

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.**

O.A.2033/2017

Dated this Tuesday the 9th day of October, 2018.

Coram; Dr.Bhagwan Sahai, Member (A).

Pravin Jayawant Suryawanshi,
Age-45 Yrs., Occ: Unemployed,
R/o. 06, Nehru Colony,
Pension Nagar, Katol Road,
Nagpur - 440 013. .. Applicant.

(By Advocate Shri A.N. Dighore).

Versus

1. The Union of India, through its Secretary, Department of Post, Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi - 110 001.
2. The Chief Postmaster General, Maharashtra Circle, Mumbai - 400 001.
3. The Postmaster General, Nagpur Region, Nagpur - 440 010.
4. The Superintendent of Railway Mail Services F Division, G.P.O. Compound, Nagpur - 440 001. .. Respondents.

(By Advocate Shri R.G. Agrawal).

Order reserved on : 31.08.2018

Order delivered on : 09.10.2018.

O R D E R

1. Through this O.A. the applicant seeks relief in terms of quashing and setting aside of the

orders dated 23.02.2007 and 21.03.2007 and Minutes of the Circle Relaxation Committee (C.R.C.) held on 04.11.2006/8.11.2006, and direction to the respondents to employ him on compassionate grounds to the post of Postal Assistant or Sorting Assistant.

2. Facts of the stated in brief:-

2 (a) . Father of the applicant i.e. late Shri Jayawant Suryawanshi (date of birth 20.11.1943) had joined as Postal Assistant on 16.11.1963 with the Superintendent of Railway Mail Services, Nagpur.

2 (b) . He came to be declared by the Medical Board as completely incapacitated and invalidated for further service of any kind and as per provisions of Rule 38 of C.C.S. (Pension) Rules, 1972 was invalidated for Government service from 25.02.1999.

2 (c) . At the time of his retirement on being invalidated, he was 54 years old. After retirement he received his due terminal benefits and monthly pension. At the time of his invalidation for Government service, there were 5 other members in his family i.e. his wife, 3 sons and 1 daughter.

2 (d) . The present applicant is one of the sons of late Shri Suryawanshi. His date of birth is 23.11.1971. The ex-employee late Shri Jayawant Suryawanshi expired on 06.03.2012. The present

applicant made request on 10.10.2000 for compassionate appointment to the post of Postal Assistant. This claim was rejected by the Circle Relaxation Committee (C.R.C.) in its meeting held in the office of Chief Post Master General, Maharashtra Circle, Mumbai on 04.11.2006 to 08.11.2006.

2(e). The applicant claims that he is not having any landed property except his small house in Nagpur. The Respondent No.2 did not recommended his case to Respondent No.3 i.e. Postmaster General, Nagpur Region because of which his request has been rejected.

2(f). The applicant has claimed that one other candidate included in the list placed before the C.R.C. for consideration in its meetings on 4th to 8th November, 2006 i.e. Shri Dinesh S. Meshram was also not recommended by the Committee and Postmaster General but he has been selected and appointed although indigency of the applicant was more deserving than the selected candidate.

2(g). The applicant has also requested for condonation of delay in filing the O.A. through M.A.2140/2017. According to him this delay is of 8 years, 11 months and 8 days. He has mentioned that he submitted many representations in 2007 and 2016 to different authorities, including the Hon'ble

Minister of Communications, Government of India. But because of poor family condition he could not get guidance from anybody and, therefore, this delay has taken place, which should be condoned.

3. Contentions of the parties:-

The applicant's Advocate has contended that-

3(a). delay of 8 years, 11 months and 8 days in filing the O.A. should be condoned in view of the indigent condition of the family;

3(b). although his application for compassionate employment submitted in October, 2000 was considered on 04.11.2006, but his case was rejected on 23.02.2007. This rejection was non-recommendation of his case by the Postmaster General, Nagpur;

3(c). although the applicant's case was wrongly rejected, 3 other persons i.e. Shri Dinesh S. Meshram (Sr.No.15 in the list of C.R.C.), Shri Amol R. Kulkarni (Sr.No.14) and Shri Mangesh V. Patole (Sr.No.21) came to be selected by the Committee headed by the Chief Post Master General during the meeting held on 4th to 8th November, 2006;

3(d). the other 3 candidates selected by the Committee were financially better off than the applicant but because of discrimination his case was rejected;

he has relied on 3 case laws :- (i) the first is Apex Court decision dated **03.01.1979** -

Madras Port Trust Vs. Hymanshu International (1979 (4) SCC 176). In this case law observations have been made about consideration of plea of limitation. It has been mentioned that the Governments and public authorities should adopt the practice of not relying upon technical pleas for the purposes of defeating legitimate claim of the citizens and do what is fair and just to the citizens;

(ii) the second is the decision of this Tribunal in **O.A.598/1986 decided on 29.08.1988 - Kamla Devi Vs. Union of India**. In this case the above case law i.e. Madras Port Trust Vs. Hymanshu International and some other cases were referred to and the stand taken by the Apex Court was reiterated that Government should not stand on technical pleas with respect to the point of limitation in cases of hardship;

(iii) the third is a decision of this Tribunal, Ahmedabad Bench in **O.A.374/2014 decided on 30.06.2015 - Vijay Makwana Vs. Union of India & Others**. This O.A. pertained to a case of compassionate appointment. In para 16 of this decision of the Tribunal, the view taken by the Apex

Court in Para 20 of the Bhawani Prasad Sonkar has been reproduced:-

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time....."

