



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 12808/2021

1. Smt. Parwati Devi

2. Hazari Lal

----Petitioners

Versus

1. Director, (G) & Nodal Officer (PG), Ministry of Mines, Geology Survey of India, Central Headquarters, 27, J.L. Nehru Road, Kolkata-700016

2. Additional Director General & HOD, Western Region, Geology Survey of India, 15-16, Jhalana Dungri, Jaipur-302004

3. Dy. Director Genral, Geology Survey of India, Western Region, Jhalana Dungri, Jaipur.

For Petitioner(s) : Mr. Sanjay Mehla

For Respondent(s) :

**HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

Order

08.02.2022

(BY THE COURT: PER ANOOP KUMAR DHAND, J)

Reportable

A challenge in the instant petition has been made by the petitioners to the order dated 19.08.2021 passed by Central Administrative Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal') in Original Application No.291/431/2017 whereby the Tribunal dismissed the original application filed by them.



Brief facts of the case are that the husband of the petitioner No.1, Mool Singh was working on the post of 'Darban', expired on 19.05.2003. The petitioner No.1 approached the concerned authorities for seeking compassionate appointment for the son i.e. the petitioner No.2 Hazari Lal. While considering petitioners case by the respondents, they were informed vide letter/order dated 05/12.04.2005 about the ban on direct recruitment on Group "C" and "D" posts. Thereafter again, the petitioner No.2 submitted a representation dated 19.09.2005 with the same request to the respondent No.3 and again on 13.06.2006, the respondents- authorities informed the petitioners that no post in Group "C" is vacant and denied appointment to the petitioner No.2 Hazari Lal and vide order dated 04/05.10.2006, issued under the signature of Administrative Officer Gr. I, Office of Geological Survey of India, Western Region, the matter for giving compassionate appointment to the petitioner No.2 was closed.

After a period of more than ten years of denial of compassionate appointment, the petitioners again started making representations to the authorities including the local Member of Parliament with the prayer to give compassionate appointment to the petitioner No.2.

The respondents again re-considered the matter and rejected the claim of the petitioners by saying that the petitioner No.2 is a married son of the deceased-employee, Lt. Sh. Mool Singh.

Without challenging the orders dated 05/12.04.2005 and 13.06.2006, the petitioners submitted Original Application before



the Tribunal challenging the order dated 12.09.2016 on the ground that the application was submitted by them well within time, but the same was rejected by the respondents vide order dated 19.08.2021 by the Tribunal, on the ground that the petitioner No.2 is not entitled to get compassionate appointment being he a married son of the deceased-employee. The Tribunal rejected the original application of the petitioners on the ground that the request of the petitioner No.2 for compassionate appointment cannot be entertained at such a belated stage.

Feeling aggrieved and dissatisfied with the impugned order dated 19.08.2021 passed by the Tribunal, the petitioners have filed this petition before this Court.

Heard learned counsel for the petitioners.

From the facts narrated in the writ petition, it emerges that the deceased-employee died on 19.05.2003, while he was in service. Thereafter the petitioners submitted application for appointment on compassionate ground to the petitioner No.2, in the year 2003. The petitioner No.2 was denied appointment vide order dated 05/12.04.2005 by the respondents by saying that there is ban on direct recruitment on Group "C" and "D" posts and finally the matter was closed by the respondents on 13.06.2006 by reiterating the same, that posts in Group "C" are not available.

It appears that the petitioners did not bother to challenge the orders dated 05/12.04.2005 and 13.06.2006 before any competent forum of law. Thereafter, they awoke after ten years and started making representations to the concerned authorities. Again their matter was reconsidered by the respondents but their



claim for compassionate appointment was denied vide order dated 12.09.2016.

At this stage, it is required to be noted that in the year 2003, the application was submitted on compassionate ground which was rejected in the years 2005 and 2006 respectively, and the same have attained finality and despite of the above, the petitioners did not avail any remedy available to them upto ten years.

After expiry of ten years, the petitioners approached the concerned authorities for reconsideration and their matter for compassionate appointment was again declined by the respondents vide order dated 12.09.2016.

