

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
(Reserved on 13.03.2014)

O.A NO. 060/00086/2014 Date of decision - 25 .03.2014

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

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Sunil Kumar Son of Late Sh. Narian Dutt resident of Satroad Khurd,
Tehsil and Distt. Hisar.

...APPLICANT

BY ADVOCATE: Sh. Mr. Chandarhas Yadav

VERSUS

1. Union of India through Secretary Ministry of Communications,
Department of Posts, New Delhi.
2. The Director General, Department of Posts, Dak Bhawan
Sansad Marg, New Delhi.
3. Chief Post Master General, Harayana, Circle Ambala.

...RESPONDENTS

ORDER (ORAL)

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present Original Application filed under Section 19
of the Administrative Tribunals Act, 1985 is directed against the
order dated 25.09.2001 (Annexure A-6) and 25.01.2010 (Annexure

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A-8) vide which the claim of the applicant for appointment on compassionate ground has been rejected. He also sought a writ of mandamus to direct the respondents to consider his claim for compassionate appointment in view of change circumstances.

2. The facts which led to filing of the present O.A are to be noticed first. The father of the applicant, Late Sh. Narian Dutt was working as a Sorting Assistant and was posted at RMS Hisar. He unfortunately died on 03.01.1999 leaving behind four legal heirs i.e. Smt. Chameli Devi, Widow and three sons. The mother of the applicant moved an application requesting therein to consider the case of his son i.e. Sunil Kumar (applicant) for appointment under the compassionate scheme as the his two bothers had no objection to that. But the same was considered and rejected by the authorities vide order dated 25.09.2001. Thereafter, the applicant made another application (dated -nil) to the respondents with the same request which too was rejected by them vide order dated 25.10.2010. Hence, the present O.A.

3. In support of his claim, Mr. Chanderhas Yadav, learned counsel for the applicant vehemently argued that action of the respondents in not considering the case of the applicant in terms of the policy is illegal and arbitrary and, thus, the impugned order is liable to be set aside. To elaborate his arguments, he submitted that immediately after the death of the applicant's father, he moved

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an application for appointment on compassionate grounds, which was rejected vide order dated 25.09.2001 by passing a cryptic order by mentioning that the family has received terminal benefits, which is not permissible, therefore on this ground alone, the impugned order is liable to be set aside. He further submitted that thereafter, another application was moved by him which too was rejected vide impugned order dated 25.10.2010 by the respondents, on the ground that there is no provision under the rules for revision. Therefore, he prayed that impugned order be set aside and direction be given to the respondents to reconsider the case of the applicant in the light of the policy.

4. We have given our thoughtful consideration to the entire matter.

5. We are afraid that the contention of the applicant can not be accepted at this stage for the reason that the father of the applicant died on 03.01.1999 and at that time, as per averment made by the applicant as reflected in the affidavit (Annexure A-4), the applicant was of 21 years of age and his case was considered by the Circle Relaxation Committee of the respondent department and only thereafter his claim was rejected vide order dated 25.09.2001. Perusal of the impugned order makes it clear that a categorically finding has been recorded by the respondents that "there are only 3 vacancies in PA/SA cadre for compassionate appointments and

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there are 61 applicants to be considered against these three vacancies. For such less number of vacancies only the cases who were really indigent and in penury conditions would be considered. The committee under these circumstances felt that in this case the family cannot be considered to be really indigent and in penury." Considering the above, the Circle Relaxation Committee in his case was of the opinion that the family is not indigent, making him eligible for appointment on compassionate grounds. The finding recorded by the Circle Relaxation Committee was not challenged by the applicant before any court of law and rather he moved a second request (date is not mentioned) to the respondents for the same relief but same was again considered by the authorities and rejected vide impugned order dated 25.10.2010. Therefore, the order dated 25.09.2001 rejecting his claim had attained finality as same was not challenged in any court of law. Subsequently, the order dated 25.10.2010 was also not, challenged within the limitation period as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

6. Law prescribes certain bars for approaching a judicial forum. The most important of them is the bar of Limitation. Section 21 of the Administrative Tribunals Act, 1985, (for brevity 'the Act') provides this bar. It is inconceivable that a litigant may come at any time before a Court and claim adjudication of his/her

grievance, thereby unsettling the matter which has already been presumed to have come to a rest. In the case of **Union of India versus Harnam Singh** (1993(2) S.C.C. Page 162), the Hon'ble Apex Court has held that "the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of Limitation to expire." As per Section 21 of the Act an Application under Section 19 of the Act can be filed within one year from the date of cause of action, which can be extended by another six months if any statutory appeal or revision is pending. Beyond that an application for condonation of delay as provided under Section 21(3) of the Act is to be filed with sufficient cause. There is another reason for not inferring with this application because there is delay in approaching the court of law. The cause of action arises in favour of the applicant on 25.09.2001 for the first time when his request was turn down. If he was so aggrieved, then he could had approached the court of law at the relevant time. In this case the Section 21 of the Administrative Tribunals Act, 1985 provides one year of limitation from the date of cause of action and of six months if the appeal/representation/revision petition not decided. Therefore the present case is barred by limitation by more than 13 years. Even if we choose the impugned order dated 25.10.2010 as cause of action when his case for appointment was

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rejected 2nd time, even then the applicant has not chosen to approach the court within time as has approached after more than three years. The lordships of the Hon'ble Supreme Court have held that law of limitation is to be regressively applied. There is no sympathy recognized in law for which the court direct any authority to pass any order which is against the rules and policy therein. In this regard, learned counsel for the respondents placed reliance upon decisions in the cases of **State of Uttar Pradesh Vs. Brahm Datt Sharma** (AIR 1987 SC 943); **Executive Engineer Bihar State Housing Board Vs. Ramdesh Kumar Singh and others** (JT 1995 (8) SC 331), **Special Director and another Vs. Mohd. Ghulam Ghouse and another** AIR (2004 SC 1467), **and Union of India & Ors. Versus M.K.Sarkar** (2010(2) S.C.C. Page 58).

7. In view of the above authoritative law by their lordships of the Hon'ble Supreme Court, if the O.A was not filed within one year from the date of cause of action then application of condonation of delay, which is provided under Section 21 (3) of the Administrative Tribunals Act, 1985 was required to be filed explaining the reason for not approaching the court within prescribed period, which has not been done in this case. It is well settled that if a person is not vigilant about his right by not approaching the court against the order then the court can not help him by entertaining the petition after a along delay, which has not

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been even explained herein by filing any application for condonation of delay. Therefore, this petition deserves to be dismissed on the ground of delay and laches alone.

8. Now we proceed to consider the O.A on merits as well. The compassionate appointment cannot be claimed as a matter of right. What right flows from compassionate scheme is a right of consideration only under the parameters of the scheme. The intention of the scheme was/is only to help a family whose bread earner has died and to provide them minimum financial assistance to live with dignity as their sole bread earner has died. It is not that legal heir of deceased employee can claim appointment on compassionate ground as matter of right, that they be given the same post, which was occupied by the bread earner. What right flow from the scheme is a fair consideration, that too for removal of immediate crises of destitute family. It cannot be presumed that appointment can be claimed at any point of time.

9. It is now well settled that the appointment on compassionate grounds is not a source of recruitment. It is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment,

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except by way of the concession that may be extended by the employer under the Rules or by a scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. In case "**Umesh Kumar Nagpal Vs. State of Haryana**, (1994) 4 SCC 138, their lordships of the Supreme Court held as under:-

"The whole object of grant of compassionate employment is, thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee I harness does not entitle his family to such source of livelihood. The Government or public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

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The object being to enable the family to get over the financial crisis which it faces at the time of death of the old breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

Similar view has been taken by the Hon'ble Supreme Court in cases of **Jagdish Prasad versus State of Bihar**, (1996) 1SCC 38, **Steel Authority of India Ltd. Vs. Madhusudan Das and Ors.** (2008 (15) Scale 39, **I.G (Karmik) Vs. Prahalad Mani Tripathi** (2007) 6 SCC 162 and **Secretary, State of Karnataka Vs. Uma Devi &**

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Ors.. Recently again in case of **MGB Gramin Bank Versus Chakrawarti Singh** 2013(6) SLR 227, the Lordships of the Hon'ble Supreme Court again reiterated their earlier view. The claim of the applicant has been rejected on the ground that family is not in a state of financial destitution and small size of the family, its nominal liabilities, sufficient amounts of terminal benefits and regular source of family benefits and regular source of family pension do not reflect any sign of penury.

10. The applicant does not succeed for the simple reason that compassionate appointment cannot be claimed as a matter of right. He had a right of consideration which has been done. Accordingly, the present O.A is dismissed being devoid of merit and barred by time. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Dated: 25.03.2014.

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