

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**



APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>03.02.2009</u></p> <p><u>OA No. 453/2007</u></p> <p>None present for the parties.</p> <p>List it on 04.02.2009.</p> <p style="text-align: right;"> (B.L. KHATRI) MEMBER (A)</p> <p>AHQ</p> <p><u>4-2-2009</u></p> <p>Mr. Amit Mathur, Counsel for applicant Mr. Amit Kumar Soni, Proxy Counsel for Mr. Hemant Mathur, Counsel for respondents.</p> <p>Heard learned Counsel for the parties.</p> <p>Order Reserved.</p> <p style="text-align: right;"> (B.L. Khatri) Member (I)</p>
<p><u>13/2/2009.</u></p> <p>order pronounced today in the open court by the aforesaid Bench.</p> <p><u>13/2/09.</u> C.O.</p>	

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 13th day of February, 2009

ORIGINAL APPLICATION NO. 453/2007

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Nirmal Kumar Gurjar son of Late Shri Vinod Kumar Gurjar, aged about 23 years, resident of Ghurbura Mohalla, District Jhalawar, Rajasthan.

.....APPLICANT

(By Advocate: Mr. Amit Mathur)

VERSUS

- 1. Union of India through its Secretary, Ministry of Finance, North Block, New Delhi.**
- 2. Narcotics Commissioner, Finance, 19th The Mall, Morar, Gwallor, MP.**
- 3. Deputy Narcotics Commissioner, Kota, Rajasthan.**
- 4. The Superintendent, Central Bureau of Narcotics, Jhalawar, Rajasthan.**

.....RESPONDENTS

(By Advocate: Mr. Amit Kumar Soni proxy to Mr. Hemant Mathur)

ORDER

PER HON'BLE MR. B.L. KHATRI

This OA has been filed by the applicant against the order dated 21.09.2007 (Annexure A/1) by which the applicant was informed that his case for grant of appointment on compassionate grounds could not be considered as there is three years of limitation for considering cases of compassionate appointment. Through this OA, the applicant has prayed for the following reliefs:-

- (i) That the order dated 21.09.2007 may kindly be set aside and respondents may be directed to consider the claim of the applicant for appointment on compassionate ground.**
- (ii) Respondents may further be directed to give appointment to the applicant after properly considering**

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his claim for appointment from the date when the application for compassionate appointment was submitted by the applicant.

- (iii) Any other order, if passed by the respondents during the pendency of the OA prejudice to the interest of the applicant and adversely affect his rights may kindly be taken on record by this Hon'ble Tribunal and be quashed and set aside.
- (iv) Cost of the Original Application be awarded in favour of the humble applicant. "

2. Learned counsel for the applicant contended that the case of the applicant was never ever been considered by the committee constituted for the purpose of considering the claim of compassionate appointment. The limitation of three years is only applicable where the case is considered thoroughly and subjectively. In case there is no post lying vacant or in case where no vacancy has occurred during the stipulated period, the condition of three years would not be applicable. The respondents never ever informed the applicant that when his case was considered for the first time and what was the result of that consideration. Therefore, the claim of the applicant has wrongly been rejected by the respondents. He has raised the following grounds:-

- (A) That the impugned order dated 21.09.2007 (Annexure A/1) passed by the respondents is illegal, arbitrary and unjust. Therefore, the same is liable to be deprecated by this Hon'ble Tribunal.
- (B) The the present OA further deserves to be allowed for the reason the respondents have in a mechanical manner rejected the claim of the applicant. The reasoning given by the respondents is unjust. The respondents have wrongly rejected the claim with the reasoning that more than three years period has been expired. Therefore, the claim of the applicant cannot be considered. It is pertinent to submit that condition of three years can be made applicable where the case has been considered at least once. In fact the case of the applicant was never been considered by the respondents. Therefore, the reasoning of the respondents is unjust.

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- (C) That the present OA further deserves to be allowed for the reason that respondents have wrongly placed reliance upon the instructions dated 05.05.2003. It is respectfully submitted that each case has its own facts. The duration of three years period has been incorporated so that the claim of the concerned person may come to an end at some time. But in facts of the case when claim has not been considered even for once, that office memorandum cannot be made a ground for rejection of the claim.
- (D) That the very purpose of compassionate appointment provision is to assist a bereaved family when it lost its sole bread earner. The father of the applicant was the sole bread earner of the applicant's family. He died in the year 2000 and he left behind two unmarried daughter, two unemployed sons, old mother and wife. Never ever been the financial status of the applicant was considered by the respondents. No report was submitted by the local office of the respondents to the committee so that the financial status of the family might be ascertained by working in such a manner, the respondents has disowned/ shirk from there own responsibility and liability to give appointment to the member of family whose bread earner has been died during the service.
- (E) That other grounds will be urged at the time of arguments before this Hon'ble Tribunal.

3. Learned counsel for the applicant had relied on the following case laws:-

- (I) Mukesh Kumar vs. Union of India & Others
2007 (8) SCC 398
- (II) Mohan Mahto vs. Central Coal Field Ltd. And others
2007 (8) SCC 549

4. Learned counsel for the respondents had relied upon the reply filed wherein inter-alia the following submissions were made:-

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(A) The case of the applicant has been closed on the recommendations of Compassionate Appointment Committee with following the instructions contained in OM dated 09.10.1998 and 05.05.2003. Therefore, the action of the respondents is legal, just and not arbitrary.

(B&C) The contents of these Paras are not admitted in the manner stated. However, it is submitted that as position explained in Para NO. 4.4, the case of the applicant was considered at two times by the Compassionate Appointment Committee. Therefore, reasons given for rejection were just and proper and provisions of DOPT's OM dated 05.05.2003 were rightly involved in the case of the applicant.

