicant was busy or engaged in attending his ailing mother for about 6 to 7 months. On perusal of the copies of the Medical Certificates it is found that one of them is of



11.4.2006 i.e. of the date before the impugned order was passed and rest of the Medical Certificates indicate that they pertain to 2009 and thereafter. The Hon'ble Supreme Court in its judgment dated 4.5.1994 in the case of ***Umesh Kumar Nagpal VS. State of Haryana and others - JT 1994 (3) SC 525*** has laid down important principles to be taken in view while considering the cases for appointment on compassionate ground. One principle relevant in this case, as held in this judgment of the Hon'ble Supreme Court, is that compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. Other judgments on principle of limitation i.e. delay and laches are as under :-

1. ***Ramesh Chand Sharma Vs. Udhamp Singh Kamal & ors. - 2000 SCC (L&S) 53.***
2. ***State of J & K & others Vs. Sajad Ahmed Mir - 2006 (5) SCC 766.***
3. ***Karnataka Power Corpn. Ltd. Through its Chairman & Managing Director & another Vs. K. Thangappan & others - 2006 SCC (L&S) 791.***

8. In view of the narration and analysis given above, I hold that this OA has been filed after inordinate delay and the delay has not been explained satisfactorily and cogently. Therefore, the delay cannot be condoned. The delay



condonation application No. 18/2011 is rejected. The matter is therefore not being adjudicated on merits. Accordingly, on the point of limitation only, the OA is dismissed. No order as to costs.



Member-A

RKM/