In reply to the O.A., the respondents have contended that -

3(e). the applicant has applied for compassionate appointment on many occasions through several applications/representations. Therefore, the claim of the applicant that he could not get proper guidance due to his poor family circumstances leading to delay in filing the O.A. is not correct;

3(f). this application has been made after lapse of 11 years from the rejection of his claim in 2007. Therefore, it should be decided sympathetically on limitation. The C.R.C. had considered his case along with others and did not recommended his case

on merits as per rules and regulations. Accordingly the applicant was also informed vide letters of 23.02.2007 and 21.03.2007;

3(g). that after lapse of 8 years the applicant made a representation on 19.12.2015 to the respondents which was replied on 23.01.2016. As per DOPT OM dated 09.10.1998, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and provide relief to the family of the deceased employee. The compassionate appointment cannot be granted after lapse of long period;

3(h). it has been held by Apex Court decision of 28.02.1995 in **LIC Vs. Mrs.Asha Ramchandra Ambekar and others (JT 1994(2) SC 183)** that a Court/Tribunal cannot give appointment to a person on compassionate grounds but can merely direct consideration of the claim to the applicant;

3(i). the amount of family pension i.e. Rs.11,823/- and dearness relief on it is adequate to cater to the needs of the family of the deceased pensioner. The C.R.C. had considered the case of applicant properly as per the office letter of 23.02.2007;

3(j). the claim of the applicant that in rejecting his case the C.R.C. discriminated against

him is false. As per the DOPT OM dated 09.10.1998, the scheme for compassionate appointments is to provide such employment to a dependent family member of a Government servant who dies while in service or is retired on medical grounds.

The respondents' Advocate has submitted that -

(i) the O.A. has been filed after 9 years and because of the long delay in filing this application (i.e. O.A.), it deserves to be dismissed;

(ii). compassionate appointment is not a right of the family of ex-employee, it can be provided only as per the provisions of the Scheme on this subject and number of children dependent on the ex-employee, sources of income, property held, etc. are to be considered while deciding the applications for such employment. The object of the compassionate appointment is to provide immediate relief to the family. The family of the ex-employee has already been maintaining itself for 19 years after retirement of the ex-employee.

4. Analysis and conclusions:-

4(a). It is to be specifically noted here that the impugned order is of 23.02.2007, whereas the O.A. has been filed on 06.02.2017. Thus there is delay of 9 years, 11 months and 18 days, it is not

only of 8 years, 11 months and 8 days as claimed by the applicant.

4 (b) . The M.P.2140/2017 filed by the applicant for condonation of delay simply mentions that the applicant had made certain representations in 2007 and thereafter in 2016. But why he waited for so long from 2007 to 2016 has not been explained. The only mention is of poor family condition, because of which the applicant claims that he could not get proper guidance to approach the Tribunal. From this it appears that no proper justification has been put forth by the applicant or his counsel for this long delay of almost 10 years in filing the O.A. The claim of the applicant that because of poor condition he could not get guidance for approaching the Tribunal is not reliable and acceptable as he himself made many representations particularly during 2016. In view of this, the M.P.2140/2017 is rejected.

4 (c) . The ex-employee i.e. Shri Jayawant Suryawanshi had joined service on 16.11.1963, he retired on 25.02.1999 and expired on 06.03.2012. The present applicant is also now 47 years old (his date of birth is 23.11.1971) and at this stage consideration of his case would mean the consideration after 19 years and 8 months of

retirement of his father. The compassionate appointment cannot be claimed as of right and it is provided by the employer only by making an exception to the recruitment rules to provide immediate relief to the family of the deceased employee or employee retired on medical grounds.

4(d). In the present case, because of the extreme long delay in filing the O.A. and for seeking compassionate employment at this stage is not justified. On page 30-31 of the O.A., there is copy of application of the present applicant dated 08.05.2007 in which under Part A of Para 3, he himself had mentioned that his younger brother was working with Maharashtra state Electricity Distribution Company i.e. a State Government Undertaking at Chakan, Pune.

4(e). Based on his earlier applications, I find that the concerned Committee of the respondents headed by the Chief Postmaster General in its meeting held on 4th to 8th November, 2011 had taken into account various parameters for analyzing eligibility of the applicants for compassionate appointment and based thereon the case of the present applicant was not recommended. In pursuance to that the letter of 23.02.2007 (the subject matter of this O.A.) was sent on behalf of Principal Chief

Postmaster General, Mumbai to the Postmaster General, Nagpur explaining as to why applicant's case had been rejected. One reason mentioned was that family of the deceased employee was not in indigent condition and vacancies were also not available under the relaxation quota. It was also clarified that in most deserving cases when the Government servant dies in harness, compassionate appointment is given.

4(f). As explained by the respondents, the core justification for compassionate employment is not there in the present case. The ex-employee had taken retirement on 25.02.1999 i.e. 19 and half years ago and he expired on 06.03.2012 i.e. 6 and half years ago. After such a long time of retirement of the ex-employee and his death, and when the family has been able to maintain itself with family pension etc. at this stage compassionate employment to the applicant cannot be justified and, therefore, rejection of his application by the respondents is right.

4(g). After applying my mind to these facts of the present case, I conclude that the applicant has not been able to make out a fully justified case for allowing the O.A. Therefore, this O.A. fails.

5. Decision:-

O.A.2033/2017 is dismissed on account of limitation as it has been filed after 9 years, 11 months and 18 days of the impugned order and also on merits.

**(Dr.Bhagwan Sahai)
Member (A) .**

H.

