

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**RA No.061/00055/2017 IN
OA No.061/00063/2014**

Chandigarh, this the 26th day of March, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Laxmi Kant S/o Late Sh. Surjit Lal, R/o Ram Nagar Keerian, Tehsil & District Kathua, J&K.

....APPLICANT

(Present: Ms. Hemlata Issar, Advocate)

VERSUS

1. Union of India through the Secretary, Ministry of Defence Govt. of India, South Block, New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. The Chief Engineer, Headquarters, Pathankot Zone, Pathankot.

....RESPONDENTS

(Present: Mr. Ram Lal Gupta, Advocate)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

Heard learned counsel for the parties.

2. Present Review Application has been filed seeking review of order dated 22.04.2015, whereby the Original Application seeking appointment on compassionate ground was dismissed on the ground of delay as well as on merit. Against the order of this court, the applicant approached the jurisdictional High Court by filing CWP No.13672 of 2015 which was withdrawn on 24.08.2017, with liberty

to approach this court by filing RA, on the basis of memorandum dated 16.01.2013.

3. Ms. Hemlata Issar, learned counsel for the review applicant vehemently argued that the order under review is bad in law on two grounds. Firstly, this Tribunal cannot be allowed to dismiss the petition on merit, and secondly they have to decide Misc. Application for condonation of the delay and thereafter, this Court if allows delay, then the case of the applicant can be considered on merits. Since the OA was dismissed on the ground of delay as well as on merit, therefore, the order be reviewed. She also argued that the ground taken by the respondents in not considering the applicant, for appointment under the compassionate ground in terms of memorandum dated 16.01.2013 on the basis of earlier condition for considering the case for three times in terms of OM dated 05.05.2003 has been set aside by subsequent OM, as such, there is no bar for considering the case under the compassionate scheme. Thus, she submitted that the impugned order be reviewed and matter be heard on merit, which is opposed by learned counsel for respondents, who submitted that once his case was dismissed on the ground of delay by noting a specific plea in the order that "MA does not disclose sufficient cause for not filing the OA within the prescribed limitation period", therefore, it can be said that his application for condonation of delay has not been considered by this Court. He also submitted that the case of the applicant has been considered eight times for appointment on compassionate grounds, which has also been noted in the order

under review. Therefore, he submitted that the Misc. Application for condonation of delay as well as OA have been dismissed by the Court.

4. We have given thoughtful consideration to the entire matter and are in agreement with the submissions made at the hands of the respondents that the OA was dismissed on the ground of delay as also on merit as his case was considered eight times and the same was finally rejected on 9.2.2013. Fact remains that father of the applicant died on 24.07.2009, thereafter, the case of the applicant was considered and rejected vide order dated 9.2.2013 and the applicant approached the Tribunal by filing O.A.No.061/00063/2014 on 20.10.2014 i.e. after a period of more than five years from the date of death of the father of the applicant.

5. Even in the reply filed to the OA, the respondents have stated that they took various aspects as stipulated in MoD dated 9.3.2001 i.e. family size including age of children, amount of terminal benefits, amount of family pension, liability in terms of unmarried daughter(s), minor children etc moveable/immovable property left by the deceased at the time of his death and to find out the cases of acute financial distress/most deserving cases in relative merit and recommended only the really deserving cases that too only if clear vacancy meant for appointment on compassionate ground existing within the ceiling limit of 5% under direct recruitment vacancies, as such, the case of the applicant was not considered to be rarely

indigent and in penury condition. Even the Hon'ble Apex Court in the case of **Umesh Kumar Nagpal vs. State of Haryana & Ors.** (J.T. 1994(3) S.C. Page 525) has held that compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any point of time.

6. The applicant has alleged that his case for compassionate appointment is required to be considered as per instructions dated 16.1.2013, wherein it was mentioned that his case is required to be considered without any time limit and decision taken on merit in each case. We are not in agreement with the submissions of the learned counsel for the applicant as his father died on 24.7.2009 and the instructions dated 16.1.2013 cannot be made applicable retrospectively.

7. The Hon'ble Apex Court Hon'ble Supreme Court in the case of **U.O.I. Vs. M.K. Sarkar**(2010(2) S.C.C. Page 59), wherein it has again been reiterated that limitation has to be counted from the date of original cause of action and stale matters should not be entertained and accordingly, the Tribunal has rightly rejected the claim of the applicant being time barred.

8. In view of above discussion, we find that the present RA is bereft of any merit and the same is accordingly dismissed.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 26.03.2018.

'kks'