

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Acting Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

WP.CT No.353 of 2024

UNION OF INDIA AND OTHERS

. . .APPELLANTS

VERSUS

SUBRATA DAS

. . .RESPONDENT

For the Appellant/(s) : Mr. Indrajeet Dasgupta, Adv.

For the Respondent/(s) : Mr. Pratip Kumar Chatterjee, Sr. Adv.
Ms. Swapna Ray, Adv.
Mr. Ashish Deb, Adv.
Ms. Maitrayee Chatterjee, Adv.
Mr. Tridun Mishra, Adv.

Heard on : 18th November, 2025.

Judgment on : 18th November, 2025.

Sujoy Paul, ACJ.:

1. In this petition filed under Article 226/227 of the Constitution, the petitioner/department has challenged the order of Central Administrative Tribunal ('Tribunal'), Kolkata Bench, dated 29th July, 2024, passed in

O.A. No.350/249/2023 whereby claim of the applicant (respondent herein) is allowed and he was directed to be given compassionate appointment against the vacancy of 2002-2003 forthwith.

Department's Contention:

2. Learned counsel for the department raised fourfold submissions. By taking this court to the admitted facts it is submitted that applicant's father was working with the Geological Survey of India and was declared medically unfit with effect from 26th July, 2000. The applicant preferred an application for compassionate appointment. The department admittedly considered his claim for compassionate appointment and he was declared to be fit by original committee in its meeting held on 29th April, 2003. Thereafter, a review committee meeting had taken place in which applicant was not selected. Thereafter, because of change of policy of compassionate appointment, the department informed the candidates to prefer fresh applications submitting their candidature for compassionate appointment. In terms of such communication, the applicant submitted his candidature for the year 2013-2014, 2014-2015 and 2015-2016.
3. However, his case was not recommended for compassionate appointment. The applicant filed O.A. No.350/249/2023 in the year 2023 seeking compassionate appointment against his selection which had taken place in 2002-2003 and also prayed to set aside the regret letters dated 19th February, 2013, 13th January, 2017 and 13th August, 2000, whereby the department informed him that his various applications for compassionate appointment were rejected.

4. *First* and foremost contention of learned counsel for the department is that the very purpose of grant of compassionate appointment is to provide immediate helping hand to a family in distress. If compassionate appointment is not claimed with quite promptitude, the very purpose of granting compassionate appointment is frustrated. The applicant approached the tribunal when he was aged about 40 years. By placing reliance on ***Eastern Coalfields Limited vs. Anil Badyakar and Others*** reported in ***(2009) 13 SCC 112, Local Administration Department and Another vs. M. Selvanayagam @ Kumar Avelu*** reported in ***(2011) 13 SCC 42*** and ***Government of India and Another vs. P. Venkatesh*** reported in ***(2019) 15 SCC 613***, it is submitted that the claim of compassionate appointment deserves to be rejected solely on the ground of delay in approaching the Tribunal on the part of the applicant.
5. The *second* submission is that even assuming that the applicant was selected in the year 2003, he did not file any petition immediately thereafter, within a period of limitation before appropriate forum for enjoying the fruits of such selection. Instead, he waited till 2012-2013 and then he submitted fresh applications on three occasions for grant of compassionate appointment. Thus, he has waived his right to enjoy the outcome of selection of 2003.
6. *Thirdly*, it is submitted that the petitioner herein by communication dated 19th February, 2013, specifically informed the applicant that in the CAC meeting dated 29th April, 2003, his case was recommended but it was not recommended in the next CAC held on 16th February, 2006. Thus, the

applicant came to know about his non-selection on 19th February, 2013. By two more rejection orders dated 13th January, 2016 and 13th August, 2020, the department again informed the applicant about the rejection of his candidature in subsequent considerations for compassionate appointment. The limitation to assail the orders is one year as per section 21 of Administrative Tribunal's Act, 1985. However, if statutory remedy is availed against the impugned decision, the limitation is extended upto one and half years. Thus, examining it from any angle, the O.A. was barred by limitation.

7. The *fourth* submission is that the tribunal was not justified in directing the appointment of applicant in the vacancy of 2002-2003. The tribunal has failed to examine that very object of compassionate appointment stands frustrated if a candidate comes to the court nearly about two decades.

Stand of Applicant:

8. Learned counsel for applicant submits that the applicant was admittedly selected in the year 2003. The respondents are at fault in not implementing the said selection in his favour. It is further argued that when department itself invited candidature for compassionate appointment, the applicant on few occasions submitted such candidature which were rejected by aforesaid orders. The department sat tight over the matter for compassionate appointment after his selection in 2003 and, therefore, in the light of judgment of the Hon'ble Supreme Court in ***Malaya Nanda Sethy vs. State of Orissa and Others*** reported in ***2022 SCC OnLine SC 684***, no fault can be found in the order of the tribunal. The similar contention is advanced on

the strength of judgment of the Apex Court in ***East Coast Railway and Another vs. Mahadeb Appa Rao and Others*** reported in ***(2010) 7 SCC 678***.