(D&E) It was submitted that compassionate appointment cannot be claimed as a right of inheritance and further it cannot be granted if vacancy is not available as provided in DOPT's OM dated 09.10.1998 and it cannot be offered after a lapse of time as contained in DOPT's OM dated 05.05.2003. Therefore, case of applicant was rightly closed on recommendations of the Compassionate Appointment Committee which met on 06.02.2007 and action of the respondents was justified and not unconstitutional as stated by the applicant.

5. As per Para No. 4.4 of the reply, it was submitted that the case of the applicant for compassionate appointment had been considered by the Compassionate Appointment Committee, which met on 03.09.2004 but as per Para No. 7 of the OM dated 09.10.1998 issued by the DOP&T, New Delhi, compassionate appointment can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' and 'D' posts. Vacancy could not arise for appointment on compassionate ground. Therefore, no compassionate appointment had been made due to want of vacancy and case of the applicant along with other all pending cases, those had not completed three years had been kept alive for consideration for next Compassionate Appointment Committee. The case of the applicant was

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again considered by the Committee, which met on 06.02.2007 but he could not be offered appointment because of limitation of three years laid down in DOPTs OM dated 05.05.2003 which prescribes that a maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years and after three years, if compassionate appointment is not possible to be offered, his case will be finally closed, and will not be considered again.

6. Learned counsel for the respondents relied upon the following case laws:-

- (i) Umesh Kumar Nagpal vs. State of Haryana & Others
JT 1994 (3) SC 525
- (ii) LIC vs. Ms. Asha Ramchandra Ambekar & Others
JT 1994 (2) SC 183

7. I have heard the learned counsel for the parties and perused the record and relevant case laws on the subject. The father of the applicant, Late Shri Vinod Kumar Gurjar, expired on 01.03.2000. For the first time, an application was moved in the name of the elder brother of the applicant, Shri Mahesh Kumar, for granting appointment on compassionate grounds. Being the elder brother a drug edict, mother of the applicant, Smt. Kailash Bai, moved another application for granting compassionate appointment to the applicant in place of her elder son, Shri Mahesh Kumar. At that time, the applicant was minor. The date of birth of the applicant is 05.08.1989. After attaining the majority in the year 2002, an application granting appointment on compassionate grounds to the applicant was moved by his mother as per Annexure A/3. The plea of the applicant is that his case for compassionate appointment was not considered by the competent authority whereas it is evident from Para No. 4.4 of the reply that the case of the applicant was considered twice. Once his case could not be considered as no vacancy was available. Next time, his case was again considered by the Committee which met on 06.02.2007. As the father of the applicant expired on 01.03.2000, following the instructions contained in Ministry of Finance OM dated 05.05.2003, the Compassionate Appointment Committee recommended that since the

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case of the applicant is over three years old, hence appointment on compassionate ground cannot be provided and accordingly his case has been finally closed.

8. Learned counsel for the applicant relied on the case of Mukesh Kumar (supra). In that case the applicant's request for compassionate appointment was rejected on the ground that the family was not in indigent condition. In Para No. 7 of the judgement, it was held that there is no indication as to on the basis of which materials the conclusion was arrived at. It is also not clear as to what were the materials before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition. The facts of this case are entirely different and distinguishable from the facts of this case. In the case before me, it has already been intimated vide order dated that 21.09.2007 (Annexure A/1) that the case of the applicant was more than three years old. Therefore, in view of the DOPT's OM dated 05.05.2003, his case was not found fit for granting appointment on compassionate grounds.

9. Learned counsel for the applicant had also relied upon the case of Mohan Mahto (supra) wherein it was held that although no period of limitation was provided in the settlement, it is not necessary herein to go into the question as to whether in the teeth of the provision of NCWA V, the respondent at all had any power to fix a time limit and thereby curtailing the right of the workman concerned. It may be assumed that the respondents had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on compassionate grounds. But, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. Keeping in view the fact that a beneficial provision is made under a settlement, the "State" was expected to act reasonably. While so acting, it must provide for a period of limitation which is reasonable. What should be a reasonable period would depend upon the rules operating in the field. A public sector undertaking which is "State"

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within the meaning of Article 12 of the Constitution is expected not only to act fairly but also reasonably and bona fide.

The period of six months' limitation prescribed in the circular letter dated 12.12.1995 was not statutory. It is also not imperative in character. The period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character. Even for entertaining such an application beyond the period of six months, the headquarters of the Central Coal Field Limited is entitled to consider the facts and circumstances of each case.

The facts of this case are also totally different and distinguishable from the facts of the case before me. In this case the respondents have no powers to relax the limitation period of three years laid down in DOPTs OM dated 05.05.2003. Learned counsel for the applicant had not been in a position to make out a case for declaring the DOPTs Circular dated 05.05.2003 as null & void and it has already been made clear by the respondents that the limit of three years as laid down vide DOPTs OM dated 05.05.2003 cannot be relaxed.

10. Learned counsel for the respondents had relied upon the case of Umesh Kumar Nagpal vs. State of Haryana, JT 1994(3) SC 525 wherein it was held by the Apex court as under:-

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. Once such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The post in Class III and IV are the lowest posts in non

manual and manual categories and hence they alone can be offered on compassionate grounds."

11. Such appointment on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. The object is to enable the family to get over sudden financial crisis. In the case of *State of Haryana v. Ankur Gupta*, JT 2003 (Supp.1) SC 96), the Apex court held as under:-

"As was observed in *State of Harana v. Rani Devi* [JT 1996 (6) SC 646] it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

12. Thus having regard to the facts & circumstances of the case & legal position, I am of the opinion that this OA is bereft of merit and is accordingly dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

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