

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00330/18

With MA No. 290/00246/18

Reserved on : 04.12.2018

Jodhpur, this the 5th December, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Bharat Phulwari S/o Late Sh. Shiv Charan Phulwari, aged about 23 years, R/o 265, Sardar Patel Nagar, Over Bridge Road, Pali, Rajasthan. Father of the applicant was working as clerk at the office of respondent No. 3.

.....Applicant

By Advocate : Mr B.S. Tanwar.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Postal, New Delhi.
2. The Chief Post Master General, Rajasthan, Jaipur.
3. The Sr. Superintendent of Post Office, Jodhpur Head Office, Jodhpur.

.....Respondents

ORDER

The present original application has been filed under Section 19 of the Administrative Tribunals Act, 1985 alongwith Miscellaneous Application under Section 22 of the said Act seeking direction on the respondents to consider the case of applicant for appointment on compassionate grounds.

2. Father of the applicant Late Shri Shiv Charan Phulwari died while in service on 13.10.2007. Thereafter, wife of late Shri Shiv Charan Phulwari, i.e. mother of the applicant applied for

appointment on compassionate grounds for her son Shri Bharat Phulwar (applicant) and respondents vide letter dated 16.03.2007 (Annex. A/2) sought some documents for considering the same. It is submitted that after passing of long time when no action was taken by the respondent authority, applicant approached the respondents and submitted representations but respondents did not redress the grievance of the applicant. Thereafter applicant served legal notice dated 15.06.2018 (Annex. A/3) and has approached this Tribunal seeking direction for the respondents to consider his case for appointment on compassionate grounds as he is graduate person having RSCIT certificate in computing and also cleared Polytechnic from BTER in the year 2015 with 63.75%.

3. In MA filed for condonation of delay, the applicant submitted that he is a poor person having young age, poor financial condition and his family is living in difficult financial condition. There is no one to take care of him after death of his father. Before attaining the age of majority, his mother tried best to get the response from the authority and submitted various letters. It was obvious for the respondents to consider the genuine grievance of the applicant but only assurances were given to the applicant and his mother, whereas time and again they personally met with the authorities that appointment may be given but the same was not done so. However, authorities of respondent-department for a long time assured the applicant that his case will be considered

but after passing of long time his case was not considered, therefore, he approached this Tribunal. Thus, the delay caused in filing the O.A. is bonafide one.

3. It is evident from the averments made in the OA as well as MA for condonation of delay that there is no valid justification for delay in filing the present Original Application as well as there are apparent contradictions in the averments made by the applicant. As per averments made by the applicant, the deceased govt servant expired on 13.10.2007 whereas mother of the applicant applied for compassionate appointment for her son soon thereafter and the respondents sought the documents vide letter dated 16.03.2007. As such, the date of death, i.e. 13.10.2007 and date of response by the respondents with regard to compassionate appointment, i.e. 16.03.2007 are contradictory. Be as it may, the applicant has averred to have made number of representations before the respondent authorities but none were placed on record. Accordingly, there is gross delay of almost 11 years in filing the present OA and there is nothing on record to justify the same.

4. Further, from perusal of the original application, it is seen that the mother of the applicant filed the application for compassionate appointment of his son. From perusal of Annex. A/2, it is revealed that the letter was issued by the Superintendent, RMS, ST Division, Jodhpur to Jitendra Phulwari

S/o Shiv Charan Phulwari who is admittedly not the applicant herein who prima-facie appears to be other son of the deceased govt. employee. The applicant has annexed the said document, which is not issued to him. Therefore, I find that the applicant has not come before this Tribunal with clean hand.

4. Furthermore, applicant filed the instant OA at the age of 23 years whereas his father died on 13.10.2007. As such, the applicant was 13 years of age when his father died. Hon'ble Supreme Court in Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}, in paragraph-3 of its judgment, held as under:-

3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

5. For the reasons discussed in foregoing paragraphs, it is clear that the applicant has not approached this Tribunal with clean hands and there is also gross unexplained delay of almost

11 years. Accordingly, OA as well as the MA are dismissed in limine with no order as to costs.

**[Hina P. Shah]
Judicial Member**

Ss/-