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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-17-2009

Judge : The Honourable Mrs. Justice Meera Chhibber, Judicial Member

Appeal No. : MA-424 OF 2009 & OA 255 OF 2009

Appellant : Amit Kumar

Respondent : Union of India Through General Manager, Northern Railway, Baroda House, New Delhi and Others

Advocate for Pet/Ap. : For the Appellant: Narinder Rohilla, Advocate. For the Respondents: ----

Judgement :

Order (Oral)

Applicant has challenged orders dated 19.11.2008 and 26.3.2008 whereby his request for compassionate appointment has been rejected. He has further sought direction to the respondents to give appointment on compassionate ground.

2. It is submitted by the applicant that his father, namely, Shri Jagdish @ Jissa was working as Gangman ROK with the respondents. Unfortunately, he died on 14.7.1993 while in service. After his death, his elder son, namely, Subhash had

applied for compassionate appointment but he also expired in 1996 while his case for compassionate appointment was being processed. Accordingly, the applicant requested for compassionate appointment but till date it was delayed on one ground or the other. Being aggrieved, applicant filed this OA on 6.8.07 for a direction to decide the representation of the applicant on merit. However, his request has been rejected by the respondents on 26.3.08 without giving any opportunity to the applicant of being heard. The request of the applicant has been rejected on the following grounds:-

(1) Your claim under Section Engineer/Jakhal is not in order as no such employee was working under him. As regards to Shri Jissa S/o Lilla, it is mentioned that he has worked as Cale Rated Khalasi under PWI/ROK but he is absent from duty since March, 1991.

(2) Since the authenticity of the documents submitted by you are suspect, the claim of her compassionate ground appointment is not justified.

3. It is submitted by the applicant that the above grounds were never in issue and are new grounds of rejection by the respondents, therefore, it is clear that his request has been rejected arbitrarily. It is submitted by the applicant that his father was known by two names, therefore, his request could not have been rejected on this ground. In any case he has given the evidence to substantiate his claim that his father Jagdish was also known as Jissa as is evident from the death certificate issued by the Municipal Committee, Jakhal.

4. I have heard counsel for the applicant. Admittedly, applicants father has died as per his own averment in the year 1993. According to the applicant his brother was considered for compassionate appointment but he also died in the year 1996 where after applicant had applied for compassionate appointment. If respondents were not granting compassionate appointment to the applicant, he should have at least approached this court maximum within one and half year as per Section 21 of the Administrative Tribunals Act, 1985. Applicant has not explained why he had chosen for coming to the court in the year 2009. It is correct that his request was rejected vide order dated 26.3.2008, therefore, this case could not be dismissed on the ground of limitation, but it has repeatedly been held by Honble Supreme

Court that delay in approaching court for grant of compassionate appointment is fatal because the whole scheme of compassionate appointment is tied with immediate difficulties faced by the family of the deceased employee with hardship and are not able to survive unless they are given immediate assistance by the department. It is also held that delay in such matter is fatal because if compassionate appointment is granted after so many years it defeats the very object of granting compassionate appointment. Moreover it is well settled law that compassionate appointment cannot be sought as a matter of right or as a line of succession in each case. On the contrary, compassionate appointment is an exception to the general rule of appointment and cannot be relaxed by the courts, otherwise it would amount to opening another mode of recruitment which would be de-hors the rules. It is also settled law that compassionate appointment cannot be claimed as a matter of right and persons only has right of consideration. So long as person has been considered, courts cannot interfere in the matter unless it is shown that respondents have not considered the case of the applicant properly or have taken some extraneous material into consideration. As I have noted in the instant case that father had died in the year 1993 whereas the present OA has filed in the year 2009 after a long delay of about 16 years.

5. At this juncture, it would be relevant to refer to the judgment of Honble Supreme Court in the case of Ratan Chandra Sammanta and Ors vs. Union of India and Ors (JT 1993 (3) SC 418) wherein it was held that delay deprives the person of the remedy available in law. A person, who has lost his remedy by lapse of time, loses his right as well. In the said case, the petitioners had approached Honble Supreme Court after over 15 years and even at that time they had not placed supporting documents on record. Honble Supreme Court observed as follows:-

The petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too

dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. and not for the sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well.

6. Similarly, in the case of Ramesh Chand Sharma etc. vs. Udham Singh Kamal and Ors, reported in 2000 (2) AISJ S.C. 89, Honble Supreme Court held as under:

7. On perusal of the materials on record and after hearing Counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985.

7. Even otherwise in the earlier OA applicant has not given any valid reason as to why he wanted to regularize his compassionate appointment. Neither it is stated by the applicant that liabilities to the family left by deceased employee nor he has stated any clinching ground that he should be considered for compassionate appointment. It is also settled law, nobody would claim compassionate appointment as matter of right of consideration for compassionate appointment after so long a person has been considered court cannot interfere nor can give any direction to the department but in the instant case respondents have considered the applicant and rejected the representation of the applicant vide order dated 26.3.2008. In the statement it is clearly mentioned that widow of the deceased employee was asked to submit copies of Ration Card, Bank Pass Book, Death Certificate etc. followed by reminders but it was not given. Accordingly, information was sought from the SE Jakhal about the deceased employee Jagdish, S/o Zila Singh who has informed that no such person was working under him. The widow then stated that Jagdish was known as Jissa whereas in PPO

produced by the widow, name of deceased was shown as Jagdish and the following discrepancies have been noticed such as the name of the deceased in the Ration Card was shown as Jagdish Ram whereas name of son was shown as Mital instead of Amit Kumar for whom compassionate appointment has been sought. In the Bank pass book name of the deceased was shown as Jagdish Raj and in the death certificate name was shown as Jagdish. Similarly, in the PPO also the name is shown as Jagdish. Moreover, as per record Jagdish S/o Zila Singh is not in order as no such employee was working under him. As regard to Shri Jissa S/o Jilla it is mentioned that he has worked as Caleb Rated Khalasi under PWI, ROK but he is absent from duty since March, 1991. After that no where-about were known about that person. It is seen that authenticity of the documents itself are doubtful, therefore, the claim for compassionate appointment is not justified.

8. In the OA applicant has annexed some copy of ration card, issued on 4.7.2005 which shows name of Kanta Devi as annexed at page 23, whereas respondents have stated that in the earlier ration card the name of the son was shown as Mital, therefore, it is doubtful whether the person is genuine or not. No other points have been raised by the applicant.

9. In these circumstances, I find no merits in the OA, therefore, the OA is dismissed at the admission stage itself. No order as to costs.

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