

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 09.12.2014

MA No. 291/00426/2014 (MA No. 291/00264/2014)
(OA No. 871/2012)

Mr. M.F. Baig, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

MA No. 291/00426/2014

Heard on the M.A. No. 291/00426/2014 filed on behalf of the applicant praying for restoration of MA No. 291/00264/2014.

In the interest of justice, the MA No. 291/00264/2014 is restored to its original number and status.

The Misc. Application No. 291/00426/2014 is disposed of accordingly.

MA No. 291/00264/2014

Heard on the M.A. No. 291/00264/2014 filed on behalf of the applicant praying for restoration of OA No. 871/2012.

In the interest of justice, the OA No. 871/2012 is restored to its original number and status and with the consent of the learned counsel for the parties is taken up for hearing today itself.

The Misc. Application No. 291/00264/2014 is disposed of accordingly.

OA No. 871/2012

Heard learned counsel for the parties.

O.A. is dismissed having no merit, reasons to be followed. The detailed order is to be passed on the separate sheets.


(ANIL KUMAR)

ADMINISTRATIVE MEMBER


(B. V. RAO)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 871/2012

DATE OF ORDER: 09.12.2014

CORAM

HON'BLE MR. B.V. RAO, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Gauri Shankar Verma S/o late Shri Puran Mal Bunkar, R/o Village & Post Dhand, Tehsil Amer, District Jaipur (Rajasthan).

...Applicant

Mr. M.F. Baig, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Sansad Marg, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, M.I. Road, Jaipur.
3. The Assistant Post Master General (Staff/Vigilance), office of Post Master General Rajasthan Circle, Jaipur.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

(Per Mr. B.V. Rao, Judicial Member)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs: -

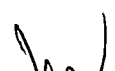
- "i) That this Original Application may kindly be accepted, allowed and the respondents may be directed to give compassionate appointment to the applicant as per his qualification forthwith.
- ii) Any other order, direction or relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case, may kindly be passed in favour of the applicant.



- iii) Costs of the Original Application may kindly be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the applicant, are that father of the applicant late Shri Puran Mal was working on the post of Dak Sahayak, (P.A.) in the Rajasthan Circle. He while in service died on 09.10.1990 leaving behind his wife and son (applicant). The mother of the applicant Smt. Mooli Devi applied for compassionate appointment by submitting application on 16.04.1991. In pursuance of the application dated 16.04.1991, a letter dated 2/5.8.1991 has been issued regarding approval to the appointment of Smt. Mooli Devi W/o late Shri Puran Mal Bunkar on the post of Group 'D' (NTC Cadre) under relaxation of recruitment rule of compassionate grounds.

3. The applicant further submitted that vide letter dated 28.07.1995, Assistant Director (Grahak Sewa Avam Bharti) Rajasthan Circle, Jaipur written letter by which it was revealed that the post of Group 'D' non-test category has been allowed in the office of Post Master General, Rajasthan Circle. Vide letter dated 22.10.1997, mother of the applicant was informed that vide letter dated 16.02.1995, she was allowed on the post of Class-IV NTC in the office of Railway Postal Service, J.Mandal, Ajmer to Unit of the Jaipur City Mandal.



4. Subsequently, vide letter dated 26.02.2001, it was informed the mother of the applicant that presently no post of Group 'D' (NTC) is available, therefore, appointment is not possible on the said post and if she desired to get appointment in another department/ministry in the circle, she can give her consent. The mother of the applicant replied to the letter dated 26.02.2001 giving consent to the same that she is ready for appointment in department / ministry in place of Group 'D' (NTC) despite of it, a letter dated 06.09.2001 has been issued regarding consent for the post of (Gramin Dak Sewa) but by the same, it has been mentioned that for the said post, minimum qualification 8th or 10th pass is required. Along with the same contents, letter dated 27.12.2001 also has been issued to the mother of the applicant. After receiving letter dated 27.12.2001, mother of the applicant was given reply that since post of Group 'D' was already allotted to her and that was approved vide letter dated 25.08.1991, hence, she may be given appointment on the post of Group 'D'.

5. After receiving letter dated 06.09.2001, applicant written a letter dated 28.11.2007 (Annexure A/6) to the department that since his mother is not having requisite qualification of 8th or 10th pass for the post of (Gramin Dak Sewa) but he is having requisite qualification of 10th with 1st Division and presently, he has attained the age of majority



so, he may be given compassionate appointment in place of his mother. The applicant's mother also given representations on 06.10.2010 (Annexure A/7) and 21.12.2010 (Annexure A/8) to the Senior Superintendent of Post Office, Jaipur Division, Jaipur regarding appointment of her son in place of her deceased husband Shri Puran Mal.

6. After a long silence, candidature of the applicant for appointment on compassionate grounds has been rejected by the respondents vide order dated 24.05.2011 on the premise that since long time has lapsed, hence, matter regarding compassionate appointment cannot be re-considered.

