

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

...

ORIGINAL APPLICATION NO.060/00971/2018

Chandigarh, this the 18th day of August, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

...

Parminder Singh Dhiman, aged 30 years,

son of Late Bal Krishan,

presently resident of H.No. 87,

Village, Khuda,

Chandigarh (U.T)

(Group D).

....Applicant

(PRESENT: MR. RANJIT S. DHIMAN, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India,
Ministry of Home Affairs,
New Delhi-110011.
2. Union Territory, Chandigarh through Home Secretary,
Chandigarh Administration,
U.T. Secretariat,
Deluxe Building, Sector 9-D, U. T.
Chandigarh-160009.
3. Chief Engineer, Sector 9, Chandigarh (U.T)-160009
4. Superintending Engineer, Construction Circle II,
Sector 9, Chandigarh (U.T)-160009.
5. Executive Engineer, C.P. Division No. 3,
Sector 15,
Chandigarh-160014.

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Respondents

ORDER (Oral)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. In this O.A. filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged order dated 1.6.2017 vide which his representation dated 15.12.2016 / reminder dated 17.2.2017, for appointment on compassionate ground, has been rejected, and for issuance of a direction to the respondents to consider and grant him appointment on compassionate grounds.

2. Heard learned counsel for the applicant.

3. The facts in brief, leading to the filing of the O.A., are that the father of the applicant Sh. Bal Krishan, Carpenter, expired on 23.5.2002. The widow (Smt. Surjit Kaur) applied for appointment on compassionate grounds but was not approved due to non availability of a vacancy, and it was ultimately deleted from the list on close of 3 years. Then, applicant herein, son, filed a representation dated 15.12.2017 for appointment on compassionate grounds, which has been rejected vide order dated 1.6.2017 (Annexure A-6), on the precise ground that it cannot be acceded to at this belated stage in view of Instructions No.32, 39 and 40 of Compassionate Appointment (Frequent Asked Questions) of Chandigarh Administration, Department of Personnel, Chandigarh, issued vide letter dated 30.12.2015.

3. Learned counsel argued that at the time of death of his father in the year 2002, applicant was minor, thus, his illiterate mother had applied for appointment on compassionate grounds but was not granted but since now applicant has become major, so he is entitled to appointment. Learned counsel argued that since his mother was not given appointment at the relevant point of time and now since the applicant has attained majority, therefore, the respondents may be directed to grant him appointment on compassionate grounds.

4. We have considered the matter carefully and gone through the pleadings with the assistance of learned counsel for the applicant. We are unable to

persuade ourselves to agree with the submissions of the learned counsel for the applicant to grant any relief as there is huge delay in filing the Original Application, and in this case, there is not even an application seeking condonation of delay, so question of any condonation does not arise, at all.

5. The father of the applicant died in the year 2002 and his mother, whose case was duly considered, could not be offered appointment, for lack of vacancy under relevant quota, as per the impugned speaking order, Annexure A-6. The applicant, after attaining majority, submitted a representation which was replied to vide order dated 1.6.2017, Annexure A-6, and his claim stands rejected on the ground of delay. It is, however, argued that impugned order has been passed in 2017, and as such O.A has to be held to be within the period of limitation.

6. It is well settled that if a person is not vigilant about his right by not approaching the court against the adverse order then the court cannot help him by entertaining the petition after a long delay. This plea, apparently, cannot be accepted at all. It is now well settled that the cause of action has to be counted from the original cause, and not from a reply or order if a belated representation is considered and rejected. Moreover, in this case, the very ground taken in order, Annexure A-6, is that the claim is barred by limitation. In the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected,

the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

7. In the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

8. 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".

9. On the aspect of delay in applying for compassionate appointment, the Hon'ble Supreme Court has consistently held that delay in applying for compassionate assistance cannot be condoned, as it would be introducing a concept of condonation of delay, which is otherwise not provided in the scheme of compassionate assistance. The issue of minor asking appointment on attaining majority has been considered in various cases including in the case of **LOCAL ADMINISTRATION DEPARTMENT AND ANR. VS. M. SELVANAYAGAM @ KUMARAVELU**, reported in 2011(2) CLJ (SC) 209 wherein it has been held that when a minor has applied after seven years and six months of his father death, appointment cannot be said to be sub-served the basic object and purpose. The Hon'ble Apex Court has clearly held as under :-

"8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position,

the case of the respondent did not come under the scheme of compassionate appointments."

10. In view of the settled legal position and the inordinate delay, in seeking employment assistance, there is no manifest illegality in rejecting the request of the applicant and O.A accordingly deserves to be rejected. Even otherwise also, the case has no merit. The object of the scheme of the compassionate appointment is to provide financial assistance to mitigate the hardship occurred to the family due to the sudden death of the bread winner, who had left the family in penury and without any means of livelihood. This cannot be taken as a source of employment by the family members. There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there is some specific provision.

9. In the background of aforesaid discussion, this O.A. is dismissed being barred by time, as well as on merit also.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 18.08.2018

HC*