9. The learned counsel for the applicant has taken pains to contend that when aforesaid rejection orders came to his notice, he availed the statutory remedy and preferred an application in GSI Portal. Thereafter, he preferred an application on 18th July, 2022, under the RTI Act, 2005, seeking information and note-sheets of his selection. Soon thereafter, when he came to know about the said information, he filed the said O.A. in 2023. Thus, there is no delay on the part of the applicant and department has not raised any objection of limitation before the tribunal. In support of these submissions, the applicant has filed the written submission and said two judgments.
10. The parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

Analysis:

11. The admitted facts in this case are that applicant's father was voluntarily retired on medical grounds with effect from 26th July, 2000. The applicant was selected for compassionate appointment in 2003 but in the review selection he was not selected. Admittedly, the applicant did not approach the appropriate legal forum seeking the benefit of his selection of the year 2003 immediately. The applicant, on the other hand, had chosen to wait for about 8-9 years and when a new policy of compassionate appointment came into being, he preferred fresh applications for compassionate appointment.

12. In our considered opinion, if applicant wanted to enjoy the fruits of his selection of 2003, he should have filed a petition with quite promptitude before submitting his candidature in the year 2011-2012 onwards. After having participated in the subsequent selections, in our considered judgment, the applicant has waived his right to get the benefit of his selection in the year 2003.

13. In ***Halsbury's Laws of England, Vol. 16(2), 4th Edn., Para 907***, the expression "waiver" was defined as under:

"Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it."

(Emphasis Supplied)

14. After considering this dictionary meaning, the Apex Court in ***Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr.*** opined as under:

"122. As such, for applying the principle of waiver, it will have to be established, that though a party was aware about the relevant facts and the right to take an objection, he has neglected to take such an objection."

(Emphasis Supplied)

15. It was further held:

"127. Thus, for constituting acquiescence or waiver it must be established, that though a party knows the material facts and is conscious of his legal rights in a given matter, but fails to assert its rights at the earliest possible opportunity, it creates an effective bar of waiver against him."

(Emphasis Supplied)

16. In view of this judgment, it is clear that applicant with eyes wide open submitted his candidature for compassionate appointment on 4-5

occasions after 2003. Thus, he, by his conduct, waived his right to enjoy the benefit of selection of 2003.

17. The matter may be viewed from another angle. The department, in no certain terms, informed the petitioner by communication dated 19th February, 2013, 13th January, 2016 and 13th August, 2020, that he has not been selected in the selections for the year 2002-03, 2005-06, 2013-14, 2014-15 and 2015-16, i.e. five times. Interestingly, these rejection orders could have been challenged with a period of one year. If any statutory remedy is availed against this order, this could have been challenged within 18 months as per section 21 of the 1980 Act which prescribes a statutory limitation.

18. The petitioner is explaining delay on the basis of two reasons, namely-

- (i) he preferred a complaint in the year 2014 in GSI Portal; and
- (ii) he preferred an application under RTI Act on 18th July, 2022.

19. In our view, both the reasons neither extend the limitation nor explain the reason for delay. The GSI Portal remedy was availed on 8th December, 2013, and from that date he could have availed the remedy of filing Original Application under section 19 of 1980 Act within 18 months. The RTI information, by no stretch of imagination extends the limitation. The applicant came out of his deep slumber in 2022 for the first time to obtain information under the RTI Act. Nothing prevented him to obtain such information immediately after 2003 when he was selected and thereafter, review committee took a different decision. Thus, the applicant has taken a calculated risk and delay of about two decades is not properly explained.

20. We find substantial force in the argument of the department that if compassionate appointment is directed to be given after decades, the very object and purpose of compassionate appointment will stand defeated. The judgments cited by the learned counsel for the department are on this point and deals with the aspect of immediacy.

21. In the case of **Santosh Kumar Dubey vs. State of U.P. (2009) 6 SCC 481**, the Apex Court poignantly held as under:

“12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service.”

(Emphasis Supplied)

22. The *ratio decidendi* of this judgment is consistently followed by Hon'ble Supreme Court. In its recent judgment in **State of W.B. v. Debabrata Tiwari, 2023 SCC Online SC 219** the Apex Court opined as under:-

“35. 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.”

(Emphasis Supplied)

23. Once facts are admitted, in our opinion, even if the objection of limitation is not specifically taken, it was obligatory on the part of the tribunal to examine whether it is dealing with any stale claim or not. The tribunal, in our humble opinion, has miserably failed to do the same and directed appointment of the applicant in the year 2024 against the vacancy of 2002-2003. The order of tribunal, thus, cannot sustain judicial scrutiny.

24. So far judgment of the Hon'ble Supreme Court in ***Malaya Nanda Sethy (Supra)*** is concerned, a careful reading of this judgment shows that it is based on the peculiar facts and circumstance of the said case. In the said case, the application was preferred by the claimant therein with quite promptitude but department sat tight over the matter for several years. In this backdrop, the Hon'ble Apex Court opined that negligence of department cannot be a ground to deprive the claimant. In the instant case, the applicant has waived his right to get appointment against a vacancy of 2003-2004 when he submitted candidatures without any demur against the vacancies of year ending 2003, 2006, 2014, 2015 and 2016. Thus, this judgment cannot be pressed into service in the factual matrix of the present case.

25. The judgment in ***East Coast Railway (Supra)*** also shows that compassionate appointment cannot be claim as a matter of right. It is a

concession given to the candidate in the factual backdrop of each case. This judgment is of no assistance to the applicant.

26. In view of foregoing discussion, we are unable to give our stamp of approval to the impugned order of tribunal dated 29th July, 2024. Resultantly, the said order is **set aside**.

27. The petition is **allowed**.

28. WP.CT No.353 of 2024 is **disposed of** accordingly.

29. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)

Saikat Mukherjee
A.R.(Ct.)