

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 01st day of August 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/01287/2014

Smt. Poonam Devi, Wife of Late Sushil Kumar, Resident of 156, Durga Nagar, Post Ruhel Khand Vishwavidyalaya, District Bareilly.

.....Applicant

By Advocate: Shri I.P Srivastava

Versus

1. Union of India through its Secretary, Ministry of Ministry of Agriculture Government of India New Delhi.
2. Secretary, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi 110001.
3. Director, Indian Veterinary Research Institute, Izzatnagar,, 243122 (U.P) India.
4. Assistant Administrative Officer, Indian Veterinary Research Institute, Izzatnagar 243122 (U.P) India.
5. Assistant Secretary (Animal Science), Indian Council of Agricultural Research, Krishi Bhawan Dr. Rajendra Prasad Road, New Delhi 110001.

... Respondents

By Adv: Shri N.P Singh

ORDER

1. The present O.A. has been filed by the applicant Smt. Poonam Devi seeking following reliefs:-
 - "(a) An appropriate order or direction setting aside the impugned orders dated 30.09.2009, 20.10.2009 and 22.05.2014 passed by Assistant Administrative Officer, Indian Veterinary Research Institute Izzatnagar, U.P Assistant Secretary (Animal Science) Indian Council of Agricultural Research, New Delhi and Assistant Administrative Officer, Indian Veterinary Research Institute Izzatnagar, UP respectively respondent Nos. 4, 5 and 4 (Annexure Nos. A1, A2 and A3 respectively to compilation No.1 of original application).

- (b) to issue an appropriate order or direction to the respondents to consider the appointment of the applicant on compassionate ground.
- (c) To issue an appropriate order or direction directing the respondents to appoint the applicant on compassionate ground forthwith.
- (d) Issue any other order or direction as this Hon'ble High Court may deem fit and proper in the circumstances of the present case.
- (e) To allow this original application with all costs in favour of the applicant".

2. Case of applicant is that on death of her husband Sushil Kumar while serving in the office of respondent No.3 expired on 22.11.2003 due to Cancer, she filed an application for appointment on compassionate ground on 16.1.2004 which was rejected by the Committee. Applicant in this regard seeks quashing of order dated 30.09.2009 passed by respondent No. 4, 20.10.2009 passed by Assistant Secretary (Animal Science) ICAR (respondent No. 5) and order dated 22.05.2014 passed by Assistant Administrative Officer, IVRI, Izzatnagar. It is further case of applicant that time and again, she approached the respondents who informed her that due to unavailability of post, she could not be appointed on compassionate ground and her case would be considered in the future meeting of the department. By the impugned order dated 30.9.2009 the request of appointment on compassionate ground was rejected, which reads as under:-

**"Jherh iue noh iRuh Lo0 Jh 'kli y dekj dks muds i kFkuk
 i = fnukd 14-01-2014 24-8-09 tks fd I kFkku ea d: .kneyd
 vkkj ij fu; Dr ds fo'k; ea Fkj ds I antk ea I fpr fd; k
 tkrk gS fd muds i kFkuk i = ij funskd egkn; }jk xBr
 I fefr }jk fnukd 17-07-2005 08-04-2009 o 11-08-2009 dks
 vks; kfr cBdks ea I gkukfir i vld fopkj fd; k x; k i jUrq i nks
 dh vunpi yCkrk ds dkj.k ,oa Hkj r I jdkj ds dk; k; Kki u
 I ;k 14014@19@2002 &LFkko 1Mh½ fnukd 05-05-2003 ea**

mfYyf[kr funks ds vuq kj@vk/kj ij fu; Dr djuk I Eko uk gksus ds dkj.k I fefr }kj vLohdr dj fn;k x;kA

bI fo"k; eaHkjrh; df"k vuq akku i fj'kn ds nsk Hkj ea fLFkr I AFku dks Hh ,s I eLr i kFkz ks dh I ph Hst dj vuqk fd;k x;k fd os vius I AFku eamiyCk fjDr inka ij fu; Dr inku djus dh dik djA

vr%Jherh iue nsh iRuh Lo0 Jh I qhy dkj dks [kn I fgr I spr fd;k tkrk gS fd mudh d: .Keyd vkkj ij fu; Dr gsrqik=rk fujLr@vLohdkj dh xbZ gA"

3. It is also the case of applicant as per O.A. that:-

" 17. That long time passed the applicant could not get any appointment. The condition of the applicant was getting worse day by day. Subsequently keeping in view of the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010 the issue of 3 years time limit was re-examined in consultation with Ministry of Law. It was decided to withdraw the instruction of limit of 3 years. A true photocopy of the Office Memorandum dated 26.07.2012 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) is being filed and marked as Annexure No.A13 to Compilation No.II to the Original Application.

18. That after coming to know about the decision of the Government to consider the case of compassionate appointment even after the lapse of 3 years incase of genuine need. The applicant wrote to the Director Indian Veterinary Research Institute, Izzatnagar U.P. to give compassionate appointment to the applicant. A true copy of the application dated 15.04.2014 is being filed and marked as Annexure No.A14 to Compilation No.II to the Original Application.

20. That the applicant enquired through one Sri H.D. Sharma vide application dated 6.1.2014 about the position of compassionate appointment and vacancy, then it was

informed that 4 persons were appointed in between 19.10.2004 to 3.9.2009 and there was vacancy of 174 since 2010 to 2012. A true copy of the reply/information dated 6.1.2014 is being filed and marked as Annexure A 15 to compilation No.II to the Original Application.