7. The applicant further submitted that he has sent a Legal Notice dated 13.08.2012 (Annexure A/1) through his counsel to the respondents but the same has not yet been decided.

8. Being aggrieved by the impugned communication dated 24.05.2011 and inaction of the respondents to the legal notice dated 13.08.2012; the applicant preferred the present Original Application.

9. The applicant has challenged the action of the respondents in rejecting the candidature of the applicant belatedly and that too assigning no cogent reason which is




patently arbitrary, illegal and uncalled for. Rule of 1996 provides for giving compassionate appointment to the dependent of the deceased government servant in case, he/she applies within the stipulated period. Despite this, denying appointment belatedly is nothing but arbitrariness on the part of the respondents. The right of the applicant to get appointment on compassionate ground has been infringed in an illegal manner.

10. On the contrary, the respondents have filed their written reply. The respondents have taken preliminary objection submitting that the case of the applicant for compassionate appointment was rejected vide order dated 24.05.2011, however, no such order is submitted on record, whereas OA has been filed on 20.12.2012 i.e. beyond the period of limitation. It is settled preposition of law that the repeated representation/notice for demand of justice, does not extend the limitation and further the applicant has also served for demand of justice dated 13.08.2012, after expiry of limitation period of one year. The deceased Govt. servant died on 09.10.1990 and mother of applicant Smt. Mooli Devi submitted her unwillingness vide application dated 02.01.2002. Thus, the O.A. of the applicant suffers with delay, latches and barred by limitation and accordingly deserves to be dismissed.



11. The Chief Postmaster General Rajasthan Circle approved the appointment of Smt. Mooli Devi for the post of Group 'D' (NTC) vide letter dated 2/5.08.1991 (Annexure R/1) and appointment order was also issued by the SSPOs Jaipur City vide letter dated 08.08.1991 (Annexure R/2). She was allotted to RMS 'J' Dn. Ajmer as a Group 'D' (NTC) vide Chief PMG Office, Jaipur letter dated 29.03.1993 (Annexure R/3). She was again re-allotted to the SSPOs Jaipur City Dn. vide Chief PMG Office Jaipur letter dated 16.02.1995 (Annexure R/4). She was informed vide SSPOs Jaipur City Dn. Jaipur letter dated 28.08.1995 (Annexure R/5) that there was no vacant post of Group 'D' (NTC) in Jaipur City Dn. Therefore, whenever there would be any vacant post of Group 'D' (NTC), she would be given appointment.

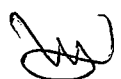
12. Smt. Mooli Devi was informed vide letter dated 05.08.1996 (Annexure R/6) that as there was no vacancy of Group 'D' (NTC) in Jaipur City Dn. so appointment would not be possible in future. She was also informed that if she is willing to take appointment to the post of Sweeper, Group 'D' (NTC), she may present in SSPOs Jaipur City Dn. office for further appointment formalities. She was again requested for the same vide letter dated 22.10.1997 (Annexure R/7). She gave unwillingness for appointment



on the post of Sweeper Group 'D' (NTC) vide her application dated 27.10.1997 (Annexure R/8).

13. In accordance with the direction of Directorate, New Delhi letter dated 08th February, 2001 (Annexure R/9) and Chief PMG Office, Jaipur letter dated 19.02.2001 (Annexure R/10), she was requested for expressing her willingness to be appointment in departments of other ministries vide SSPOs letter dated 26.10.2001 (Annexure R/11). Meanwhile, Directorate, New Delhi vide letter dated 25.07.2001 (Annexure R/12) directed that the person who could not be appointed for want of vacancies and expressed their willingness for consideration in other departments had discontinued and such approved candidates would be considered for the vacant posts of Gramin Dak Sewaks, if they were willing and eligible for the post of GDS.

14. Smt. Mooli Devi was informed accordingly and offered post of Gramin Dak Sewak in Jaipur City Dn. vide letter dated 06.09.2001 (Annexure R/13) but no response was received by the SSPOs Jaipur, City Dn. Office, Jaipur. She was again requested for giving her willingness to the post of Gramin Dak Sewak vide letter dated 27.12.2001 (Annexure R/14). She gave unwillingness for the appointment on the post of Dak Sewak vide her application dated 02.01.2002 (Annexure R/15) and requested to give appointment to the post of Group 'D'. This application of Smt. Mooli Devi was




forwarded to Chief PMG Office Jaipur vide SSPOs letter dated 10.01.2002 (Annexure R/16).

15. The applicant submitted a letter to the Chief PMG Rajasthan Circle and SSPOs Jaipur City on 28.11.2007 (Annexure R/17) that since his mother Smt. Mooli Devi was not having requisite qualification of 8th or 10th pass for the post of Gramin Dak Sewak, was not appointed due to non-attaining minimum educational qualification. He has attained the age of majority and is 10th pass; he may be given compassionate appointment in place of his mother.

