

Court No. - 39

Case :- WRIT - A No. - 19777 of 2023

Petitioner :- Shripal Verma

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Manoj Kumar Dhruvanshi

Counsel for Respondent :- A.S.G.I.,Gopal Verma

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Manoj Kumar Dhruvanshi, learned counsel for the petitioner, Sri S.P. Singh, learned A.S.G.I. alongwith Sri Gopal Verma, learned counsel for the Union.

2. Present writ petition is directed against the order dated 02.03.2023 passed by the Central Administrative Tribunal, Allahabad in Original Application No. 1119 of 2021 (Shripal Verma Vs. Union of India and 6 Others). By that order the learned Tribunal has rejected the Original Application filed by the petitioner primarily seeking compassionate appointment.

3. Undisputedly, the petitioner's father died on 09.09.2004, one year before attaining the age of superannuation. The application claiming compassionate appointment was first filed by the petitioner on 22.11.2006. On the own showing of the petitioner that application was first rejected in the year 2009. Yet, the Original Application was first filed by the petitioner in year 2019 i.e. ten years later.

4. The explanation for the delay has been-repeated representation filed by the petitioner. It is thus claimed, in view of last representation dated 25.10.2018 the Original Application was filed within limitation.

5. While rejecting the claim, the Tribunal has noted as below:-

"6. Counsel for the applicant has submitted one order of CAT Allahabad Bench in OA No. 10 of 2018 which is not covering the case of the applicant. In this case, the death of the father of the applicant happened in the year 2004 at the age of 59 years. He had served almost his entire tenure of service. In the case of State of J&K and Others Vs. Sajad Ahmed Mir reported in (2006) 5 Supreme Court Cases 733, it is observed that "Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no need for compassionate appointment." On the basis of above discussion, it is clear that the father of the applicant had served almost full tenure before his death, the family of the deceased has survived from 2004 till date, the applicant has got only 48 points (even if accepted as 56 points, as claimed by the applicant in the rejoinder), whereas the last selected candidate who was appointed had secured 71 points, and as per directions of the Hon'ble Supreme Court that 5% of the existing vacancies only should be taken into consideration for providing appointment on compassionate grounds; the applicant has not been able to establish his claim and hence, the O.A. is dismissed. No costs."

6. In view of the facts noted above, we find no error on part of the Tribunal in treating the Original Application to be wholly belated. In the first place it is a settled principle in law that repeated representation may never give rise to repeated cause of action in view of Section 21 of the Administrative Tribunal's Act, 1985. In **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** the Supreme Court observed as under :

"21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. 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.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is

disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

7. Also, it is undisputed to the petitioner that his first representation was rejected in the year 2009 for reason of lower quality points awarded. The last selection having been made of the candidate, who had been awarded 71 quality points, prima facie, there was no error in the petitioner's claim being negated, at that stage.

8. Then almost 19 years' time has passed since the unfortunate occurrence of the death of the petitioner's father.

9. It may never be forgotten that grant of compassionate appointment is an exception made to the rule of equality enforced by Article 16 of the Constitution of India. Such exception may be made only in deserving facts and not by way of largesse, on a general notion of compassion. Compassion has to be matched with deserving facts to ensure that the exception to the rule of equality is not wasted or created where the claimant has survived the immediate hardship caused by the unfortunate death of the bread earner.

10. Seen in that light, we find no merit in the writ petition. Accordingly, it is **dismissed**. No order as to costs.

Order Date :- 29.11.2023

SK Srivastava

(Shiv Shanker Prasad,J.) . . . (S.D. Singh,J.)