21. That the respondent No. 4 did not consider the averments made in the application dated 15.04.2014 and in an arbitrary manner mechanically passed in the impugned order dated 22.05.2014 whereby rejected the application dated 15.04.2014 on the ground that her case of compassionate appointment was rejected on 30.09.2009 and further no further action was required. A true photocopy and typed copy of the impugned order dated 22.5.2014 is being filed and marked as Annexure No. 3 to compilation No. 1 to the Original Application".

4. In the counter affidavit, it has been averred that the O.A. is barred by period of limitation laid down in section 21 of Administrative Tribunals Act, 1985. It is further case of applicant that impugned order rejecting the application of applicant was issued in accordance with the guidelines of Government of India as well as the OM. In the rejoinder affidavit, applicant has reiterated the pleas raised by her in the OA.
5. I have heard learned counsels for the parties and perused the material on record.
6. It was argued by learned counsel for the applicant that the case of applicant was rejected in violation of the law laid down by the Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 13102/2010 vide order dated 07.05.2010 as well as OM dated 26.7.2012 (Annexure A-13) issued by DOPT and submitted that as per the aforementioned order and OM, the limit 3 years to consider the case of compassionate appointment had been withdrawn. So, the question is whether the applicant can be limited for consideration to three occasions.
7. The settled law with regard to the compassionate appointment is that the applicant does not have any right for such appointment, but he is to be considered fairly in accordance with the scheme/rule for compassionate appointment formulated by Government. In the case

of Bhawani Prasad Sonkar vs. Union of India and others reported in (2011) 4 SCC 209, it was laid down by Hon'ble Apex Court as under:-

"19. 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.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

8. As per, the respondents, the application was considered for a maximum time of 3 occasions and since limited vacancies were available, case of applicant could not be accepted.
9. Reference may be made to judgment of Hon'ble High Court, Allahabad dated 31.05.2018 in Special Appeal No.916 2009 titled Food Corporation of India through Executive Director and others Vs. Hari Ram. In the said case, it has been held by Hon'ble High Court that :-

"..... Court has recorded finding to the effect that Court will not ordinarily interfere with such policy of fixing time limit unless it

is ex facie arbitrary and unreasonable. In interview maximum limit of 3 years, does not appear to be unreasonable considering objective of providing compassionate appointment hence we do not find ourselves in argument with the view taken by learned Single Judge.

We may point out that in Umesh Kumar Nagpal v. State of Haryana and Others (1994) 4 SCC 138, while considering object of compassionate appointment to enable family to come out of certain crisis occurred on account of death of bread-earner in harness, Court held that principle behind compassionate appointment is bad conditions of deceased family only. Since, it is an appointment against general rule of direct recruitment, caution and care has to be taken that only in genuine cases appointment should be offered, more especially in the circumstances when quota is only 5 percent to the vacancies available under direct recruitment category.

On the question of interference of Court regarding fixation of cut-off date and inference in the policy decision of Government and Department, settled legal position is that Courts are not to decide as to what should be cut-off date and as to what should be time limit for a particular benefit to be offered under a particular scheme."

10. Therefore, in view of the law laid down by the Hon'ble High Court in case of Hari Ram (supra), the contention of applicant that her case is to be considered beyond the limit of 3 years cannot be accepted.
11. Learned counsel for applicant submitted that as per information under R.T.I Act, it was informed that between 2010-2012, there were 174 vacancies and, therefore, the applicant should have been appointed against the said vacancies. On the other hand, learned counsel for the respondents submitted that even if there were 174 vacancies, the same were existing between 2010-2012 whereas the case of the applicant was rejected in the year 2009 and, therefore, she was not eligible to be considered thereafter. The contention of learned counsel for the respondents has force and to be accepted.

12. Even otherwise assuming that applicant has a cause of action to institute the instant O.A. The question of the O.A. being barred by period of limitation arises. Indubitably, the application for compassionate appointment filed by the applicant was rejected vide order dated 30.09.2009 and communicated immediately to her. No doubt the OM was issued in the year 2012 doing away with the limit of three years for consideration of a case for compassionate appointment, however, the OM is not retrospective in nature and, therefore, cannot apply to the case of applicant which was disposed of in the year 2009. No doubt she made a representation in the year 2014 which was disposed of vide order dated 22.5.2014 but again this representation cannot extend the period of limitation in any manner whatsoever.
13. So the cause of action accrued to the applicant in the year 2009 whereas the present OA has been filed in the year 2014. This clearly shows that the O.A. is barred by period of limitation, as per, Administrative Tribunal Act, 1985.
14. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. That Section reads as follows:-

“21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in subsection (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

15. It is settled law 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.

16. In the instant case, the cause of action accrued in the year 2009 and, therefore, the applicant even if given the benefit of one and half years to file the OA ought to have filed the O.A. in the year 2011 but the applicant choose to file the OA in the year 2014 which is beyond the period of limitation settled by Section 21 of the Act. No application for condonation of delay has been filed. Delay and laches, on part of the applicant to seek remedy is written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered

opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition.

17. The applicant has not adduced any cause that prevented her from filing the Application within the prescribed period of limitation. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, by the Hon'ble apex Court it has been held as follows:- "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)".
18. Reference may be made to observation of Hon'ble Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, 1994 SCC (4) 138, wherein it has been held that :-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit..... However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful

employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class 11 posts.The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned..."

- 19 As observed by the Hon'ble Apex Court in *Union of India Vs. Harnam Singh*, 1993(2) S.C.C. 162, 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.
20. In the light of the aforesaid observation of the Hon'ble Supreme Court, I am not satisfied that the applicant had sufficient cause for not

making the original application within the period of limitation envisaged by Administrative Tribunal Act, 1985.

21. In the result, for the foregoing reasons, the present OA being devoid of merit and barred by period of limitation is dismissed. There shall be no order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-