

Item-3 22-09-2021

WP.CT 251 of 2013

Mousumi Dutta
Versus
Union of India & Ors.

sg Ct. 30

(Through Video Conference)

Mr. Bhudeb Chatterjee, Adv.
...for UOI

The writ petition is directed against an order dated January 23, 2013 passed by the learned Central Administrative Tribunal, Kolkata Bench in O.A. 991 of 2012.

The petitioner is the daughter of one Smt. Tripti Dutta. Her mother was working as a LDC under the respondents. She applied for voluntary retirement. Her application for voluntary retirement was accepted by the authorities on 20th March, 1998 retrospectively with effect from 19th July, 1997 on the ground that she was completely and permanently incapacitated. An application for compassionate appointment was submitted. She was also asked to appear before the committee on 29th April, 2003. Since no response was forthcoming, she filed an application being O.A. 1047 of 2004 for consideration of her case for compassionate appointment. The said application was disposed of by an order dated 24th August, 2005 with a direction to consider her case against any available vacancy, within three months. The respondent authority in purported consideration of the said application by an order dated 25th January, 2008 expressed its inability to appoint her on compassionate ground

on the following grounds:

- (a) No Group-C Ministerial post was available.
- (b) There has been reduction over all strength of Group-C post and
- (c) More than 3 years have passed.

The said order was challenged by filing O.A. 223 of 2006. The said OA was disposed of vide order dated 9th November, 2009 with a direction to the respondents to consider her case as per OM dated 5th May, 2003 and in case the applicant fulfils the eligibility criteria and if vacancy is available, then to consider her case along with others and to offer appointment.

As a consequence of such direction, the authority appears to have passed an order dated 11th May, 2010 rejecting her claim on the ground that there was no vacancy.

The applicant made a further representation on 20th May, 2012 indicating that although her case was rejected on the ground that no post was available, one Smt. Rita Rana was, however, offered appointment. It was contended before the learned Tribunal that her mother was appointed on compassionate ground and had to take voluntary retirement after 3 to 4 years of service because of her health condition. The learned Tribunal rejected the application. The application was, in effect, dismissed on the ground of limitation.

The learned Tribunal relying upon the two Hon'ble Apex Court decisions in (i) *C. Jacob vs. Director of Geology and Mining and Another* reported in 2008(2) SCC (L&S) 961 and *Ramesh Chan Sharma vs. Udham Singh Kamal & Ors.*

reported in *2000 SCC (L&S) 53*, rejected on the ground that the said application for compassionate appointment was barred by limitation.

The learned Tribunal did not go into the merits of the matter but dismissed the said application on the ground of delay.

We have heard the learned Counsel for the parties.

We fail to appreciate the reason that prevailed with the learned Tribunal in not considering the said application on merits.

In course of argument, we have come across DOPT Circular being DoP&T's No. 14014/02/2012-Estt.(D) dated 30th May, 2013 wherefrom it appears that one of the issues deliberated upon by the authorities concerned namely, ***"26. If compassionate appointment cannot be given in a year, can it be considered in the next recruitment year?"***. The authority answered to the said question in the affirmative. The answer reads as follows: ***"Yes. There is no time limit for compassionate appointment. A request for compassionate appointment can be carry forward to next or more years, but the total compassionate appointment made in a year should be exceed 5% limit of the direct recruitment Group C quota."***

This circular appears to have not been considered by the learned Tribunal while disposing of the writ petition and dismissed the same on the ground of limitation.

In view of the aforesaid, the order of the learned Tribunal dated 23rd January, 2013 is set aside.

We direct the authority concerned to consider the application of the applicant for compassionate appointment taking into consideration the aforesaid Circular and take a decision with regard to the compassionate appointment of the applicant and communicate the same to the applicant.

The order of the authorities concerned rejecting the application for compassionate appointment is accordingly quashed.

The entire process should be completed within a period of four months from date.

The writ petition is accordingly disposed of.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)