

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

OWP No.2354/2015

MOHAMAMD AMIN LATOO

... PETITIONER(S)

Through: - Mr. Syed Manzoor, Advocate.

Vs.

STATE OF J&K & OTHERS

...RESPONDENT(S)

*Through: - Mr. Mubashir Majid Malik, Dy. AG, for R1 to R4.
Ms. Yasmin vice Mr. Mr. T. M. Shamsi, DSGI, for R5.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)
24.12.2024

1) The petitioner has sought a direction upon respondent No.2 to consider his case for grant of ex-gratia relief and the benefits under SRO 43 (compassionate appointment).

2) According to the petitioner, his father, namely, Mohammad Qasim Latoo, was hit by a bullet fired by a BSF personnel on 22.04.1994, in respect of which FIR No.32/1994 for offences under Section 307 RPC, ¾ of TADA(P) Act and 3/25 Indian Arms Act came to be registered with Police Station, Nigeen. It has been contended that the incident was verified by the Criminal Investigation Department of J&K Government and vide letter dated 15.09.2022 of the said Department addressed to the Deputy Commissioner, Srinagar, it was confirmed that the case has been closed as 'untraced' and it was also

confirmed that nothing adverse was found against the father of the petitioner, who ultimately died on 21.06.1996.

3) According to the petitioner, though his father had received bullet injury on 22.04.1994 and died more than two years thereafter but the cause of his death was the bullet injury, which he had sustained in the cross firing. It has been contended that the Deputy Commissioner, Srinagar, has not finalized case of the petitioner for grant of ex-gratia relief and for his compassionate appointment till date, hence the present petition.

4) The respondent Deputy Commissioner, Srinagar, in his reply has submitted that the petitioner had preferred an application before the said respondent for grant of ex-gratia relief and compassionate appointment and the case was forwarded to Tehsildar North with a direction to examine the same. Tehsildar North is stated to have conveyed that father of the petitioner had sustained injuries due to cross-firing in the year 1994 and for this, the petitioner has been granted ex-gratia relief to the tune of Rs.25,000/-. It has been further submitted that as per the report of Medical Superintendent, SMHS Hospital, Srinagar, father of the petitioner was remained admitted to the said hospital on 22.04.1994 and he was discharged on 28.04.1994. However, the hospital has not given any categoric report with regard to cause of death of the deceased as the same was not available with the hospital. It has been further contended that because father of the petitioner had died after more than

two years of having sustained the bullet injury, as such, the petitioner is not entitled to any relief under the norms.

5) The respondent Deputy Inspector General of Police, BSF, Srinagar, has also filed his reply, in which it has been submitted that there is no record to show that father of the petitioner was hit by the bullet of BSF personnel. According to the said respondent, the record showed that father of the petitioner had sustained injuries during cross-firing, therefore, it cannot be stated that he had died on account of firing by the BSF personnel.

6) I have heard learned counsel for the parties and perused record of the case.

7) Admittedly, the death of father of the petitioner had taken place in the year 1996. The petitioner has filed the present writ petition in the year 2015 i.e. after 19 years. In the writ petition, the petitioner has not explained the delay that has occasioned in filing the writ petition. The only assertion made by the petitioner is that his case was not finalized by the Deputy Commissioner, Srinagar, compelling him to run from pillar to the post. He has not even made a representation with the Deputy Commissioner, Srinagar, agitating his grievance during all these years. At least no such assertion has been made by the petitioner in his writ petition in this regard.

8) The question of delay and laches has been examined by this Court in a series of decisions in which the delay and laches has been considered to be an important factor in exercise of discretionary relief

under Article 226 of the Constitution. When a person who is not vigilant of his rights and has acquiesced with the situation, his writ petition after a lapse of as many as 19 years cannot be heard. The matters which have become stale or barred by limitation cannot be agitated by taking a belated resort to the court proceedings. Delay or laches is a relevant factor for a Court to determine the question as to whether claim made by an applicant deserves consideration.

9) In **Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu**, 2014 (4) SCC 108, the Supreme Court has, while dealing with the effect of delay in approaching a court, observed as under

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

10) In view of the foregoing analysis of the law on subject, it is clear that a Writ Court would not come to the rescue of a person who has

slept over his rights for close to two decades. In these circumstances, this Court refuses to exercise its writ jurisdiction in favour of the petitioner who has approached this Court after 19 years of death of his father.

11) Apart from the above, the claim of the petitioner for grant of compassionate appointment has otherwise become stale and unenforceable with the passage of time.

12) The Supreme Court has, in the case of **State of West Bengal vs. Debarata Tiwari and Ors.** AIR 2023 SC 1467, while dealing with the issue relating to effect of delay on a claim for compassionate appointment, observed as under:

7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependents of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the

authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

7.4. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependents⁸ of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

*7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in *Hakim Singh* would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.*

13) From the foregoing analysis of law on the subject, it is clear that a claim for compassionate appointment cannot be entertained after a lapse of several years since the death of a Government employee or of

a person whose dependents are entitled to such appointment under a scheme of the Government. As is already noted, the petitioner has approached this Court after a lapse of 19 years of death of his father. Such a long delay would disentitle the petitioner to grant of compassionate appointment and it would not be open to this Court to exercise its extraordinary writ jurisdiction in order to come to his rescue.

14) For the foregoing reasons, I do not find any merit in the writ petition. The same is dismissed accordingly.

Srinagar,
24.12.2024
“Bhat Altaf-Secy”

(SANJAYDHAR)
JUDGE

Whether the order is speaking: **Yes/No**
Whether the order is reportable: **Yes/No**