

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:
JAIPUR.

O.A. No.652/96 with MA 553/96 Date of order:01.09.98

Mukesh Beniwal s/o late Shri Ram Narain aged about 21
years r/o Plot No. 127, Gautam Nagar, Tonk Road, Jaipur
: Applicant

Versus

1. Union of India through the Secretary, Ministry of Water Resources (Central Ground Water Board) Government of India, New Delhi.
2. The Director, Central Ground Water Board, Government of India, N.H. IV, Faridabad, Haryana.
3. The Chief Scientist Ground Water, Geo-Hydrologist, Central Ground Water Board, Government of India, N.H. IV, Faridabad, Haryana.
4. The Director, Central Ground Water Board, Western Region, Jhalana Doongari, Jaipur.

: Respondents

Mr. Amitabh Bhatnagar, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Ratan Prakash, Judicial Member

The applicant herein Shri Mukesh Beniwal has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to quash and set-aside the impugned order dated 7.7.94 (Ann.A5) and also to

direct the respondents to give him suitable appointment on compassionate ground in place of his deceased father, on any post of Group 'D' employees.

2. The facts relevant for disposal of this application in brief are that Shri Ram Narain, father of the applicant was working on the post of Safaiwala in the office of Director, Central Ground Water Board, Western Region, Jaipur (respondent No.4) and died on 2.1.1989 while in service leaving behind a family of six members consisting of his wife Santosh Devi, two sons and three daughters. It is the case of the applicant that at the time of the death of his father Shri Ram Narain; he was of 15 years of age and all other children of late Shri Ram Nagain were younger to him. Due to the sudden death of his father and there being no earning member in the family and because also of himself being a minor, he could not move an application for compassionate appointment in place of his father. It is also stated by the applicant that at the time of the death of his father, his mother Smt. Santosh Devi was also serving in the Municipal Corporation and getting about Rs. 2000/- per month which is insufficient and meagre amount to meet needs of 5 members of the family of the deceased employee. He moved an application on 5.10.93 to respondent No.4 but this application was rejected by the respondents vide their letter dated 7.7.94 (Ann.A5). He sent reminders and representations to the respondents but without any result hence he approached this Tribunal to claim the aforesaid relief.

3. The respondents has opposed this application by

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filling a written reply to which a rejoinder has also been filed. It is the stand of the respondents that firstly the application is time barred and secondly since the mother of the applicant is serving in the Municipal Corporation, Jaipur and is getting Rs. 2000/- per month, it cannot be said that the family of the deceased employee is in indigent circumstance or in financial distress. Besides, the deceased employee's family has also received retiral benefits and also the family pension. It has, therefore, urged that the request of the applicant has been considered after taking all facts into account and that the application deserves rejection.

4. I heard the learned counsel for the applicant and the respondents at great length and examined the record in great detail.

5. From a perusal of the pleadings of the parties as also the impugned order as at Ann.A5, it is made out that the request made by the applicant to seek compassionate appointment has been rejected mainly on the ground that the application is time barred. The applicant has moved the application to seek appointment on compassionate ground on 5.10.1993. It is also not disputed that at the time of the death of the deceased employee, the applicant was around 15 years of age i.e. a minor. Although in the Birth Certificate filed by the applicant at Ann.A2, the date of birth has been indicated as 20.12.1974 yet from other documents which the applicant has filed in the respondent Department which has now been produced by the respondents alongwith their reply, it is made out that the date of birth of the applicant has been 20.12.1972.



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Besides this, there is an affidavit of the applicant himself as at Ann.R4 and a copy of the transfer certificate of the school as at Ann.R5 wherein the date of birth of the applicant has been indicated as 20.12.1972. In view of it, it is apparent that at the time of the death of the deceased employee on 2.1.1989, the applicant was around 16 years. The applicant has moved an application to seek compassionate appointment on 5.10.1993. Although in the instruction issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 30.6.1993 no time limit has been fixed to move an application to seek appointment on compassionate grounds but regulation 7 of this Office Memorandum laid down that-

"Ministries/Departments can consider the requests for compassionate appointment where the death took place long ago, say five years or so, while considering such belated requests it should be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness....."

It has further been laid down in regulation 7 that great deal of circumspection has to be taken while taking a decision in such matters and such a decision can be taken only at the level of Secretary. In view of this specific provision and finding that the applicant has moved the respondent Department within 5 years of the death of the deceased employee, it was incumbent upon the respondents Department to consider the request of the applicant to seek appointment on compassionate ground at the level of Secretary. From a perusal of the impugned order as at

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Ann.A5 dated 7.7.94, it is made out that the request made by the applicant to seek appointment on compassionate ground has been rejected mainly due to finding it as time barred. However, in view of the express provision in the Office Memorandum referred to above, it is incumbent upon the respondent Department to consider the request of the applicant to seek appointment on compassionate ground at the level of Secretary only, if having been made within 5 years of the death of the deceased employee.

6. Regarding the plea of limitation for which the applicant has also moved a separate MA No. 553/96, it is suffice to mention that after the rejection of the request of the applicant by the respondents vide their communication dated 7.7.94 (Ann.A5), the applicant has filed this application on 12.11.1996 but looking to the exceptional circumstance as brought out in this case and also a provision in regulation 7 of the consolidated instructions issued by the Ministry of Personnel, Public Grievances and Pensions, it would not be in the interest of justice to reject this application solely on the ground of limitation. The delay, if any, in filing this OA is condoned. The MA No. 553/96 stands disposed of accordingly.

7. This OA is therefore disposed of with the direction to the respondents to consider the application of the applicant to seek appointment on compassionate ground on the basis of the consolidated instructions issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 30.6.1993 and to get his case examined and considered by the Secretary of the Department. The respondents shall

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accordingly take action as aforesaid and communicate the result to the applicant by a speaking order within four months from the date of receipt of a copy of this order.

8. The OA stands disposed of accordingly with no order as to costs.


(Ratan Prakash)

Judicial Member