

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDER SHEET

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ORDERS OF THE TRIBUNAL


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17.11.2008

OA No.454/2008

Mr.Banwari Sharma, counsel for the applicant

Heard the learned counsel for the applicant at admission stage. For the reasons dictated separately, the OA stands disposed of.

  
(M.L.CHAUHAN)  
Judl.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 17<sup>th</sup> day of November, 2008

ORIGINAL APPLICATION No.454/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Rahupulla Khan  
s/o Shri Niyamatulla Khan,  
aged about 30 years,  
r/o Village and Post Kho Dariba,  
Police Station Tahla,  
Tehsil Rajgarh.  
District Alwar.

.. Applicant

(By Advocate: Shri Banwari Sharma)

Versus

1. Union of India through the Chief Engineer (HQ),  
Commander Works Engineer, Jaipur.
2. The Chief Engineer (HQ), Southern Command,  
Engineering Branch, Pune-411011.
3. The Chief Engineer, Garrison Engineers (EMS),  
Khatipura Road, Jaipur
4. Engineer in Chief (EIC-4), Kashmir House, Army  
Headquarters, New Delhi-110 001.

... Respondent

(By Advocate: ----)

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**O R D E R (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- i) By an appropriate order or direction, the impugned order dated 11.10.2002 (Annex-A/1) may kindly be declared as illegal, arbitrary, and unjustified and, therefore, be quashed and set aside and respondents be further directed to give compassionate appointment to the applicant on a suitable post forthwith.
- ii) Or any other appropriate order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- iii) Costs of the application may kindly be awarded in favour of the applicant.

2. Briefly stated, facts of the case are that father of the applicant, Shri Niyamatulla Khan, while working as LDC in the office of Garrison Engineer (MES) expired on 5.8.1983. At that time the applicant was minor. After attaining the age of majority, he made an application to the Garrison Engineer, Jaipur for appointment on compassionate grounds on 24.5.1996 and thereafter in the prescribed proforma on 6<sup>th</sup> September, 1997. It is the case of the applicant that thereafter the matter remained pending with the authorities as the authorities sought certain information and documents. However, case of the applicant was placed before the Board of Officers and Administrative Officer-I vide letter dated 28.10.99 intimated the applicant that there was no vacancy for compassionate appointment in the post of LDC. It is

further averred that vide order dated 11.10.2002 (Ann.A1), case of the applicant was rejected on the ground that his case was considered with other candidates and due to more deserving cases and non availability of vacancy till 30.6.2002, the case of the applicant has not been recommended by the Board for appointment on compassionate ground. It is this order which is under challenge in this OA.

In para 3, the applicant has alleged that the present application is within limitation. At this stage, it will be useful to quote para 3 of the OA, which thus reads:-

"LIMITATION:

The applicant further declared that the application is within the limitation period as prescribed under Section 21 of the Administrative Tribunals Act, 1985 particularly in view of S.B.C.W.P. No.2798/06 filed by the applicant before the Hon'ble H.C. Jaipur for seeking compassionate appointment which was allowed to be withdrawn vide order dated 11.9.2008 with the observation that learned Tribunal would take note of the fact of pendency of the writ petition before the H.C. while calculating the limitation. Thus, the application is within limitation."

3. I have heard the learned counsel for the applicant at admission stage. When the attention of the learned counsel for the applicant was invited that the impugned order dated 11.10.2002 has been challenged in this OA before this Tribunal on 10.11.2008 and thus, order has not been challenged within one year as contemplated under Section 21 of the Administrative Tribunal Act, therefore, the OA is

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hopelessly time barred, the only explanation given by the learned counsel for the applicant is that subsequent to passing of the impugned order he made representation to the authorities and in fact the authorities have also asked certain information vide letter dated 4.9.2003 (Ann.A13) which information was supplied by the applicant vide letter dated 18.9.2003 (Ann.A14), as such, the matter was under consideration before the authorities. Thus, the present OA is within limitation. Learned counsel for the applicant further argued that the applicant has also filed Writ Petition before the Single Bench of the Hon'ble High Court which was registered as S.B.C.W.P. No.2798/06 and the same was decided on 11.9.2008 on the ground that Hon'ble High Court has got no jurisdiction to entertain the matter under Administrative Tribunals Act, 1985 and it was further observed that the Tribunal will take note of the fact that Writ Petition was pending before the Hon'ble High Court for the purpose of seeking condonation of delay. The learned counsel for the applicant argued that since the Writ Petition was disposed of on 11.9.2008, as such, the present OA was filed immediately thereafter, thus, within the period of limitation.