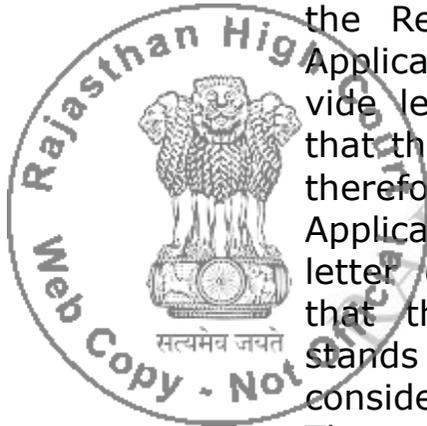
For the first time, the petitioners have challenged the order dated 12.09.2016 without challenging the earlier orders dated 05/12.04.2005 and 13.06.2006 before the Tribunal. It appears that the petitioners were satisfied with the earlier orders issued by the respondents.

The Tribunal has considered the matter and after considering the facts and circumstances of the case, rejected the original application filed by the petitioners by observing as under:-

"10. The factual matrix of the case is that Late Shri Mool Singh, the husband of the Applicant No.1 expired on 19.05.2003. At the time of death of the ex-employee, Applicant No.1 and Applicant No.2 were completely dependent on him. Applicant No.2 was having qualification of B.A. and 3 years Polytechnic Diploma in Electricals, therefore, Applicant No.1 applied for appointment on compassionate grounds for Applicant No.2 within the prescribed period and thereafter Respondent No.3 vide letter dated 26.08.2003 informed the



Applicant to submit required documents and again vide letter dated 27.04.2004 requested Applicant to submit certain information. As no appointment orders were issued in favour of Applicant No.2, Applicants submitted representation to Hon'ble Prime Minister as well as to Chairman SC/ST, Jaipur and their case was also recommended by Chairman SC/ST. But at that relevant time since there was ban on direct recruitment in Group C & D post, same was informed to the Chairman, no such appointments could take place. Thereafter again several letters were written by several authorities to the Respondents recommending the case of the Applicants but no fruitful purpose was served. Again vide letter dated 13.06.2006 Respondents replied that the posts in Group-C are not lying vacant and therefore, it is not possible to give appointment to Applicant No.2. Thereafter the Respondents vide letter dated 05.10.2006 informed the Applicants that the matter on compassionate appointment stands closed and therefore, it is not possible to consider the case of the Applicant (Annexure-A/11). Thereafter again representations were made by Applicants to several authorities who again recommended case of the Applicants and as per letter from PMO office dated 09.05.2016, Respondents were directed to take appropriate action. Also letter was sent by Administrative Officer, Director (G) to Respondent No.1 & 2 to re examine the case of the Applicants and take appropriate action and ultimately Respondent No.1 vide impugned letter dated 12.09.2016 denied appointment to the Applicant No.2 on compassionate grounds and the same was intimated to the Applicants vide letter dated 26.10.2016 on the ground that he is married person and in view of the Point No.13 of DOPT OM No.14014/2012 dated 30.05.2016.



सत्यमेव जयते

11. As observed by us the ex-employee expired in 2003 and it is only in 2017, the present OA has been filed by Applicants seeking compassionate appointment though seeking challenge to the impugned order dated 12.09.2016 (Annexure-A/1) which was only a reply to the letter dated 09.08.2016 written by the Administrative Officer for Director (G) requesting to re-examine the case of the Applicants. The actual cause of action arose on 05.10.2006 when the Respondents intimated the Applicants about the closure of the case and that Applicant cannot be granted appointment on compassionate grounds. As seen on limitation, the present Original Application is hopelessly time barred, but we come on merits and wish to highlight



that the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. 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 amongst the several competing applicants to the limited quota of posts available. Moreover, appointment on compassionate grounds cannot be claimed as a matter of right. Though we are not satisfied by the reason given by the Respondents in denying the compassionate appointment to the Applicant, but if seen the ex-employee expired in 2003 and the family was able to maintain itself for several years and merely making representations to the higher authorities and they recommending the case of the Applicants cannot be a reason to grant appointment to the Applicant. Therefore we are not inclined to consider the case of the Applicants for providing appointment on compassionate grounds in view of the legal principles settled by the Constitutional courts across the country. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over and the indigent circumstances certainly vanish after a lapse of long years. Coming to the grounds raised in challenge by the Applicant as the same are not found convincing, the same cannot be considered."

