

Sanjeev Kumar Vs Union Of India Through General Manager, North Eastern Railway, Gorakhpur & Ors.

Court: Central Administrative Tribunal - Allahabad Bench, Allahabad

Date of Decision: Jan. 16, 2025

Acts Referred: Administrative Tribunals Act, 1985 " Section 19, 20(2)(a), 20(2)(b), 21, 21(i)(b), 21(3)
Constitution Of India, 1950 " Article 226

Hon'ble Judges: Rajnish Kumar Rai, Member J

Bench: Single Bench

Advocate: Vinod Kumar, K.K. Ojha

Final Decision: Dismissed

Judgement

Rajnish Kumar Rai, Member J

1. By way of the present O.A., the applicant has sought the relief for compassionate appointment on the ground that his father Late Ramanand Singh

died on 22.10.2003. The O.A. is supported by Misc. Application No. 3012/2023 i.e. Delay Condonation Application explaining the delay and laches in

filing the O.A. The relief sought under Section 19 of the Administrative Tribunals Act, 1985 is quoted below: -

“(ii) To issue an order or direction in the suitable nature directing the respondent department to consider the appointment of applicant on

compassionate ground under the dying-in-harness rules within stipulated period of time which may be specified by this Hon'ble Tribunal.

(iii) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) To award the cost to the application to the applicant.

2. This case is reserved for orders on delay condonation application (M.A. No. 3012/2023).

3. The brief facts of the case, as per pleadings, is that the father of applicant expired on 22.10.2003 during service career leaving behind him two

widows namely Smt. Ahilya Devi and Smt. Renu Devi along with four children. The deceased employee married two times, firstly with Smt. Ahilya

Devi and thereafter with Smt. Renu Devi with the consent of first wife Smt. Ahilya Devi because she was unable to born child. The applicant is the

one of legitimate child of the deceased employee who born from the wedlock of second wife Smt. Renu Devi. Before death of deceased employee,

Smt. Ahilya Devi (first wife) was living in the parental house of the deceased employee at Begusarai, whereas Smt. Renu Devi (second wife) living

with deceased employee at Bareilly City. After the death of deceased employee, Smt. Renu Devi approached in the office of respondent department

vide application dated 07.01.2012 and requested for release of death-cum-retiral dues of her husband as per rules. Since the respondents department

did not release the death-cum-settlement dues of the deceased employee on the pretext that first wife of the deceased employee is still alive and as

such she may obtained succession certificate from the competent court of law then only death-cum-settlement dues can be released. Having no other

option, the mother of applicant Smt. Renu Devi had filed Succession Suit No.56/2006 before the learned court of Civil Judge (Senior Division) Bareilly

praying therein that she may be declared one of the successor of deceased employee and the said case was decided by the learned Civil Judge vide

judgment dated 23.11.2008 declaring the mother of applicant namely Smt. Renu Devi as one of the successor of the deceased employee to obtain the

death-cum-settlement dues. However it was very unfortunate to the applicant that his real mother Smt. Renu Devi also died on 22.04.2011 leaving

behind applicant and his three sisters and one younger brother. Thereafter, the applicant started to pursue the claim of appointment on the

compassionate ground under the dying-in-harness rules with the consent of his step mother Smt. Ahilya Devi, therefore she was agreed and filed an

affidavit to this effect on 18.03.2016 in the office of respondents department requesting therein that now she is sole alive widow of deceased

employee and as such family pension of her husband may be released in her favour and further requested for consideration of an appointment of

applicant on the compassionate ground under the dying- in-harness rules for which she has no grievance at all. Learned counsel for the applicant

pointed out that since the applicant was born from the wedlock of second wife of deceased employee namely Smt. Renu Devi and as such the

respondent department did not consider his claim till date and therefore he is running from pillar to post to get appointment on compassionate ground.

4. The respondents have filed the objection against the delay condonation application stating therein that during the pendency of above mentioned

original application, the applicant filed delay condonation application supported by an affidavit in which he prayed to condone long delay. The dispute of

two widows of deceased employee with regard to payment of legal dues of deceased employee is involved. The competent authority of department of

railway demanded the succession certificate from the widows of deceased employee for releasing the legal dues. The learned Civil Judge (Sr.),

Bareilly has decreed vide order dated 23.11.2008 had decreed the amount of Rs.47,269/- in Succession Suit No. 56 of 2006 (Annexure-4) which has

been paid to the mother of applicant. It is further submitted that about 12 years have been passed from the date of death of mother of applicant and 15

years have been passed from the date of obtaining succession certificate by the department and at present the applicant is about 33 years old and he

attained the age of majority in the year 2008 but after attaining the age of majority her mother and also applicant sleeping over the matter and after

passing long time approached this Tribunal and made a request to consider his case for appointment on compassionate ground. It is relevant to mention

here that in the delay condonation application and affidavit he has not explained any cogent reason for condonation of delay and also not explained day

to day delay in filing original application before this Hon'ble Court. In the original application none of the paragraphs in support of long delay has been

mentioned and also the applicant had not given any satisfactory reason and not explained the day to day delay in affidavit as such the applicant is not

entitled to get the benefit of limitation Act. The Tribunal in considering delay condonation application followed the provisions contained in Section 21 of

