

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO. A. No.: 342 of 2005

with

M. A. No.: 258 of 2005[Patna, this Monday, the 8<sup>th</sup> Day of May, 2006]

.....

C O R A M

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

.....

1. Smt. Lalita Mishra, W/o Late Bhuwan Mohan Mishra, resident of House No. 1/E-107, New Patliputra Colony, Patna-800 013 [Bihar].
2. Vijant Kumar Mishra, S/o Late Bhuwan Mohan Mishra, resident of House No. 1/E-107, New Patliputra Colony, Patna-800 013 [Bihar].

.....APPLICANTS.By Advocate :- Shri A.N.Jha.

Vs.

1. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110 001.
2. The Controller General of Defence Accounts, West Block-5, R.K.Puram, New Delhi-110 066.
3. The Central Defence Accounts, Office of C.D.A., Patna-800 019 [Bihar].
4. The Senior Accounts Officer [AN], Office of the C.D.A., Patna-800 019 [Bihar].

.....RESPONDENTS.By Advocate :- Shri P.N.Kumar, ASC.O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- This O.A. has been heard along with M.A No. 258 of 2003 which is for condonation of delay in filing the O.A. Before the matter of condonation of delay is considered, same facts may be stated.

2. The husband of applicant no.1 and father of applicant no.2 [Vijant Kumar Mishra, for short A-2] had taken voluntary retirement w.e.f.



16.10.1998 on medical grounds. He sent an application, as will be apparent from Annexure-A/10, for appointment on compassionate ground of A-2 which was dated 23.02.1999. There are certain documents under Annexures-A/6 to A/9 relating to the correspondences made in between the two sides. However, by Annexure-A/10 dated 15.09.2000 the prayer to appoint on compassionate ground was rejected. Thereafter, through Annexure-A/11 the applicant no.1 sent a letter to the then Defence Minister, Government of India, dated 10.11.2000. Annexure-A/12 is another letter sent to the Defence Minister by the another Minister in the Central Cabinet, Dr. C.P.Thakur for the same relief to the applicant. The letter at page 66 of the application dated 22.04.2003 is another application sent by applicant no.1 to the Defence Minister. Annexure-A/13 is a reply sent by the Defence Minister to Dr. C.P.Thakur in reply to his letter stating therein that the criteria of indigency laid down by the Government have not been found to be satisfied in the case of the applicants since the widow was drawing family pension of Rs.3505/- p.m. and had received terminal benefits to the tune of Rs.1,87,311/- and that besides the aforesaid, the family had own house and the eldest son was serving in the Regional Development Authority as an Assistant getting a pay of Rs.7080/- p.m. It was also stated that no vacancy did exist under the 5% direct recruitment quota.

3. The learned counsel has also relied on a decision of this Tribunal as at Annexure-A/15 and of Kerala High Court at Annexure-A/16.

4. However, such decisions, unless specifically lay down any ratio, <sup>judgments</sup> are in *personam*. Every such case is based upon its own facts. Moreover, in this case the first question is as to whether or not the delay should



be condoned.

5. The learned counsel for the applicant has sought to make out a case that the limitation should be counted from the date of the letter at Annexure-A/13, which was 11.09.2003. In view of the learned counsel, as per Section 21 of the Administrative Tribunals Act, the application thereafter should have been filed before 11.09.2004 but it was filed on 21.04.2005, hence the delay was not much and since the applicants have <sup>a</sup>strong case, in the interest of justice the delay should be condoned.

6. The learned counsel for the respondents, on the other hand, submitted that Annexure-A/13 could not be made the base from which the limitation should be computed, rather that should be computed w.e.f. 15.09.2000 on which date letter was issued by a competent authority conveying to the applicants rejection of the prayer for compassionate appointment. The learned counsel also submitted that the dependent of an employee who had taken voluntary retirement was not entitled to appointment on compassionate ground and for that the Rules filed by the applicant at Annexure-A/5 have been pointed out. The Scheme of compassionate appointment in para 2 states as to whom the Rules for compassionate appointment were applicable which included a Government servant who was retired on medical grounds before attaining the age of 55 years. This Rule also has been relied upon by the learned counsel for the applicant. However, it is evident that the applicant has claimed that on medical ground he had taken voluntary retirement but that is different from "having been retired on medical grounds". If a Medical Board certifies that a person was incapacitated physically to render service then he

*[Handwritten signature]*

can be retired by the administration in which case obviously the benefit to a dependent of appointment on compassion could be granted. This Rule does not say about a person taking retirement voluntarily though claiming to be on medical ground without enforcing his examination by a Medical Board.

7. I fully agree with the contention of the learned counsel for the respondents that the limitation should be counted from the date of communication at Annexure-A/10 [15.09.2000] and this application should have been filed by the corresponding date in the year 2001, to be within limitation. If after receiving the rejection order the applicants have gone on writing to the Minister, that would not extend the commencement of period for limitation. Definitely, a letter by one Cabinet Minister to another Cabinet Minister and reply thereto could not extend the limitation.

8. Therefore, it will appear that the filing of this application was delayed almost by three years and seven months. No satisfactory explanation for this has been provided in the application for condonation of delay. Moreover, by so delaying the matter the applicants themselves have committed laches. Appointment on compassionate ground is granted to bring in immediate relief to a family whose bread-earner [in the case of death in harness] leaves them in lurch, or has been retired on medical grounds. A person who has retired voluntarily, also gets his admissible pension and other retiral benefits. It is altogether a different matter that subsequently such an employee dies. Any such delay, in a case of compassionate appointment, grossly weakens the case of the applicant.

9. Therefore, it is not possible to accept the contention of the



learned counsel for the applicants that the case of the applicants had good merits and because of that the delay should be condoned.

10. On the aforesaid grounds and on the ground that satisfactory explanation has not been provided for condoning the delay, Misc. Application 258 of 2003 stands dismissed.

11. The Misc. Application having been dismissed, the connected OA also becomes not maintainable and on that ground this OA also stands dismissed.



[P. K. Sinha]/VC

skj.