4. I have given due consideration to the submissions made by the learned counsel for the applicant. Admittedly, the applicant has not moved any

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application for condonation of delay. As can be seen from para 3 of the OA, case of the applicant is that the present OA is within limitation as Writ Petition was disposed of on 11.9.2008. According to me, this is no ground for condonation of delay. Admittedly, in this case the impugned order was passed on 11.10.2002. As per provisions contained under Section 21 of the Administrative Tribunals Act, 1985 such an order ought to have been challenged within a period of one year. Except the oral submissions made by the learned counsel for the applicant that matter was under examination before the authorities and certain information was called for vide letter dated 4.9.2003 (Ann.A13), there is no explanation whatsoever why the applicant has not resorted to the remedy available to him under law within the period of one year from the date of passing of the impugned order. Even otherwise also as per the material placed on record, the applicant has explained delay upto September, 2003. There is nothing on record to suggest why the applicant has not approached this Tribunal subsequently even in the year 2004 onwards and the applicant has also not explained what steps he has taken after 2003. Even the Writ Petition was filed by the applicant in the year 2006.

5. Law on the point is well settled. The Hon'ble Apex Court in the case of State of Karnataka vs.

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S.M.Kotrayya, 1996 SCC (O&S) 1488 has considered Section 21 of the Administrative Tribunal Act, 1985 and held that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21 of the Administrative Tribunals Act, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the applicant has not given any explanation whatsoever, why he has not approached before the appropriate forum after expiry of the period as mentioned in sub-section (1) or (2) of Section 21 of the Administrative Tribunals Act. It is also settled law that repeated representations will not extend the cause of action. At this stage, it will also be useful to quote another decision of the Hon'ble Apex Court in the case of Secretary to the Government of India vs. Shivram Mahadu Gaikwad, 1995 SCC (O&S) 1148, where the Apex Court held that in case the application is barred by limitation even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under sub-section (3) of Section 21 and the Tribunal totally overlooked this question which clearly stared in the face. No

valid explanation was available on record for coming to the conclusion that the case for condonation of delay was made out. Thus, the application was clearly barred by limitation. In the instant case also, the applicant has neither moved application for condonation of delay nor any explanation is forthcoming as to why he has not challenged the impugned order within the time prescribed under Section 21 of the AT Act. In the instant case Writ Petition was filed in the year 2006. Filing of the Writ Petition in the year 2006 and disposal of the same in the year 2008 will not constitute sufficient ground for condonation of delay prior to filing of the Writ Petition in the year 2006.

Further, the Hon'ble Apex Court in the case of Ramesh Chand Sharma vs. Udhham Singh Kamal, 2000 SCC (L&S) 53 has held that the OA without filing application for condonation of delay cannot be admitted and entertained. Thus, viewing the matter from the law laid down by the Apex Court as noticed above, I am of the view that the applicant has not made out a case for condonation of delay and the application is required to be rejected being barred by limitation.

6. At this stage, it will also be useful to notice decision of the Apex Court in the case of State of J&K and others vs. Sajad Ahmed Mir, 2006 SCC

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(L&S) 1195 which is clearly attracted in the instant case. That was a case where father of the applicant died in 1987 and the application for the first time was made in 1991. The claim of the applicant therein was rejected in March, 1996. The applicant kept silent for about 3 years and it is only in 1999 when again there was a departmental communication, the applicant woke up and approached the Court and challenged the said decision. Since there was gross delay and lapse on the part of the applicant in approaching the court, the Single Judge dismissed the petition on the ground that father of the applicant died in 1987 and applicant approached the court in 1999 i.e. after more than a decade has passed. The Division Bench has however reversed the decision of the Single Bench. The matter was carried to the Apex Court. The Apex Court while considering various judgments governing compassionate appointment including the judgment of the Apex Court in the case of Sushma Gosain vs. Union of India, 1989 SCC (L&S) 662 whereby the Apex Court has observed that in the claims of appointment on compassionate grounds, there should be no delay in appointment, the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the breadwinner in the family, Such appointment should, therefore, be provide immediately to redeem the family in distress and ultimately in

Para 17 has given the following reasoning:-

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"17. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four-and-a half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of the death of the employee. Moreover, in our opinion, the learned Single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view hence ought not to have allowed the appeal."

The ratio as laid down by the Apex court in the case of Sajad Ahmed Mir (supra) is squarely applicable in the facts and circumstances of this case. In this case father of the applicant died in September, 1983. The application for compassionate appointment was moved in May, 1996/September, 1997 (in the prescribed proforma). The case of the applicant was rejected on 11.10.2002. For the first time, the applicant filed Writ Petition in the year 2006 which was disposed of vide order dated 11.9.2008 as the Hon'ble High Court had no jurisdiction to entertain the Writ Petition in view of the provisions contained in the AT Act. Ultimately, the applicant has filed this OA before this Tribunal on 11.10.2008, after a lapse of about 15 years from the date of death of father of the applicant and about 6 years after passing of the

impugned order. Thus, according to me, the present application is hopelessly time barred. The fact that the applicant has filed this OA after more than 15 years from the death of his father is indeed a material fact which shows that the family survives after death of the employee which fact cannot be ignored in view of the law laid down by the Apex Court in the case of Sajad Ahmed Mir (supra).

7. For the foregoing reasons, the OA is hopelessly barred by limitation which is accordingly dismissed at admission stage.



(M.L. CHAUHAN)  
Judl. Member

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