

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, [Camp. At Nagpur]

ORIGINAL APPLICATION No.2156/2019
Dated this the 23rd day of July, 2019

CORAM: R.N. SINGH, MEMBER (JUDICIAL)

Balram Jagannath Ijamankar, Age 37 yrs,
Occu[-Unemployed, At-Po.Chandankhedi,
via Ashti Sub Post Office-442707, Distt.
Chandrapur.

... *Applicant.*

(*Advocate Shri A.N. Dighore*)

Versus.

1. The Union of India,
Through its Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. The Chief Postmaster General,
Maharashtra Circle, Mumbai-400001.
3. The Postmaster General Nagpur
Region, Nagpur-440010.
4. The Sr. Superintendent of Post Offices,
Chanda Division Chandrapur-442401.

... *Respondents*

(*Advocate : None*)

ORDER (Oral)

Per : R.N. Singh, Member (J)

This O.A. has been filed by the applicant
under Section 19 of the Administrative Tribunals Act,

1985 seeking for the following reliefs :-

"(1). To quash and set aside the impugned orders i.e. 1) Minutes of the Circle Relaxation Committee dated 31.12.2013, entry at S1.10 of Annexure II thereof (Annexure A-1) and 2) orders dated 29.01.2014 conveying the rejection of claim (Annexure A-2)

(2). Direct the respondent to appoint the applicant on the post of 'Gramin Dak Sevak under the administrative jurisdiction of respondent no.4.

(3). Award any other reliefs which may be deemed fit in facts and the circumstances of the case and in the interest of justice."

2. The brief facts of the case as contended on behalf of the applicant are that father of the applicant Late Jagannath Pochannaki Ijamankar was working as Gramin Dak Sevak (hereinafter referred as GDS) Branch Postman and Chandan Khedi Branch Post Office via Ashti Sub Post Office in Chandrapur District from 03.08.1983: He died on 24.01.2013 while in service leaving behind his widow Smt. Tarabai, two sons namely Sitaram and Baliram and one daughter namely Ku. Monali. The daughter is married on 22.05.2013 after the death of her father. The family received terminal benefits of Rs.99978/-. The present applicant has passed XIIth standard. He preferred an application dated 13.07.2013 to the Respondent No.2 for appointment on compassionate ground to the post of GDS. The meeting of CRC was held

on 31.12.2013 (Annexure A-1) and has rejected the claim of the applicant on the same date i.e. on 31.12.2013.

3. The applicant has taken the following grounds:-

(i). The father of the applicant was the sole bread earner of the family.

(ii). The applicant is XIIth passed and he has also completed certificate course in Electronics (Annexure A-5) and presently he is taken admission in MS CIT course (Annexure A-5).

(iii). The family is in indigent condition but the CRC meeting rejected his case on 31.12.2013 for the reasons that there is no indigency in the family and communicated its decision to the applicant on 29.01.2014 (Annexure A-2).

(iv). The merit points of the applicant are 35 but the respondents says that it should be minimum 50.

(v). There are four dependents in the family but the respondents have shown only three dependents for the reasons best known o the respondents.

(vi). As per the documents supplied by the

respondent no.4 (Annexure A-4) the income of the family has been shown to Rs.50,000/- per annum i.e. about Rs.4000/- per month whereas as per the Annual Income Certificate issued by the Revenue Authority i.e. Talathi, Ankhoda is only Rs.23000/- per annum I.e Rs.2000/- per month only.

(vii). At the time of death of his father the sister of the applicant namely Ku.Monali Jagannath Ijamankar was unmarried. His marriage has been solemnized on 22.05.2013 but the Respondent No.4 shown '0' marks for this aspect. In fact the applicant should have been awarded 15 merits points on this count and after that position of merit point is $35+15=(4$ extra point for income)=54 merit points.

(viii). The applicant has submitted representation dated 14.02.2014 (Annexure A-9) to the Respondent No.4.

(ix). The agricultural land has been shown of Rs.2 lakhs and value of house has been shown as Rs.2 lakhs which are incorrect. The father of the applicant had taken loan but this fact has not been taken into consideration while calculating merit points. Hence, this OA.

4. The applicant has also filed MA No.218/2019 for condonation of delay in filing the present OA seeking four years and three months delay.

5. I have heard the learned counsel for the applicant at length, gone through the O.A. along with Annexures A-1 to A-23 as teh grounds taken in the MA seeking condonation of delay and have considered the facts and circumstances and law points involved in the case.

