

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

MISC. APPLICATION NO.291/00435/2014

IN OA NO.291/00526/2014

Order Reserved on: 26.02.2016
Date of Order : 09.03.2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Ashutosh Sharma S/o Late Shri Kailash Chand Sharma , (adopted son of Shri Munna Lal) aged about 31 years, resident of 4507-08, Heeda Ki Mori, Surajpole, Galta Road, Jaipur (Raj.)

.....Applicant

(By Advocate Mr. M.K.Chaturvedi, Proxy
Counsel for Mr. Sanjay Sharma, Counsel)

VERSUS

1. Union of India, through its Secretary, Bharat Sanchar Nigam Limited, Harish Chandra Lane, Janpath, New Delhi-110001.
2. Chief General Manager (Telecommunication), Bharat Sanchar Nigam Limited, Ashok Marg, Jaipur.
3. Sub-Divisional Engineer (Staff-III), O/o the Principal G.M.T.D., Jaipur-10.

.....Respondents

(By Advocate Mr. Gaurav Jain)

ORDER

Heard on MA No.291/00435/2014.

With reference to the MA No.291/00435/2014, the counsel for the applicant submitted that it has been filed under Section 5 of the Limitation Act for condonation of delay in filing the OA. In this regard counsel for the applicant submitted that applicant had requested for compassionate appointment being the adopted son of late Shri Munna Lal Sharma who had passed away on 11.10.1992 while in service. His candidature was rejected vide letter dated 11.07.2012 (Ann.A/1 in OA).

2. Counsel for the applicant further submitted that the applicant filed a SB Civil Writ Petition No. 2504/2013 in the Hon'ble High Court on 18.02.2013 against the aforesaid order but later on withdrew the same with the liberty to approach the Central Administrative Tribunal, Jaipur and the same was dismissed as withdrawn with the liberty as prayed for, vide order dated 6.12.2013 (Ann.A/7 in OA). On receipt of this order the applicant filed the OA on 23.09.2014. In this regard the counsel for applicant submitted that as brought out in the MA, that due to communication gap the applicant could not get in contact with the advocate after the judgment of the Writ petition and only after contacting the advocate he could file this OA and has prayed for condonation of delay.

3. Per contra, the counsel for respondents No.2 and 3 vehemently opposed the prayer for condonation of delay. He submitted that in the first place the application for compassionate appointment was itself submitted by the applicant to the department in the year 2012 i.e. after a considerable delay though the employee late Shri Munna Lal had died in the year 1992. The same was duly considered and rejected on valid grounds vide order dated 11.07.2012 (Ann.A/1 of the OA). After that the applicant did not approach the Tribunal but filed a S.B. Writ Petition No. 2504/2013 before the Hon'ble High Court and later withdrew the same to approach the Hon'ble Tribunal and the Writ Petition was accordingly dismissed as prayed for vide order dated 16.12.2013 (Ann. A/7 in the OA). Counsel for respondent submitted that as is evident from the Ann.A/7, order of the Hon'ble High Court, the applicant did not pray for any condonation of delay when withdrawing the Writ Petition. Counsel for respondents contended that the applicant has tried, to get the artificial limitation by approaching wrong forum, and in this regard he relied on the judgment of the Apex Court in the case of Bhoop Singh Vs. UOI 1992(3) SCC 322 in support of his contention. He also referred the judgments of the Apex Court in Union of India and others Vs. M.K. Sarkar in Civil Appeal No.8151 of 2009 decided on 8.12.2009 (2010) 2 Supreme Court Cases 59 and C.Jacob Vs. Director of Geology and Mining and another in SLP (C) No.25795 of 2008 decided on 03.10.2008 (2008) 10 Supreme Court Cases 115. He also referred to judgment of this Tribunal by Jaipur Bench in the case of Bheewan

Ram Jat Vs. UOI in OA No.585/2009 decided on 22.03.2010 and prayed for the dismissal of MA on grounds of delays and latches there being no cogent or justified reasons for the same.

4. Considered the aforesaid contentions and perused the record. It is noted that Shri Munnal Lal Sharma, employee of the respondents, died on 11.10.1992 while in service. As per the counsel for respondents the applicant applied for compassionate appointment in the year 2012 though he attained majority in 1999 itself, his date of birth being 06.05.1981 and the request for compassionate appointment was rejected vide order of the respondent dated 11.07.2012 (Ann.A/1 in the OA) on the ground that the adoption deed of Shri Asutosh Sharma, applicant is of 2008 while the employee Shri Munna Lal Sharma died on 11.10.1992 and as per rules only those persons are considered as family members who are fully dependent on the employee at the time of death and this scheme, therefore, does not apply to Shri Asutosh Sharma the applicant.

5. The applicant thereafter filed a SB Civil Writ petition No.2504/2013 in the Hon'ble High Court on 8.02.2013 but later prayed for withdrawal of the same with the liberty to file OA in the Tribunal, which was dismissed as withdrawn on 6.12.2013 (Ann.A/7) with liberty as prayed for. The copy of the order of the Hon'ble High Court was available with the applicant on 14.12.2013 itself. Even thereafter the applicant filed the present OA No.291/00526/2014 on 23.09.2014 i.e. after nine months. The counsel for the applicant was also the counsel in the writ petition filed in the High Court, therefore, the reason that the applicant could not contact the advocate in filing the OA, thus does not appear to be genuine or convincing. Thus this OA is filed 9 months after the order of the Hon'ble High Court dated 6.12.2013(Ann. A/7) and more than 2 years after the initial rejection by the respondents of application for compassionate appointment vide order dated 11.07.2012 (Ann.A/1). The applicant has not given any cogent reason in the MA filed for condonation of delay, as to why OA was not filed in time after representation was rejected on 11.07.2012 and further even after he withdrew the case from the High Court and it was dismissed as withdrawn vide order dated 06.12.2013 (Ann.A/7) no OA was filed for more than 9 months. Thus there is force in the contention of the counsel for respondents that there are no grounds to

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condone the delay and latches in filing this OA and this is fortified by the citations relied upon by him and referred to above.

6. In view of the above position, the MA No.291/00435/2014 filed for condonation of delay, lacking in merit, is dismissed and consequently the present OA No.291/00526/2014 also stands dismissed accordingly.



(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

Adm/