

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.211/00110/2018

Dated this Tuesday the 30th day of July, 2019.

Coram: Dr. Bhagwan Sahai, Member (Administrative)

Smt. Kamal S. Madankar W/o
Late Shivaji Madankar,
Resident of Near Dueta Sir
House, Siddarth Nagar,
Taluka: Jaffarabad,
Dist: Jalna-431 206. .. Applicant.

(By Advocate Shri R.K. Shrivastava).

Versus

1. The Union of India, through
the Secretary,
Ministry of Mines,
Department of Mines,
Shastri Bhavan,
New Delhi - 110 011.
2. The Director-General,
Geological Survey of India,
27, J.L. Marg,
Kolkata - 700 066.
3. The Deputy Director-General
and H.O.D.,
Geological Survey of India
(Central Region), Seminary Hills,
Nagpur - 440 006. .. Respondents.

(By Advocate Ms. Renuka Puranik Nallamwar).

Order reserved on : 19.06.2019
Order delivered on : 30.07.2019.

O R D E R

Smt. Kamal S. Madankar, resident of
Siddarth Nagar, taluka Jaffarabad, dist Jalna has
filed this O.A. on 05.06.2018. In this O.A. she
sought quashing and setting aside of order dated

05.12.2014 (Annex-A-1), direction to the respondents to appoint her on Group 'D' post suitable to her qualification and payment of cost of this O.A.

2. Summarized facts:

2(a). The applicant has stated that her husband late Shri Shivaji Namdeo Madankar, worked as Junior Technical Assistant with Deputy Director General, Geological Survey of India (Central Region), Seminary Hills, Nagpur and expired on 23.06.2004. He had earlier married Smt. Leelabai who expired on 24.08.1998 leaving behind four daughters. Then he married the present applicant on 13.12.1998.

2(b). After death of late Shri Madankar, the applicant has received retiral benefits. The amount of G.P.F., Deposit Linked Insurance, D.C.R.G., etc were equally distributed among married daughters of late Shri Madankar and the present applicant and her minor children. The applicant is also in receipt of family pension of Rs.11,280/- per month.

2(c). On 31.08.2004, she applied to Respondent No.3 for employment on compassionate grounds. On 24.01.2013 she was directed to submit application in the prescribed proforma which she did on 20.03.2013. She also attended personal interview

on 19.05.2014 but her application has been rejected by the impugned order dated 05.12.2014 without mentioning any reason and, therefore, this O.A.

3. Contention of the parties:

The applicant and her counsel contend that -

3(a). the Government of India has introduced the scheme of compassionate appointments to family members of deceased Government employees who died in harness so as to provide financial help to family members of such deceased employees who are in great distress of indigent condition. But the applicant has received only a meagre amount of retiral benefits which were divided equally among four married daughters of the earlier wife and she along with her one son and one daughter. For expenses on study of her children and for marriage of her daughter, the amount of family pension being received by her is not adequate;

3(b). she had applied for employment on compassionate grounds in 2004 but the respondents asked her only in January, 2013 to submit her application in the prescribed proforma and called her for interview on 19.05.2014. The action of the respondents in rejecting the application appears to be biased and from 2004 to 2014 they

have appointed many persons on compassionate grounds, but did not consider her and, therefore, this O.A. should be allowed;

3(c). the applicant has also filed M.A.2103/2018 for condonation of delay in filing the present O.A. In her application she has mentioned that after submitting the documents and attending interview on 19.05.2014, she was seriously ill and could not pursue her case because of her illness and financial difficulties and, therefore, the delay should be condoned.

In their reply and arguments on 19.06.2019, the respondents contend that -

3(d). in her application for condonation of delay, she has not even mentioned how much is the delay in filing of the present O.A. She has challenged the order of 05.12.2014 in the O.A. filed on 05.06.2018 and thus there is delay of 887 days, thus the O.A. is hopelessly barred by limitation and deserves to be dismissed on this ground. The applicant has slept over her rights for such a long time and did not raise any objection during last 3 years and half. She has not given any satisfactory explanation for the delay, hence the application for condonation of delay should be rejected;

3(e). the applicant was interviewed by the

Compassionate Appointments Committee on 19.05.2014 and her application was considered along with other candidates but the Committee could not recommend her name because she was lower in the comparative merit; and

3(f). the applicant has herself submitted that she has received the share of herself as well as two children in the retiral benefits of late Shri Madankar. Based on her application on 31.08.2004, the CAC had called her for interview on 10.11.2010 but the notice could not be served on the given address as she was found by the Postal Authorities to have left that place. Based on her application and interview on 19.05.2014, the CAC duly considered her case along with other candidates but because of her lower rank in the comparative merit, she could not be appointed. In view of the unjustified long delay and rejection of her application because of lower rank in the comparative merit of eligible candidates considered by the CAC, the O.A. should be dismissed.