6. The respondents are merely required to consider the case of applicant as per the policy and demise of an employee does not create any statutory right to the bereaved family to claim compassionate appointment contrary to the scheme on the subject. The applicant after the death of his father Late Jagannath Pochannaji Ijamankar on 24.01.2013, submitted an application dated 13.07.2013 for appointment on compassionate ground for himself enclosing all the requisite documents. The family consists of widow, two sons and one daughter, who got married on 22.05.2013 within four months after the death of her father. The family received terminal benefits of Rs.99978/-. His case for appointment on compassionate ground has been

considered by the CRC in the meeting held on 31.12.2013 and finally rejected on 31.12.2013 (Annexure A-1) itself.

7. The applicant in the present case has moved his first representation for appointment on compassionate ground on 13.07.2013 which was rejected on 31.12.2013 by the CRC. Thereafter, he submitted representation dated 14.02.2014 (Annexured A-9) followed with RTI application dated 24.02.2015 and 07.03.2019 (Annexure A-13 and Annexure A-15) respectively. Thereafter, he filed the present OA on 30.04.2019 alongwith MA No.218/2019 seeking condonation of delay for the period of four years and three months. The reasons for delay as given by the applicant in the MA are as under:-

- "i). Financial hardship/waiting for disposal of representation- 14.02.2014 to 13.02.2015.
- ii). Period spent in calling information under R.T.I.- 24.02.2015 to 25.03.2015.
- iii). Period of medical treatment- 06.04.2015 to 19.10.2018.
- iv). Period spent in calling informatin under R.T.I.- 07.03.2019 to 04.04.2019."

Depayed representation time consumed in seeking information under Right to Information Act cannot be construed as sufficient and good grounds to

seek condonation of delay. Moreover, the Hon'ble Apex Court particularly in the case of *S.S. Rathore v. State of Madhya Pradesh reported in 1990 SCC (L&S) 50* has observed that unsuccessful representations not provided by law cannot extend the period of limitation. Para 20 and 21 of the said judgments is reproduced herein under

: -

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. **Repeated unsuccessful representations not provided by law are not governed by this principle.**

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. Sub Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals' Act shall continue to be governed by Article 58."

8. On the point of limitation, the Hon'ble Apex Court has reiterated its earlier view on this matter in

the case of *Union of India & Ors. v. A. Durairaj* reported in JT 2011 (3) SC 254 and held as under:-

Re: Question(i)

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection, should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly for grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

9. The question of limitation being nullified by filing an OA and getting an order with direction to decide the pending representation was also examined by the Hon'ble Apex Court in the case of *Union of India v. M.K. Sarkar* (JT 2009 (15) SC 70: 2010(2) SCC 58) and held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.

When a belated representation in regard to a 'stale' or 'dead' issue dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such

decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation. Or erase the delay and laches.

A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."

Therefore, in the light of the discussion made above the present OA is liable to be dismissed on the ground of delay and latches. However, I have though it necessary to consider the claim on merits as well.

10. The Hon'ble Supreme Court in the case of **Eastern Coal Fields Ltd. v. Anil Dadykar & Ors. { (2009) 13 SCC 112}**, wherein it was held that it cannot be held that the appointment cannot be claimed or offered, after a lapse of time, when the crisis is over.

11. The Hon'ble Supreme Court in the case of **General Manager, SBI and Anr. v. Anju Jain { (2008) 8 SCC 475}**, has held that appointment on compassionate grounds is not a right. However, the scheme of compassionate appointment is an exception and the same is to be provided strictly in accordance with the terms and conditions of the scheme. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

12. The Hon'ble Supreme Court in the case of **Santosh Kumar Dubey v. State of U.P. & Ors. {2009 (6) SCC 481}**, held that the scheme is meant to provide immediate financial assistance to family which has lost its bread winner and request for compassionate appointment should be proximate to employee's death and

compassionate appointment is not a bonanza or another source of recruitment, and it cannot be claimed as a matter of right.

13. The Hon'ble Supreme Court in *State Bank of India v. Raj Kumar*, (2010) 11 SCC 661, elucidating the nature of the scheme of compassionate appointments observed: "It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

14. The Hon'ble Supreme Court in the case of *Local*

Administration Department & Anr. vs. M. Selvanayagam @ Kumaravelu, Civil Appeal No. No. 2206 OF 2006 decided on 05.04.2011 has observed as under:-

"It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind."