16. The competent authority after considering the request of the applicant, rejected his candidature for appointment on compassionate grounds vide order dated 24.05.2011 on the premise that since long time has lapsed, hence, matter regarding compassionate appointment cannot be reconsidered. Thereafter, the applicant served legal notice to the Chief PMG Rajasthan Circle, Jaipur and the Assistant PMG Rajasthan Circle Jaipur on 13.08.2012 after a lapse of more than one year from the order dated 24.05.2011.

17. In the reply, the respondents have further submitted that the applicant has filed the present O.A. without challenging the order dated 24.05.2011. Thus, in view of the position explained, the present Original Application deserves to be dismissed.



18. It is further submitted by the respondents that Smt. Mooli Devi submitted her unwillingness for appointment on the post of GDS on 02.01.2002. The applicant submitted his application on 28.11.2007 after a lapse of more than 5 years from 2002. Since the father of the applicant died on 09.10.1990 and the applicant submitted application on 28.11.2007, after a lapse of more than reasonable period of 17 years, the action of the competent authority is just and proper because after a lapse of more than reasonable period, the compassionate appointment cannot be granted.

19. The Govt. of India made a scheme for appointment on compassionate grounds vide Dept. of Personnel & Training (DPO&T) OM dated 09.10.1998 read with OM dated 03.12.1999. The scheme stipulates that the object of the scheme is to grant appointment on compassionate grounds. The scheme is intended to render immediate assistance to the family of the Govt. servant who dies in harness leaving his family in financial crisis. Further Para 5.13 of the Scheme is not intended to ensure that in each and every case, the members of family of the deceased employees are to be given employment. Such appointment can be provided only to fill up 5% of vacancies that arise for direct recruitment within a year. The compassionate appointment is not a vested right which can be exercised at any time in future. The applicant has no reason to file this O.A. at such

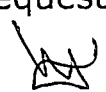


belated stage. The O.A. is badly barred by limitation and the same is not maintainable.

20. The respondents in their written reply by relying upon the law laid down by the various Benches of the Central Administrative Tribunal as well as by the Hon'ble Apex Court have submitted that the compassionate appointment cannot be claimed as a matter of right. It is further submitted that when subsequent to the death of the bread-earner, sufficient time has passed and bereaved family has maintained themselves, there can be no direction to the competent authority to consider the claim for compassionate appointment. The compassionate appointment can be made only if a vacancy is available. Therefore, the respondents have prayed that the Original Application deserves to be dismissed with costs.

21. Heard learned counsel for the parties and perused the documents available on record.

22. We have considered the letter dated 05.08.1996 (Annexure R/6) by which the applicant's mother Smt. Mooli Devi was informed that there was no vacancy of Group 'D' (NTC) in Jaipur City Division and if she is willing to take appointment to the post of Sweeper, Group 'D' (NTC), she may present in the SSPOs Jaipur City Division office for further appointment formalities. She was again requested



for the same vide letter dated 22.10.1997 (Annexure R/7) but she gave her unwillingness for appointment on the post of Sweeper Group 'D' (NTC) vide her application dated 27.10.1997 (Annexure R/8).

23. We have also considered the letter dated 06.09.2001 (Annexure R/13) by which the applicant's mother Smt. Mooli Devi was informed and offered the post of GDS in Jaipur City Division but no response was given. She was again requested for giving her willingness to the post of GDS vide letter dated 27.12.2001 (Annexure R/14). We also seen the application dated 02.01.2002 (Annexure R/15) by which the applicant's mother gave her unwillingness for the appointment on the post of GDS.

24. After going through the documents available on record, it is an admitted fact that the applicant's mother Smt. Mooli Devi declined and given her unwillingness for appointment to the post of Sweeper, Group 'D' (NTC) on 27.10.1997 and to the post of GDS on 02.01.2002.

25. After a lapse of more than 5 years of giving unwillingness for the post of GDS by her mother in 2002, the applicant submitted his application on 28.11.2007 (Annexure R/17) seeking compassionate appointment to him. Admittedly, the applicant's father was died on 09.10.1990 and the applicant's mother declined the post of

Sweeper, Group 'D' (NTC) in the year 1997 and also declined the post of GDS in the year 2002 and the applicant submitted his application for compassionate appointment in the year 2007, which is a lapse of more than a period of 17 years from the date of death of his father.

26. After giving a careful consideration to the pleadings of both the parties and after perusal of the material on record, we do not find any illegality or unjust in the action taken by the respondents by rejecting the claim of the applicant for grant of compassionate appointment.

27. For the foregoing reasons and discussions made above and in view of the facts and circumstances of the case, we do not see any merit in the Original Application and accordingly the same is dismissed. No order as to costs.


(ANIL KUMAR)

ADMINISTRATIVE MEMBER


(B. V. RAO)

JUDICIAL MEMBER