

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Misc. Application No.290/00148/2017 in
Original Application No.290/00151/2017**

Date of Order: 26.10.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Smt. Gulab Kanwar w/o Late Sh. Narain Singh aged about 47 years, r/o Village Devli Khurad, Tehsil Parbatsar, District Nagaur. Wife of Ex Majdoor under Commander 19 Field Ammunition Depot (FAD) Pin No. 909719 C/o 56 APO.

...Applicant

(By Advocate: Mr. S.K.Malik)

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commander, 19 Field Ammunition Depot Pin Code 909719 C/o 56 APO
3. Personnel Officer, 19 Field Ammunition Depot Pin Code 909719 c/o 56 APO.

...Respondents

(By Advocate: Mr. K.S.Yadav)

ORDER (ORAL)

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

- (i) By an appropriate writ order or direction respondents may be directed to produce the entire record of Unit Board on the basis of which case of applicant along with other candidates was considered for compassionate appointment.
- (ii) By an order or direction impugned letter dated 12.02.16 at Annx A/1, impugned order dated 31-07-2000 at Annx.A/2 and impugned order dated 09.10.2001 at Annx.A/3 be declared illegal and be quashed and set aside.
- (iii) By an order or direction respondents may be directed to consider the case of applicant for compassionate appointment and give her appointment on compassionate grounds with all consequential benefits.
- (iv) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (v) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief facts of the case, as pleaded by the applicant, are that husband of the applicant Late Shri Narain Singh while working on the post of Majdoor in the respondent department died on 25.6.1998. He was survived by his mother, wife, two minor daughters and two minor sons. The family is residing in a rented house and getting meagre pension and this amount is insufficient for the family to survive. Also meagre terminal benefits have been granted and the condition of the family is indigent and pathetic. The applicant is literate only to the extent that she is able to sign. The applicant has no immovable property and she has requested for compassionate appointment so that good education and facilities can be granted to her children. She has preferred application for compassionate appointment after receipt of letter from the respondents dated 6.3.1999,

but since no response was given to her application, she ultimately filed an application dated 29.1.2016 before the respondents and they have replied vide letter dated 12.2.2016. Accordingly, the applicant prays that the respondents be directed to consider her for compassionate appointment with all consequential benefits.

3. The applicant has filed a Misc. application No.290/00148/2017 for condonation of delay in approaching this Tribunal. The Tribunal vide its order dated 5.5.2017 issued notice only on the Misc. Application for condonation of delay and the same has been replied by the respondents on 2.1.2018.

4. The respondents have stated that the applicant in the Misc. Application for condonation of delay has not given any strong and cogent reason for the delay to be condoned. It is the case of the respondents that though they have replied the applicant vide their letter dated 12.2.2016, but it is only towards the application made by the applicant on 29.1.2016 seeking compassionate appointment. It is further submitted that the actual cause of action has arisen vide letter dated 9.10.2001 by which the applicant was informed that her case for compassionate appointment stands

rejected finally. It is also clear that the applicant was earlier informed vide letter dated 31.7.2000 on her application dated 21.11.1998 pertaining to the said issue. She was informed on 9.10.2001 that her case for employment in relaxation to normal rules was considered by the Board of Officers, but she could not be selected on the basis of the criteria laid down on the face of more deserving cases and limited number of vacancies at that juncture and accordingly her case stands rejected. The applicant kept mum over the matter since receipt of the impugned order dated 9.10.2001, but has approached this Tribunal only by filing the present OA on 2.5.2017. The letter dated 12.2.2016 which is in reply to letter of the applicant dated 29.1.2016 is not the actual cause of action made out by the applicant to show that she has filed the present OA within time. The respondents have further stated that the present OA is grossly barred by limitation as per Section 21 of the Administrative Tribunals Act, 1985 as the respondents have informed the applicant finally vide letter dated 9.10.2001. But, the applicant has approached this Tribunal only in 2017. Thus, the present OA is grossly barred by limitation and accordingly the same deserves to be dismissed on this ground alone. The respondents have relied on the Apex

Court judgment in the case of Bhoop Singh vs. Union of India, (1992) 3 SCC 136 and CAT, Jaipur Bench judgment passed in OA No.585/2009 wherein the cases of C.Jacob vs. Director of Geology and Mining, (2009) 10 SCC 115 and Union of India and Ors. vs. M.K.Sarkar 2009 AIR (SCW 761 have been dealt with in detail vide order dated 22.3.2010. The CAT-Jaipur Bench had dismissed the OA stating that granting relief to the applicant at this belated stage will not only affect the right of third party but also cause drainage to the public funds and, therefore, no relief was given in public interest. Therefore, the respondents pray that the present Misc. Application as well as OA require to be dismissed.