15. In another decision in the case of *Jagdish Prasad v. State of Bihar* (1996) 1 SCC 301 the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other

words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules.

4. The appeal is accordingly dismissed."

16. In the case of *Umesh Kumar Nagpal v. State of Haryana and Ors.* reported in JT 1994 (3) SC 525 it has been observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Relevant portion of the said judgment is reproduced below:-

"The whole object of granting compassionate employment is 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."

17. In the case of *Sanjay Kumar vs State Of Bihar And Ors* reported in 2000 (SCC) (7) 192 the Hon'ble

Supreme Court has observed as under:-

" 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 & Anr. v. Pushpendra Kumar & Ors. *supra*. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.88, 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.

We are, therefore, unable to agree with the view expressed in Chandra Bhushan's case.

For the reasons stated above, we hold that there are no merits in this SLP and the same is accordingly dismissed."

18. In the case of *Municipal Corporation of Delhi Vs. Shri Vir Mohd.* Reported in 94 (2001) DLT-746 the Hon'ble Delhi High Court has observed as under:-

"11. The Supreme Court has pronounced against entitlement for appointment on compassionate grounds as a right. Such employment has a specific purpose, that is, to tide over a sudden tragedy, where an application is filed five years after 'the death, the suddenness of the demise disappears and hence there is no warrant or justification for violating the equalities guaranteed under Articles 14 and 16 of the Constitution. Quite obviously, if the family could have subsisted for five years it could continue to do so in the future also. It is necessary to appreciate

the distinction between a delayed application by the Petitioner, which in view of the observations of the Apex Court, would defeat a request; and a claim or demand for compassionate appointment, which is unjustified in law; and a timely application that has been kept pending for a very long time where the request is otherwise justified in that the death was sudden and early in the career of the deceased and the bereaved family is, in a 'penurious state, a delay in deciding the application would not defeat the request. In fact Courts should be quick to direct the Managements to take a decision on all applications expeditiously. Since the Petitioner's request for compassionate appointment had been "deferred at the Petitioner's request with the purpose of enabling him to attain majority, it had become stale as held in Jagdish Prasad's case (supra). In these circumstances the impugned Award is contrary to law and must, therefore, be set aside. The Award is accordingly set aside. The C.W.P. No. 7694/99, stands, allowed accordingly:

12. In C.W.P. 422/2000 the family income was such as would place the Petitioner and the family of the deceased well above the poverty line. The Scheme, reproduced above, correctly requires eight considerations to be fully considered, before compassionate appointment can be granted. All these considerations are legally valid and salutary, and in conformity with the pronouncements of the Supreme Court. Since compassionate appointment runs counter to the equality of employment guaranteed to all citizens, the Management, appears to have taken the correct decision in declining the request of the Petitioner keeping the family income and assets in perspective. It is also significant that the deceased-father of the Petitioner died shortly before he would have otherwise superannuated. The claim for compassionate appointment is, therefore, wholly unjustified.

13. On facts as well as in law Nagendra Sahni's case is meritless. I feel compelled to impose atleast nominal costs in the hope of discouraging unjustified litigation, if not in the sanguine hope of arresting avarice. C.W.P. No. 422/2000 is dismissed with costs

quantified at Rs.1000.00. I desist from awarding these costs to the S.S.I because of its financial strength. The cost be deposited in favor o the Delhi Legal Services Authority, Patiala House, New Delhi within four weeks.

14. The W.P.No.422/2000 is accordingly dismissed."

19. It is a fact that the father of the applicant has unfortunately expired on 24.01.2013 and more than about six (06) years have lapsed thereafter. The family has managed to maintain themselves. The sons left behind by the deceased might have settled in their life and now it may not be construed as sudden financial jerk requiring assistance by way of grant of compassionate appointment.

20. In view of the discussions made above as well as the law settled by the Hon'ble Supreme Court and Hon'ble High Court, referred to above, I am of the opinion that the scope of compassionate appointment is restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Court(s)/Tribunal(s). This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court in respect of the scheme, the grounds raised in this OA deserve no further consideration. Therefore, in the

light of the discussions made above the applicant has failed to establish even a *prima facie* case hence, MA No.218/2019 is rejected and accordingly the OA is dismissed on merits and also on the ground of delay and laches. No order as to costs.

J
(R.N. Singh)

Member-J

amit/-

JD
26/8/19

