

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 797 OF 2005[Patna, this Thursday, the 27th Day of July, 2006]

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C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

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Mahabir Rai, S/o Late Deolal Rai, resident of village – Simra, P.O.: Bandhu
 Chapra, District : Arrah. APPLICANT.

By Advocate :- Pramod Mishra.

Vs.

1. The Union of India through the Commissioner, Central Excise &
 Customs, Bihar, Patna.

2. The Senior Account Officer, Central Excise and Customs, Bihar,
 Patna.

3. The Assistant Commissioner, Central Excise and Customs, Bihar,
 Patna. RESPONDENTS.

By Advocate :- Shri Dwivedi Surendra, ASC.O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Father of the applicant [Deolal Rai] having expired
 in harness on 26.09.2000, the applicant's mother was paid all retiral benefits.
 She also applied, as claimed, for appointment on compassionate ground of this
 applicant, a son and was replied through Annexure-3 dated 05.12.2001 by the
 Superintendent of Customs, Patna asking her to fill up Proformas I & II for
 that purpose and to send them immediately so that further action could be
 taken.

Not having been favoured with compassionate appointment



this applicant came to this Tribunal through OA 865 of 2004 which was disposed of without recording any order on merits, remitting back the matter to the Commissioner, Central Excise & Customs, Patna as well to respondent no.3 to look into the matter and pass an appropriate and reasoned order. Consequent thereupon a reasoned order dated 17.03.2005 was recorded by the Commissioner of Central Excise, Patna [copy enclosed] in which it was admitted that the widow of the deceased employee had applied for such appointment of the instant applicant and it also admits that thereafter she was directed to fill up Proformas I & II which were sent. This order states that till date the same had not been received and because of non-receipt of the same, the department had not been in a position to proceed further in the case. In the speaking order the circular dated 05.05.2003 issued by the DOPT was also mentioned which directed that under certain circumstances such a prayer could be considered, year after year, for three years but if compassionate appointment was not possible, of any applicant within this period, his case would be finally closed and would not be considered again. It was stated that on this ground the case was closed.

2. The matter was heard earlier and when it was asserted in arguments that filled up proformas were sent through registered post, this Tribunal directed the applicant to plead the same and to bring on record the proof of sending the proformas, as claimed. Thereafter supplementary application dated 02.05.2006 was filed enclosing a partly torn postal receipt.



3. Shri Dwivedi Surendra, the learned Addl. Standing Counsel objects to this annexure as proof of sending of the filled up proformas. Learned counsel points out that even if this receipt is taken on its face value, it will appear that it was sent to some authority whose initials were 'AA. A[अ. अ.]'. Annexure-3 was sent by the Superintendent [Adhikshak], Customs [Seema Shulka]. Learned counsel submitted that it did not appear that this receipt pertained to any official working in the department of 'Seema Shulka' or 'Utpad'.

4. From Annexure-3 it is clear that the proformas were sent to be filled up by letter dated 05.12.2001. Therefore, to connect this receipt to that letter it would be pertinent to note the month and the year to which this receipt pertained to. On the back side of the receipt there is seal of the Post Office which though gives the date as 20, but thereafter the month and the year are quite blurred which might have been due to some natural causes or on account of, as pointed out by the other side, an attempt to purposely blur the month and the year.

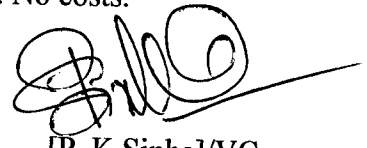
5. The learned Addl. Standing Counsel for the respondents submits that he has received a clear-cut reply through a letter from the respondents and is authorised to submit that never any such communication was received in their office.

Therefore, it is difficult to hold that the speaking order does not mention a correct fact when it states that the reply was never received.

[Handwritten signature]

Moreover, the applicant's father had died on 26.09.2000 and now about six years time has elapsed. It also does not appear to be proper to order the respondents to appoint the applicant on compassionate ground after passage of about six years, particularly in the circumstances as already discussed.

6. That being so, this application is dismissed. No costs.



[P. K. Sinha]/VC

skj.