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1

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 507 of 2013

Reserved on -29.03.2016
Date of order: 31.03.2016

Present:

The Hon'ble Mr. Justice Vishnu Chandra Gupta Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Babla Ghosh, son of Late Kanailal Ghosh (Ex Messenger GSI CHQ J.L.Neheru Road, Cal-16) residing at Vill. Bargachia, Po. Nalikul, Dist. Hooghly, Pin-712 407.
2. Smt. Beauty Ghosh, W/o. Late Kanailal Ghosh (Ex. Messenger GSI CHQ J.L.Neheru Road, Cal-6) residing at Vill. Bargachia, Po. Nalikul, Dist. Hooghly, Pin-712 407.

.....Applicants

For the Applicant: Mr.D.Banerjee, Counsel

-Versus-

1. Union of India service through the Secretary, Ministry of Steel and Mines, Geological Survey of India, Sastri Bhawan, New Delhi-1.
2. Director of Administration, GSI 4 Chowrangi Lane, Cal-16.
3. Administrative Officer, GSI CHQ, Cal-16.

.....Respondents

For the Respondents: Mr.S.K.Ghosh, Counsel

ORDER

MS. JAYA DAS GUPTA, AM:

There are two applicants in this OA. The Applicant No. 1 (Babla Ghosh) and Applicant No.2 (Smt. Beauty Ghosh) are son and widow of Late Kanailal Ghosh who while working as

207

Messenger, GSI CHQ J.L.Neheru Road, Cal-16 died in harness on 15.05.1999.

2. It is the case of the Applicants that after the death of Kanailal Ghosh on 15.05.1999, the applicant No.2 made an application seeking compassionate appointment in favour of her son i.e. Applicant No.1 on 15.09.1999. Thereafter, the respondent authorities asked the applicant No.1 to appear before the Compassionate Appointment Committee (in short CAC). The applicant No.1 had appeared before the said Committee but it is their case that no communication regarding the appointment in favour of applicant No.1 on compassionate ground was received by them even till the date of filing of this OA. This OA was filed by them on 07.06.2013. Hence being aggrieved by such inaction of the respondent authorities, they have filed the instant OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:


I) Order/direction to the respondent authorities to give the applicant compassionate appointment without any delay;

II) Order/direction be passed upon the respondents to communicate the decision of interview held on 30.1.2001 and 29.4.2003;

III) Leave may be granted to file this application jointly in common cause of action under Rule 4 (5) (a) CAT Procedure ACT, 1987;

V) Any other order/orders further order/orders as to this Hon'ble Tribunal seen fit and proper."

(extracted as such)



3. The Respondent Authorise have filed their reply inter alia stating therein that after the death of the employee concerned, his widow (Applicant No.2) had submitted application dated 15.9.1999 praying for appointment of her son (Applicant No.1) on compassionate ground. At the time of application, the applicant No. 1 was 18 years old and his educational qualification was Class VIII. After completing the official formalities, the CAC Meeting was held on 30.01.2001 and the Committee recommended his candidature for appointment on compassionate ground but he could not be offered appointment due to non availability of vacancy at that relevant point of time. Again the case of the applicant No.1 was considered by the CAC Committee held on 29.04.2003 and 20.11.2003 but the committee did not recommend any name for appointment on compassionate ground due to non availability of Group D vacancy. Finally, the case was closed after three years as per the DoP&T OM dated 05.05.2003. In view of the above, while opposing the prayer of the applicant on merit, the respondents have also prayed for dismissal of this OA *in limine* being hit by the provision of Section 21 of the Administrative Tribunals Act, 1985.

4. The learned counsel for both sides have reiterated their stand taken in their respective pleadings and having heard them at length, we have perused the records.



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5. At the first instance, along with dealing with the merit of the matter, we would like to deal with the point of limitation as raised by the Respondents in their counter as also in course of hearing.

6. Admittedly, the father of the applicant No.1 died on 15.05.1999 and the widow submitted application on 15.09.1999 seeking compassionate appointment in favour of her son (Applicant No.1). Applicant No.1 appeared before the CAC on 30.1.2001, 29.4.2003 and 20.11.2003 and it is the case of the applicants that thereafter no communication was made to them. It is the stand of the Respondents that appointment could not be provided to the applicant No.1 due to non availability of vacancy in Gr. D category and, as per the DoP&T OM dated 05.05.2003, the case was closed. This OA has been filed by the applicants on 07.06.2013 i.e. near about ten years from the date of the last meeting of the CAC. No application seeking condonation of delay has been filed. Section 21 of the A.T. Act, 1985 reads as under:

"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 sub-section (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 sub-section (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.”

7. On the point of delay and laches, the Hon'ble Apex Court in a catena of decisions have held as under:

- (i) **Bhoop Singh vs UOI**, AIR 1992 SC 1414 in which it has been held by the Hon'ble Apex Court that 'It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seek within a reasonable period. This is necessary to

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avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. The lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.'

- (ii) **Chennai Metropolitan Water Supply and Sewerage Board and others Versus T.T. Murali Babu**, AIR 2014 SC 1141 in which it has been held by the Hon'ble Apex Court that 'Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the

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greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix.'

8. On examination of the factual matrix of this case with reference to the provisions enshrined in Section 21 of the Administrative Tribunals Act, 1985 as well as the law laid down by the Hon'ble Apex Court, cited supra, the inevitable conclusion would be that this case being barred by limitation is liable to be dismissed.

9. Now coming to the merit of the matter, we would like to state that it is the case of the applicants that the case of the applicant No.1 ought not to have been closed as his case was recommended by the CAC. But the Applicant has no right to appointment even though recommended because there was no vacancy. Also the Hon'ble Apex Court in the case of State Bank of India vs Raj Kumar, reported in (2010) 11 SCC 661, in paragraph 8 have held as under:

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and **subject to availability of a vacancy for making the appointment.** Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of

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a large number of applicants so as to fill a limited number of earmarked vacancies.

(emphasis added)

10. The golden thread which runs through the web of administration of justice in the matter of appointment on compassionate ground is that such appointment is not an alternate source of employment. The consideration for such employment is not a vested right which can be exercised at any time. 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 bread earner (Ref. **Umesh Kumar Nagpal vs State of Haryana**, reported in (1989) 4 SCC 468; 1989 SCC (L&S) 662).

11. In this case admittedly the death of the concerned employee was in the year 2003 and, the applicants have approached this Court only in the year 2013 indicating thereby that they could survive financially in the intervening years. This fact also negates that the family could not face the financial ruination after the death of the employee concerned so as to be provided with appointment on compassionate ground.

12. For the discussions made above, this OA is bound to be dismissed and is accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judicial)