

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2183 of 2019**

- Nitin Kumar Nitinware S/o Late Shri R.N. Nitinware Aged About 32 Years Ex-Postal Assistant, R/o Qr. No. 1, Block No. 3, Sector-6, Street No. 48, Bhilai, District- Durg, Chhattisgarh

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Communication And Information Technology Department Of Post Dak Bhawan, New Delhi, Pin No. 110001
2. The Chief Post Master General, Chhattisgarh Circle, Raipur, Chhattisgarh, 492001
3. The Deputy Director Of Staff (Postal) Chhattisgarh Circle, Raipur, District- Raipur, Chhattisgarh 492001
4. The Superintendent Head Post Office, Durg, District- Durg, Chhattisgarh 49008
5. Member Chhattisgarh State, Scheduled Caste And Scheduled Tribe, Commission Raipur, Chhattisgarh, 492001
6. Ratnesh Kumar Mishra S/o Late Shri Rajesh Kumar Ex. P.A. Pachripara Ward No. 28 Durg, Chhattisgarh 49008

---- Respondent

For Petitioner : Shri Jitendra Gupta, Advocate.
For Respondents 1 to 4 : Shri B. Gopakumar, ASG.
For Respondent No.5 : Shri Gagan Tiwari, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra, Ag. C.J. &
Hon'ble Shri Parth Prateem Sahu, J

Order On Board By Prashant Kumar Mishra, Ag CJ

03/04/2019 :

1. The petitioner's father working as Postal Assistant in the Department of Post and Telegraph under the Union of India died in harness on 1.2.2000. The petitioner moved an application for grant of compassionate appointment on 27.12.2000, which was considered by the Circle Relaxation Committee (for short 'the CRC') and was rejected vide communication addressed to the petitioner on 16.4.2004.
2. The petitioner did not initiate any action within reasonable time after 16.4.2004 to assail the validity of the order rejecting his prayer for grant of compassionate appointment. His mother firstly moved an application on 17.8.2004 which was rejected on 6.2.2006. His mother moved another application on 15.4.2011, on which no orders were passed. The petitioner thereafter moved an application before the Chhattisgarh Scheduled Caste Commission alleging discrimination in the matter of consideration for grant of compassionate appointment. Without recording any finding as to the applicability of the Office Memorandum dated 5th May, 2003 on the basis of which the petitioner's application was rejected on 16.4.2004 and thereafter in the year 2011, as also after rejection of his mother's application, the Commission recommended that since the petitioner belong to SC community, her case deserves to be considered by amending the Rules.
3. The petitioner thereafter preferred OA No.203/1137/2015 which came to be disposed of without entering into the merits of the matter reserving liberty in petitioner's favour to move before the Department.

The petitioner thereafter moved an application on 23.2.2016 which was reconsidered in the CRC's meeting held on 24.7.2017 and was rejected vide communication sent to the petitioner on 31.7.2017.

4. The present OA was filed in the year 2017 after rejection of the petitioner's or his mother's third application for grant of compassionate appointment.
5. In **State of Himachal Pradesh and another Vs. Shashi Kumar** {2019 SCC OnLine SC 80}, the Supreme Court held that prayer for compassionate appointment should not be considered after long lapse of time, as the compassionate appointment by its very nature is for providing immediate succour to the dependents of the deceased employee. It is not a source of employment. Compassionate appointment is offered as a facility dehors the Articles 14 and 16 of the Constitution of India, therefore, it is exception to the ordinary rule of employment and that by itself is not a source of recruitment.
6. The petitioner's first application was rejected on 16.4.2004, yet he approached the Tribunal for the first time in the year 2015 i.e. after 11 years. On this ground alone, we refuse to entertain this Writ Petition. It is accordingly dismissed.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge