

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 73/94
T.A. NO.

DATE OF DECISION 24-7-95

Khagen @ Ch.Lahkar

(PETITIONER(S))

Mr. B.K. Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. G. Sharma Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.73/94

Date of order: This the 24th Day of July 1995.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
SHRI G.L.SANGLYINE, MEMBER (ADMN)

Shri Khagen Chandra Lahkar.
Son of Late Gopinath Deka
Village Lahkarpara, Bharghat.
District Nalbari, Assam Applicant.
By Advocate Mr. B.K. Sharma, M.K. Choudhury.
AND

1. Union of India
represented by the Secretary,
Ministry of Finance,
New Delhi.
2. The Collector of Customs and Central Excise
Shillong
3. The Deputy Collector of Customs & Central Excise,
Shillong.
4. The Asstt. Collector of Customs & Central Excise,
Guwahati-5- Respondents.

By Advocate Mr. G. Sharma Addl. C.G.S.C.

O R D E R.

CHAUDHARI J(VC):

1. Although the application was admitted on 8-4-94 the respondents have not as yet chosen to file written statement though time was granted on earlier occasions. We therefore refused the request of Mr. G. Sharma Addl. C.G.S.C. for further time.

2. It is an application more based on sympathetic ground rather than ^{on} any legal ground. The father of the applicant was employed as a Sepoy in the Customs and Central Excise department. He was declared medically unfit to continue in service ~~on~~ by the Civil Surgeon, Kamrup vide certificate date 14-5-81. Consequently the respondent No. 4 by order dated 3-2-85 allowed him to proceed on invalid

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pension w.e.f. 4-9-81 as per Rule 38 of CCS(Pension) Rules 1972. Mr. Sharma submits that the applicant had applied ~~an application~~ to the respondents seeking compassionate appointment on 9-5-81. According to him it was stated therein that the deceased was the earning member of the family consisting of his wife and three children and his invalid pension was hardly sufficient for the family to maintain itself. He also stated that at that time he was matriculate and aged 22 years. According to the applicant he was given an assurance by the Officer of the respondents that his case would be sympathetically considered and he was also advised to acquire better educational qualification. Accordingly, he pursued his studies and passed Pre-University(Arts) Examination in 1987 and also got his name registered with the Employment Exchange. Thereafter he approached the respondents to consider his appointment in Group 'C' post. But nothing was intimated to him. Meanwhile his parents died and even the invalid pension stopped. The family pension given to his mother was not sufficient to maintain the family consisting of himself and two unmarried sisters and mother. He therefore, once again moved the respondents to consider his request for compassionate appointment but by the letter dated 7-1-94 Annexure 3 the Deputy Controller (P & V) Customs and Central Excise, Shillong informed him that his request could not be acceded to for the reasons already communicated by letter dated 25-6-82 Annexure 4. The applicant has thereafter approached the Tribunal and prays that the respondents may be directed to appoint him on compassionate ground in Group 'C' post and also to pay him adequate compensation for the delay in making his appointment.

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2. The application was admitted subject to the objection of limitation. The order dated 7-1-94 which gave the immediate cause of action to the applicant did not by itself reject the request of the applicant for compassionate appointment. It refers to the earlier letter dated 25-6-82 as amounting to the rejection of that request. It would therefore appear that the cause of action arose against the order dated 25-6-82 and not on 7-1-94. If that be the correct position then the application will have to be treated as barred by limitation under Section 21 of the Administrative Tribunals Act.

3. Mr. B.K. Sharma learned counsel for the respondents however makes following submission in this respect. Firstly he draws our attention to the statement of the applicant in paragraph 4.12. of the O.A. wherein it is stated that he had not been communicated the letter dated 25-6-82 till he demanded a copy after a receipt of the communication dated 7-1-94. The learned counsel therefore, submits that as the applicant was not aware of that order and thus he had no occasion to adopt legal remedies earlier and he can therefore rely upon the letter dated 7-1-94 as affording the cause of action. This submission has force in it.

4. Moreover importantly however Mr. Sharma points out that the order dated 25-6-82 Annexure 4 does not at all state that the request had been refused or the application was rejected. A perusal of the order shows that it merely informs the Assistant Collector that the Collector had considered the representation of the applicant sympathetically as per existing instructions of the Ministry for appointment on compassionate ground where the Government Servant has retired after attaining the age 55 years but does not in

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terms state that the request of the applicant was rejected. Apart from the fact that it is only by implication that this communication has to be construed as rejecting the request the circumstance that it was not served on the applicant although it was stated therein that the applicant may be informed accordingly persuades as to give the benefit of that circumstance to the applicant and not to ~~throughout~~ ^{throu} throughout the application on the ground of bar of limitation.

5. That however does not mean that is possible for us straightaway to direct therespondents to appoint the applicant against Group 'C' post. Considerable time has elapsed since the death of the father of the applicant and the circumstances have also considerably changed. The applicant has also acquired better qualifications and is registered with the Employment Exchange. In the totality of the circumstances and the lacuna in the order dated 25-6-82 as pointed out above, we think that in fairness the respondents might give a fresh consideration to the request of the applicant initially made by his application dated 19-5-81 and reiterated by application dated 10-12-83 mentioned below.

6. Mr. B.K. Sharma relies upon the circular of the Government of India No. 12014/86/Estt(B) dated 30-6-87 ^{where} ~~were~~ under consolidated instructions have been issued in respect of appointment of son/daughter near relative of a Government servant on compassionate ground. Necessarily therefore the respondents would have to be guided by these instructions. Clause B of the instructions provides that in exceptional cases when the department is satisfied that the condition of the family is in great distress the benefit may be extended where the Government servant retired on medical ground under Rule 38 of CCS Pension Rules 1972 before attaining the age 55 years. The order dated 25-6-82 does not specifically refer to these guidelines. The order does

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not indicate that the deceased father of the applicant on the date of his retirement was above 55 years of age. That is required to be ascertained. Moreover as the deceased father of the applicant was Group 'D' employee the consideration would have to be extended up to 57 years of age under the guidelines as he had retired on medical ground. The order dated 25-6-82 appears to be a product of non-application of mind to the aforesaid rule or product of some confusion. That would introduce another legal error into it.

Mr. Sharma now produces a copy of the representation filed by the applicant to the collector Customs & Central Excise, Shillong, dated 10-12-93.

7. Having regard to the circumstances noted above we think that it would be appropriate and in the interest of justice if the Collector of Customs and Central Excise, Shillong applies his mind afresh to the request of the applicant contained in the letter dated 10-12-93,

8. It is unfortunate that the applicant had not chosen to annex a copy of his aforesaid letter dated 10-12-93 to the O.A. Since the impugned reply dated 7-1-94 was however ^{sent} ~~sent~~ in answer to that letter we have taken it into account. Mr. B.K. Sharma now hands over ^a copy of that letter and it is taken on record.

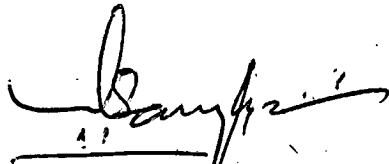
9. In the result we grant leave to the applicant to submit a copy of his letter dated 10-12-93 along with the copy of this order to the Collector Customs and Central Excise, Shillong through respondent No.4. The Collector will thereupon apply his mind to the grounds stated in the letter ^{as also the original application dated 19.5.81,} ~~letter~~ and the request made therein by the applicant and deal with the same ^{appropriately} ~~as appropriate~~ having regard to the


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above discussion and in accordance with the prevailing rules and inform his decision to the applicant. The decision will be taken as expeditiously as practicable .

10. The O.A. is disposed of in terms of the aforesaid order. No order as to costs.


(G.L. SANGLYINE)
MEMBER (ADMN)


(M.G. CHAUDHARI)
VICE-CHAIRMAN

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