

**Central Administrative Tribunal
Jabalpur Bench, Jabalpur**

OA No.773/05

Jabalpur this the 7th day of March, 2006

CORAM

Hon'ble Mr. Justice G. Sivarajan, Vice Chairman

Harishanker Choudhary
Aged 24 years
Son of Late Shri Annilal Choudhary
Occu: Nil R/o Patan Road Karmeta,
Distt. Jabalpur.

Applicant

(By Advocate – Shri Praveen Verma)

Versus

1. Union of India
Through : Secretary,
Ministry of Defence
Indian Ordnance Factories
New Delhi.

2. General Manager
Gun Carriage Factory,
Distt : Jabalpur.

Respondents

(By Advocate – Shri R.S. Siddiqui)

ORDER (Oral)

By Justice G. Sivarajan, Vice Chairman

Applicant has impugned the order-dated 8.11.02 passed by an officer under the 2nd respondent rejecting his application for compassionate appointment. Under the provisions of Section 21 of A.T. Act, 1985, a Tribunal shall not admit an application in a case where a final order mentioned in Clause (a) of Sub Section (2) of Section 20 has been made in connection with a grievance unless the application is made within one year from the date on which the said final order has been made. In the instant case, though the impugned



order was passed on 8.11.02, this application is filed only on 23.11.05 i.e. after about 2 years and 9 months. The explanation tendered in the application for condonation of delay is that the applicant had no finance to pursue the litigation and instead he continued to make representations. The further reason stated is that he was not aware of the existence of limitation in filing the OA. The Tribunal, it appears, without noticing the delay and the application for condonation of delay filed, has ordered notice to the respondents in the OA. The respondents have filed reply also. I do not find that any objection to the condonation of delay is taken by the respondents. This by itself is no ground for condonation of delay. The Tribunal has to be satisfied that there is sufficient cause for condonation of delay. I do not find any such sufficient cause stated in the application for condonation of delay. In the circumstances, before rejecting the application, I have perused the averments in the OA and the reply filed thereto and I found that, prima facie, there are certain deficiencies in the impugned order. In the circumstances, I have heard the counsel for the parties on the merits of the matter. In view of the course I propose to adopt, I condone the delay in filing the application and proceed to consider the application on merits.

2. Mr. Praveen Verma, learned counsel for the applicant submits that the applicant is entitled to appointment on compassionate ground under the Scheme for Appointment on Compassionate Grounds to the Dependents of Employees Dying in Harness and others and that the respondents while determining the financial resources did not consider the quantum of the terminal benefits received by the applicant's mother, due to the deceased government employee. The counsel has pointed out that in the impugned order, the respondents have stated that a sum of Rs.1,52,705/- was received by the applicant's mother towards gratuity but the applicant has clearly stated in Para 3.3. of the OA that the applicant's mother had only received a sum of Rs.50,640/- after deducting a sum of Rs.25712/- by way of repayment of the house loan taken by the applicant's father. The counsel further

gvt

submitted that though the respondents have filed a reply, they have not refuted the fact that the applicant had received only a sum of Rs.50640/- as against Rs.1,52,705/- mentioned in the impugned order. The counsel also pressed into service a communication dated 6.9.2001 (Annexure A3) wherein also the amount of gratuity was shown only as Rs.76,352/-, from which a sum of Rs.25,712/- being the repayment of house loan was deducted. The counsel submits that the dependents of the deceased employee consist of 2 sons and 2 daughters without any employment and, therefore, the respondents ought to have considered the application for compassionate appointment in the light of the Scheme and Guidelines issued there under and granted compassionate appointment.