4. Analysis and conclusions:

I have perused the O.A. along with its annexes, reply filed by the respondents to the application for condonation of delay and O.A. as well as the arguments of counsel of both sides

heard on 19.06.2019. Based on consideration and analysis of these, my conclusions are as follows:-

4(a). The present O.A. has been filed on 05.06.2018, the order challenged in it is of 05.12.2014. In the application for condonation of delay (M.A.2103/2018), the only mention is of a general sentence about illness and financial problem and nothing more. No details of illness have been given. The applicant has not mentioned any justifiable and satisfactory reason which continuously prevented her from approaching the Tribunal earlier during the intervening period of 3 years and half. Thus the O.A. is certainly barred by limitation and there is no satisfactory explanation for the delay.

4(b). The contention of the respondents in this regard is that the applicant herself slept over for 3 years and half is correct. In view of this the M.A. 2103/2018 filed for condonation of delay is rejected.

4(c). The ex-employee of the respondents i.e. late Shri Shivaji Madankar expired on 23.06.2004 i.e. more than 15 years earlier, during this period the applicant's family has managed itself. At this stage proximity to the death of the ex-employee is not there and by now the application for employment on compassionate ground has become

a totally stale claim.

4(d). In this context, pertinent are the Apex Court views taken in these cases:

(i) in **Local Administration Department & Another Vs. M. Selvanayagam Kumaravelu, Civil Appeal No.2206/2006** decided on 05.04.2011 that the objective of compassionate appointment is to provide immediate succor to the penurious condition of the deceased family. An appointment made several years after the death of the employee or without due consideration to financial resources available to his/her dependents and the financial deprivation caused by death, simply because the claimant happened to be one of his dependents would be directly in conflict with Articles 14 and 15 of the Constitution.

(ii) in **MGB Gramin Bank Vs. Chakrawarti in Civil Appeal No.6348/2013 (arising out of SLP(C)No.13957/2010)** (Para 5) that mere death of the Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. Also the person claiming such appointment must possess required eligibility for the post. Compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The provision for liberal interpretation beyond permissible limits on humanitarian ground should not be stretched by the Court. Such appointment can be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

(iii). in **Umesh Kumar Nagpal Vs. State of Haryana & Ors.** (1994) 4 SCC 138 decided on 04.05.1994, the Apex Court examined the considerations* which should guide giving of appointment in public services on compassionate grounds. As a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. One such exception to this rule is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. It must be remembered in this connection that as against the destitute family of the deceased there are millions of the other families which are equally,

if not more destitute. Such an employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The compassionate employment cannot be granted after lapse of reasonable period which must be specified in the rule.

4(e). Since the appointment on compassionate ground can be granted only as an exception to the normal rule of appointment to public office by open competition, in view of the position explained in the above Apex Court decisions the present O.A. has no justification for making any exception for the applicant in this regard.

4(f). Moreover, the respondents have considered her application and in fact had asked her to remain present for interview on 10.11.2010. But because of change of residence by her from the address available with the respondents, intimation for that interview could not be served on her. Subsequently she was asked to apply in the proper format and then even after 10 years of death of late Shri Madankar, the respondents called the applicant for interview, which she attended on 19.05.2014 and on consideration of her case along with others, the Compassionate Appointments Committee of the respondents could not offer her the appointment because of her lower rank in the

relative merit of those candidates.

4(g). In view of these facts and settled position in law, I do not find anything wrong or illegal in the action taken by the respondents in the impugned order. I do not find any merit in the O.A., hence it deserves dismissal.

5. Decision:

The O.A. is dismissed for unjustified long delay and on merits. No costs.

(Dr. Bhagwan Sahai)
Member (A).

H.