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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11279/2017

KASTURI & ANR Petitioners

Through: Mr.T.D. Yadav, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Jagjit Singh & Mr.Preet Singh,
Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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18.12.2017

1. Both the petitioners claim to be two of the legal heirs of Late Shri Sugar Singh who was working on the post of Keyman with the respondent-Northern Railway and had died in an accident as long back as on 25.01.1997. Apart from the petitioner No.1, the wife of the late employee and the petitioner No.2, his son, the deceased is survived by two other sons and four daughters.
2. Raising a grievance that the respondents had erroneously rejected the request of the petitioner No.2 for his appointment on compassionate grounds, the petitioners elected to approach the Tribunal in the year 2015, by filing OA No.2498/2015, which we may note was after a passage of 18 years from the date of the demise of late Shri Sugar Singh. The said petition has been dismissed by the Tribunal vide judgment dated 09.07.2015, with an observation that by that time, the petitioner No.2 was 40 years old and the petitioner No.1/widow of the deceased, was 78 years of age and who was in receipt of family pension. As a result, the petition was dismissed as patently

barred by limitation and bereft of any merits.

3. Challenging, the judgment of the Tribunal, learned counsel for the petitioners submits that the delay for seeking legal recourse cannot be attributed to the petitioners who were prompt in approaching the respondents for seeking appointment on compassionate grounds and it was the respondent No.2 who had issued a letter dated 24.11.1998, calling upon them to submit a Succession Certificate in respect of the deceased to the department. He states that the petitioners applied for the Succession Certificate along with other legal heirs of Late Shri Sugar Singh before the competent Court of law at Palwal by filing a petition under Section 372 of the Indian Succession Act. The said petition was registered as Case No.7/1997 and the Succession Certificate was granted to the petitioners and other LRs on 23.08.2002.

4. On a perusal of the said judgment dated 23.08.2002 passed by the learned Additional Civil Judge, Senior Division, Palwal, it transpires that the petitioners herein were declared as the legal heirs of the deceased, Shri Sugar Singh along with the siblings of the petitioner No.2. That being the position, we have inquired from learned counsel for the petitioners as to the date on which the petitioners had, after being granted the Succession Certificate vide judgment dated 23.08.2002, approach the respondents requesting them to process the application for compassionate appointment in respect of the petitioner No.2.

5. Learned counsel for the petitioners states that the judgment dated 23.08.2002 was not sufficient and the petitioners had to file yet another petition under Section 376 read with Section 378 of the Indian Succession Act for grant of Succession Certificate before the competent Court on

06.10.2003, which was ultimately decided on 29.11.2007 whereby the original Succession Certificate was amended and adding specific amounts relating to additional securities and dues of the deceased.

6. We are of the opinion that merely because some of the securities/assets left by the deceased were not made a part of the earlier petition due to which the petitioners had to obtain an amended Succession Certificate could not have extended the limitation insofar as the cause of action for seeking compassionate appointment is concerned for the reason that the first judgment dated 23.08.2002 whereby Succession Certificate had been granted to the petitioners had itself declared that they are the legal heirs of the deceased, which would have been sufficient for the respondents to process their application, had the certificate been produced on time by the petitioners. However, it appears that the petitioners elected not to do so and instead filed an application for seeking amendment of the earlier Succession Certificate granted in their favour that was decided only on 29.11.2007.

7. After a passage of 8 years, the petitioners approached the Tribunal only in the year 2015, by filing OA No.2498/2015, praying *inter alia* for issuing directions to the respondents to grant petitioner No.2 compassionate appointment. By the impugned judgment, the Tribunal dismissed the OA by referring to the judgment of the Supreme Court in the case of ***Haryana State Electricity Board vs. Hakim Singh***, reported as 1999(1) AISLJ 114 wherein it was held that if the family members of the deceased employee could manage for 14 years after his demise, the legal heirs lose their right to put forward a claim for compassionate appointment, since it shall have to be assumed that they were able to tide over the demise of the deceased employee in that duration. The said decision of the Supreme Court

highlights the fact that the provision of compassionate appointment is meant to give succor to the family, to enable them to tide over the sudden financial crisis befallen on the dependant members of the employee, but it cannot be treated as another mode of recruitment of the dependent of the deceased Government servant. Further, the Tribunal has referred to OM dated 29.07.1998, issued by the Department of Personnel and Training, Government of India which states that belated cases of only upto 5 years or so arising out of the death or retirement on medical grounds of a Government servant can be considered for compassionate appointment. Referring to Clause 8 of the said OM, the Tribunal observed that having regard to the fact that the petitioners did not approach the Court within a reasonable time, it has to be assumed that the family did not feel any immediate need for succor.

8. We do not find any illegality or arbitrariness in the impugned decision for interference. The Tribunal has rightly noted the fact that the petitioners have taken their own sweet time spreading over 18 years to approach the Court for relief. It took them eight years, reckoned from 29.11.2007 to file an application before the Tribunal and 2 ½ years to approach this Court against the judgment of the Tribunal for which delay, no explanation has been offered.

9. The present petition is accordingly, dismissed in *limine*, as meritless.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 18, 2017/gm