5. In rejoinder the applicant has reiterated the averments made in the OA.

6. Heard Shri S.K.Malik counsel for the applicant and Shri K.S.Yadav, counsel for the respondents and perused the material available on record.

7. It is the case of the applicant that though she is illiterate, but she can only sign the documents. As she could not understand much, she was continuously visiting the respondents' office and therefore, only when advised by the

employees of the respondents, she finally made an application on 29.01.2016 for granting her compassionate appointment, but she could not get the same. According to the applicant, she has not received the letters dated 31.7.2000 as well as 9.10.2001, but it is only along with impugned order dated 12.2.2016 that she had received these two letters. According to the applicant, there is no delay on her part, but it is actually the respondents who have delayed by not deciding her application and therefore, the impugned orders dated 12.2.2016, 31.7.2000 and 9.10.2001 deserve to be quashed and set aside. The applicant further contended that only after consultation and advise by the respondents she has written a letter to the respondents on 29.1.2016 and, therefore, it only after receipt of their letter dated 12.2.2016, she has approached this Tribunal on 2.5.2017. Therefore, there is no delay on her part and the delay in filing the OA, if any, should be condoned and the matter be heard on merit. In support of her contention, the applicant has relied on the following judgments:-

- i) State of Nagaland vs. Lipok AO and Others, (2005) 3 SCC 752
- ii) Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., AIR 1987 SC 1353

- iii) Bani Singh vs. Union of India and Others, (1989) 9 ATC 849
- iv) B.S.Sheshagiri Shetty and Ors. vs. State of Karnataka and Ors., (2016) SCC 123

The sum and substance of the judgments relied by the applicant is that delay should be condoned and the matter should be decided on merit. She has also contended that the proof by sufficient cause is a condition precedent for exercise of extraordinary discretion vested in the court. Therefore, what counts is not the length of delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion

8. The respondents have reiterated the averments made earlier and have further stated that the department had already replied to the applicant in the year 2001 and if no reply was given by the department, the applicant need not wait, but should have approached the Tribunal well within the time for redressal of her grievance. The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the deceased employee

concerned from financial destitution and to help it get over the emergency. In support of his contention, the learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in the case of **C.Jacob vs. Director of Geology and Mining** (supra), wherein the following observations were made by the Apex Court:-

"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 the ex-employees file an application/writ petition, not with reference to the original cause of action of 1982 but by treating the rejection of representation given in 2000 as the cause of action. A prayer is made for quashing the rejection of representation and grant of the relief claimed in the representation and proceed to examine the claim on merits and grant relief. In this matter, the bar of limitation or the latches get obliterated or ignored."

Therefore, the respondents contend that the present OA filed by the applicant is grossly barred by limitation and deserves to be dismissed

9. Considered the rival contentions made by the parties.
10. It is undisputed fact that late Shri Narain Singh, husband of the applicant, expired on 25.6.1998. The respondents vide their letter dated 6.3.1998 informed the

applicant to submit documents and accordingly case of the applicant was considered by the respondents. It is clear that the respondents had replied to the applicant's application dated 21.11.1998 on 31.7.2000 that her case was considered for compassionate appointment in relaxation of normal rules of recruitment. She was also directed to submit further details in the format as required within the time frame. Finally vide letter dated 9.10.2001 in response to the applicant's application dated 14th August, 2000, case of the applicant was considered and finally rejected and she was intimated about the same. It is clear that the impugned order dated 12.2.2016 (Ann.A/1), as challenged by the applicant, is only reply to her application dated 26.1.2016. After final rejection of her case in the year 2001, the applicant has waited and made application in the year 2016 which was replied by the respondents stating that the applicant was informed in the year 2000 and 2001. As the actual cause of action has arisen only in the year 2001, the applicant has miserably failed to explain the extraordinary delay in approaching this Tribunal and no cogent reasons have been given by the applicant for the delay to be condoned.

11. It is evident from record that the applicant was informed in 2001 about final closure of his case and she should have approached the Tribunal well within time as prescribed u/s 19 of the Administrative Tribunals Act, 1985. In the present case, the applicant is seeking compassionate appointment. The employee expired in 1998 and approaching this Tribunal seeking compassionate appointment in 2017 defeats the purpose and object of the scheme for compassionate appointment. Therefore, in my considered view, the applicant has failed to explain the inordinate delay in approaching this Tribunal and neither any strong reason nor any grounds are made out for the delay to be condoned, hence, the OA is grossly barred by limitation. The ratio as laid down in the case of **C.Jacob** (supra) is mutatis-mutandis applicable to the present controversy. The cases cited by the applicant are not applicable in the facts and circumstances of this case.

12. In the light of the aforesaid reason, the application for condonation of delay is dismissed. Resultantly, the OA also stands dismissed as barred by limitation. Parties are left to bear their own costs.

(HINA P.SHAH)

JUDL. MEMBER

R/