

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. 350/01674/2014

Date of order : 23.2.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

DIPANKAR DEY

VS.

UNION OF INDIA & ORS. (Eastern Railway)

For the Applicant : Ms. T. Dasgupta, Counsel

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

ORDER (Oral)

Justice Shri Vishnu Chandra Gupta, Judicial Member:

This O.A. has been filed seeking the following reliefs:-

- "a) An order directing the respondents to consider the case of the applicant to grant compensation for the delay caused in granting appointment on compassionate in favour of the applicant.
- b) An order directing the respondent to consider the pecuniary loss suffered by the applicant due to the deliberate delay and grant the salary and the service benefits considering the seniority that the applicant could have availed since 2002.
- c) An order directing the respondent to consider the representation made by the applicant to grant compensation for the delay caused in granting appointment on compassionate ground in favour of the applicant. d)

Any other relief or reliefs of the Hon'ble Tribunal may deem fit and proper."

2. Heard Ld. Counsel for the petitioner and Ld. Counsel for the respondents.
3. The short question for consideration before this Tribunal is whether a person who has already been given compassionate appointment can claim

arrears of pay and seniority from an anterior date on the ground that earlier on technical grounds his application was wrongly rejected. It is not in dispute that petitioner has got appointment in pursuance of an order dated 4.11.2009 as evident from page 51 of the O.A. and now he has already been regularised as informed by Ld. Counsel for the respondents from 30.1.2013 on the post of Technical Grade III (Feeder). The grievance of the petitioner is in a nut shell that he applied for compassionate appointment but on the basis of internal reports of the department his candidature was cancelled on the ground of discrepancy in the name and identity the speaking order of 7.3.2007 is on record. The relevant record is quoted hereinbelow:-

" In this context, it is mentioned here that the competent authority had earlier regretted the case for appointment on compassionate ground in favour of Sri Dipankar Dey i.e. the Applicant No. 2 due to the following grounds:-

- i) The ex. Employee Sri K.C. Dey, Ex. Tech-I under SSE (C&W)/UDL was declared medically unfit in all categories, w.e.f. 24.4.2001 in terms of Chief Medical Superintendent, Eastern Railway, Andal's letter No. H/Ex./UDL dated 23.7.2001 at the age of 56 years 11 months and 18 days after rendering 25 years 11 months and 24 days of service in the Railways. Thus the employee had availed of the full pensionary benefit as the maximum qualifying service permissible under the extant rule in 33 years. All settlement dues have also been paid to the ex-employee.
- ii) Secondly, identity of Sri Dipankar Dey i.e. the Applicant No. 2 was also not established beyond doubt as his name appeared differently in different documents, WI's enquiry also not been able to verify the identity of the applicant No. 2.
- iii) Moreover, the ex.employee has no burden to shoulder, as all of his sons are major.

In this context, it is worthwhile to mention here that in other cases of similar in nature as mentioned in para (i) above, appointment on compassionate ground to the wards of such an employee has not been given.

In view of the above the case for appointment of Sri Dipankar Dey, Applicant No. 2 does not merit compassion and hence regretted."

4. Thereafter this order has been challenged before this Tribunal. The Tribunal set aside the order and directed that order of the Tribunal which has been earlier passed be complied with for providing employment within two months. The order deciding the aforesaid O.A. No. 336 of 2007 vide order dated 9.10.2007 is quoted hereinbelow:-

"4. Accordingly, we reiterate that the order of the Tribunal has to be complied with for proving employment. Accordingly, 2 more months time is given for compliance of the order at paragraph 11 above thus failing which the applicant is at liberty to file necessary application for taking action in accordance with law. The O.A. is accordingly dispose of. No order as to costs."

5. This order was put under challenge by way of a petition by the Union of India and ors. and the Hon'ble High Court of Calcutta vide order dated 14.3.2008 allowed the petition and set aside the order of the Tribunal which is quoted below:-

" We, therefore, set aside the judgment and order impugned without calling for affidavit as the learned advocate for the respondents does not want to file affidavit-in-opposition. We request the learned Tribunal to hear out the matter afresh and that should be done by the appropriate Bench as we are told that the learned single Member who had passed the impugned order has no jurisdiction going by the rule of business. All points are kept open. No order as to costs."

We desire that the matter should be disposed of as early as possible preferably within a period of two months from the date of communication of this order."

6. The matter was again heard in the light of the order of the Hon'ble High Court a fresh order has been passed by the Tribunal on 19.6.2009, which reads as under:

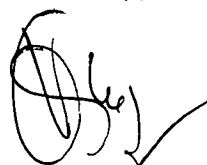
"10. We have given this matter our careful consideration keeping in view all factors. We direct that a suitable officer may be deputed to conduct a



fresh enquiry regarding the financial condition of the ex. employee's family. If the family is in penury and applicant NO. 2 has no employment then his case should be considered for compassionate appointment. The question of his identity should not be reopened in view of the categorical finding of this Tribunal in O.A. 1280/05. If penury is established and the applicant No. 2 has the requisite educational qualification then he should be considered for compassionate appointment by placement of his case before the Circle Relaxation Committee or such other empowered body. The entire exercise should be done within a period of three months from the date of communication of this order and the applicant be informed accordingly by a speaking order. In terms of directions of the Hon'ble High Court in WPCT 40/2008 O.A. 336/2007 is thus disposed of. No costs."

And thereafter the appointment was given to the petitioner.


7. The petitioner after getting the appointment filed the present O.A. in 2014. The cause of action has already accrued in 2009 for the present case. It has been contended that a representation has been made by the petitioner on 11.8.2014 for the grievance which the petitioner want to redress in this petition. It is well settled principle of law that limitation cannot be gained by moving representation and that too after prescribed period of limitation.
8. As such, the petition is highly belated and barred by time as no satisfactory reasons has been given by the petitioners.
9. There is one more reason for rejecting this petition that the petitioner accepted the appointment without any protest and reserving his right to claim the damage for non-action of the respondent. Moreover in the order of the Tribunal, wherein the direction has been issued for making appointment on compassionate ground has not mentioned that benefit earlier to the date of appointment should be given to the petitioner.



10. Hence, we are of the view that this matter cannot be re-opened in a way as claimed in the present O.A.

★ 11. Hence, the O.A. is dismissed. There is no merit in the petition.

(Jaya Das Gupta)
MEMBER(A)


(Vishnu Chandra Gupta)
MEMBER(J)

SP