3. Mr. R.S.Siddiqui, learned counsel appearing for the respondents submitted that there was only one daughter and the case of the applicant was considered by the 3rd respondent along with other similarly placed individuals in accordance with the O.M. dated 9.10.1998 and 9.3.2001 and that on such consideration the applicant could score only 55 marks out of 100. The senior standing counsel further submitted that there were candidates who had secured higher marks than the applicant, who also could not be accommodated for want of sufficient vacancies. The senior standing counsel further submitted that as per the circular issued by the DoPT, the maximum period during which an application for compassionate appointment can be considered is only 3 years and, therefore, there is no question of considering the case of the applicant more than 5 years after the death of the applicant's father on 1.12.2000. He further submitted that the respondents have taken into account the deduction of the sum of Rs.25712/- by way of repayment of the house loan while considering the issue. The standing counsel finally submitted that there is no merit in this application.

4. I have considered the rival submissions. The fact remains that the applicant's father Annilal Choudhary died while in the service of the respondents on 1.12.2000; that the applicant's mother submitted

For

an application for compassionate appointment to her son under the Scheme on 19.2.2001; that the respondents took a decision on the said application only on 8.11.2001 (Annexure A1); that the respondents had worked out the terminal benefits due to the deceased Government employee at Rs.2,24,974 and it is stated that the family pension received by the widow of the deceased employee at Rs.2831/- .According to the respondents, there is sufficient means for the immediate sustenance of the dependents of the deceased government employee. It is further stated that there a ceiling of 5% direct recruitment quota fixed for making appointment on compassionate grounds and the applicant could not be accommodated in the said vacancy since there were more deserving cases as could be ascertained from the marks obtained by the respective candidates based on an evaluation of the relevant circumstances.

5. In the reply filed by the respondents, it is specifically stated that the applicant had received only 55 marks and that even candidates who had secured 83% or more could not be given employment on compassionate grounds for want of sufficient vacancy. In this context, it is worthwhile to consider the submissions made by the counsel for the applicant that as against a sum of Rs.1,52,705/- by way of gratuity stated to have been received by the applicant, he had received only a sum of Rs.50,640/- as evidenced by communication dated 6.9.2001 (Annexure A3). If this is the factual situation with regard to gratuity, more than a lakh of rupees goes out of the calculation of receipt by way of terminal benefits. If, as a matter of fact, the dependents of the deceased employee consist of his widow, 2 sons and an unmarried daughter, certainly the calculation of the financial resource made in the impugned order will cut the root of the decision taken by the respondents. Though the applicant had clearly stated the said facts in Para 3.3 of the OA, the reply filed by the respondents does not deal with the said factual aspects. That apart, the impugned order did not disclose the factual situation as to whether there was due consideration of all the relevant matters while arriving at a decision to

Govt

reject the claim of the applicant for compassionate appointment. Though in the ordinary course it will not be open for the Tribunal to re-appreciate the materials and to take a different view than the one taken by the administration, in view of the factual situation considered above, it will only be proper for this Tribunal to direct the respondents to re-consider the application made by the applicant/his mother without harping on technicalities. The respondents will bear in mind Clause 16 of the Scheme published in Government of India, Department of Personnel & Training O.M.No.14014/6/94-Estt. (D) dated 9.10.1998 particularly Clause 16 providing for the procedure sub clauses 12(c) & (d) and Clause 16 (c) and (e) while considering the application and also an opportunity as contemplated therein.

6. In the said circumstances, I direct the concerned respondents to take a decision on the application Annexure A4 submitted by the applicant/his mother for compassionate appointment to the applicant in accordance with the Scheme and the Circulars issued there under and in the light of the observations made herein above as expeditiously as possible at any rate within two months from the date of receipt of a copy of this order by passing a speaking order. For the said purpose, the impugned order is set aside. The OA is disposed of as above. The applicant will produce the copy of this order before the concerned respondents for compliance. The senior standing counsel will also ensure that the directions issued in this order are complied with. No order as to costs.

(G.Sivarajan)
Vice Chairman

22. पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिस्तिथि आयेति -

- (1) सचिव, जबलपुर, दि.....
- (2) आवेदन प्रि. वि.
- (3) प्रत्यक्षी कार्यालय
- (4) कार्यपाल, कार्यालय

सूचना एवं आ.

Prokash Kumar
R.S. Siddiqui
R.S. Siddiqui

Forwarded
14-3-06

14/3/06