It has also been held by the Hon'ble Supreme Court in the case of "Punjab State Power Corporation Ltd. & Ors. Vs. Nirval Singh, reported in (2019) 6 SCC 774" that delay in pursuing claim/approaching court would mitigate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished.

In the said case, there was a delay of seven years in approaching the Court, thus, the Hon'ble Apex Court observed that "on the ground of delay itself, the heir of the deceased employee shall not be entitled to appointment on compassionate ground."



In the case of "State of J & K & Ors. Vs. Sajad Ahmed Mir reported in (2006) 5 SCC 766", the Hon'ble Supreme Court has considered the delay and laches in case of appointment on compassionate ground. By dismissing the claim for appointment on compassionate ground, which was made after a period of four and a half years of the death of the deceased employee, it was held that the appointment on compassionate ground is an exception to the general rule. An appointment to public offices should be made on the basis of competitive merits. It was further observed that once it is proved that inspite of the death of the breadwinner, the family survived and the substantial period is over, there is no need to make appointment on compassionate ground, at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution of India.

Even in the case of Umesh Kumar Nagpal V/s. State of Haryana & Ors. (1994) 4 SCC 138, the Hon'ble Apex Court has held that compassionate appointment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. 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 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

Similarly, in the case of Indian Bank & Ors. V/s Promila & Anr. reported in (2020) 2 SCC 729, it has been held that though Court has sympathy with the respondents about the predicament they faced on the death of deceased but sympathy alone cannot give remedy to the respondents and it is not for the courts to



substitute a scheme or add or subtract from the terms thereof in exercise of judicial review.

In the case of "Smt. Sushma Gosain vs. Union of India & Ors. reported in (1989) 4 SCC 468" Hon'ble Supreme Court observed that in all claims for appointment on compassionate grounds, there should be not any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadearner in the family.

In the case of "Government of India & Ors. Vs. P. Venkatesh" vide Civil Appeal No.2425 of 2019 decided on 01.03.2019, the Hon'ble Apex Court has held that "while considering a similar matter pertaining to repeated representations having been submitted by the person claiming compassionate appointment and the Courts directing for decision on the said representation has held that the compassionate appointment is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. The Hon'ble Supreme Court after considering the aforesaid, rejected the application for compassionate appointment where the person concerned had approached the Tribunal after a period of a decade of the death of the deceased employee".

In the present case also, as already indicated above, the petitioners approached the Tribunal after a lapse of almost 13 years from the date of death of the employee concerned. The observations made by the Hon'ble Supreme Court in the case of



P. Venkatesh (supra) are squarely applicable with the facts of the instant case. For the sake of convenience, the relevant observations made by the Hon'ble Apex Court in the case of P. Venkatesh (supra) are as under:

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondents, in these proceedings, is simply this; Compassionate appointment, it is well settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly 11 years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicated institutions. But, they do not service to the cause of justice. The litigant is back again before the Court, as they case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee....."

From a bare perusal of the pleadings and documents available on record, it is clear that the deceased-employee expired on 19.05.2003 and the claim of the petitioners for compassionate



appointment was rejected twice on 05/12.04.2005 and 13.06.2006. The petitioners kept mum for ten years and after a lapse of ten years, they submitted similar representation in the year 2016 to the concerned authorities for revival of their claim for compassionate appointment, which was again rejected by the respondents on 12.09.2016.

It is not in dispute that the earlier orders dated 05/12.04.2005 and 13.06.2006 have not been challenged by the petitioners before the Tribunal, which have attained finality.

Looking to the material available on the record, and after applying the law laid down by the Hon'ble Apex Court in the judgments referred in foregoing paras, we are of the considered opinion that the contentions put forward by the counsel for the petitioners, do not carry any merit, as the subsequent representations were made after a decade. Thus, this Court is not able to accept the claim of the petitioners for compassionate appointment after a great lapse of 17 years. Thus, the impugned order dated 19.08.2021 passed by the Tribunal warrants no interference by this Court.

In the result, the writ petition filed by the petitioners is without any substance and accordingly stands dismissed.

No order as to cost.

Pending applications, if any, also stand disposed off.

(ANOOP KUMAR DHAND),J

(MANINDRA MOHAN SHRIVASTAVA),J

HEENA GANDHI/5