Administrative Tribunal Act, 1985. As per Administrative Tribunal Act, 1985 Section 21 provides the limitation clause. The Section 21 of the Act of

1985 lays down the limitation for approaching the Tribunal, which is one year from the date of cause of action, which can be extended by another six

months from the date of filing of statutory appeal, revision or representation. From perusal of aforesaid section it is clear that under the 1985 Act the

original application is to be filed within one year from the date of cause of action. The same is extended by another six months in terms of Section

21(i) (b). Hence, the respondents have prayed for dismissal of the O.A.

5. Heard the rival contentions of learned counsel for the parties on the point of admission of O.A. and perused the pleadings on record.

6. It is an admitted fact that the father of applicant Late Ramanand Singh i.e. deceased employee died on 22.10.2003. Thereafter, none of the wife

namely Smt. Ahilya Devi (first wife) and Smt. Renu Devi (second wife) or any of the legal heirs had made application for compassionate

appointment. Smt. Renu Devi-mother of the applicant, after getting the succession certificate on 23.11.2008, had got the requisite dues i.e. death cum

retirement gratuity. However, subsequently she also died on 22.04.2011. Thereafter, for the first time the applicant has made an application for grant

of compassionate appointment along with one affidavit of Smt. Ahilya Devi (first wife) on 18.03.2016. Therefore, after 13 years of death of deceased

employee, the applicant has made application for grant of compassionate appointment though he attained the majority in the year 2008. In the year

2023, he filed the present O.A. After raising the objection by the respondents regarding delay, the applicant has filed the delay condonation application

on 01.09.2023 explaining the following grounds: -

2. That there is dispute between the family of the deceased employee about making claim on behalf of two widows in the department and

as such the direction was given by the respondents department about obtaining the succession certificate which was furnished by the mother

of applicant on 23.11.2008, whereby requested to release of entire death-cum-settlement dues of the deceased employee.

3. That even after producing the succession certificate dated 23.11.2008 obtained from the competent court of law, the respondents

department did not release single penny in favour of the mother of applicant.

4. That it is undisputed fact that the applicant is the son of second wife of deceased employee and therefore the department was not

recognizing him and his mother even to release of death-cum-settlement dues of his father as well as family pension, therefore the mother of

applicant was waiting about disbursement of family pension and other death-cum-retiral dues which still could not be released from the

office of respondents department.

5. That in such circumstances the family of applicant was facing extreme financial crises having no source of income for their livelihood,

while living under the penurious condition and as such could not approach before this Hon'ble Tribunal to file the present original

application in time.

With regard to limitation provided under Section 21 of the Administrative Tribunals Act, 1985, for filing an O.A. following provisions have been

provided under the Act: -

21. Limitation.

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub- section (2) of section 20 has been made in connection with the grievance

unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six

months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three year

immediately preceding the date on which the jurisdiction, powers authority of the Tribunal becomes exercisable under this Act in respect of the

matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be

entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a

period of six months from the said date, whichever period expires later

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in

clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section

(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

7. It is apparent that this application has been filed after a prolong delay of almost 20 years from the date cause of action accrued i.e. 22.10.2003.

However, considering the grievance and merit of the case, this Tribunal has given power under Section 21 sub section (3) of the Administrative

Tribunals Act, 1985 to condone the delay after being satisfied that sufficient cause for not making the application within such period has been

explained.

8. The scheme of compassionate appointment is framed for the purpose to provide immediate financial assistance to the bereaved family. The scheme

for grant of compassionate appointment is to enable the family of deceased employee to tide over the sudden crisis due to death of sole bread earner

who has left the family in penury condition and without any means of livelihood. It would be of no use to grant compassionate appointment to the

dependent of deceased employee after the sudden crisis which arose on account of death of sole bread earner, has become conquered. Thus, after

considering the issue, after prolong delay of 20 years, the basic object of the scheme of compassionate appointment would be frustrated.

9. Considering the aforesaid aspects, the Hon'ble Supreme Court in the case of State of West Bengal v. Debabrata Tiwari and others 2023

SCC OnLine SC 219 has held as follows: -

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.

36. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which

disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. v. Prosper Armstrong*, [1874] 3

P.C. 221 as under:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either

because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he

has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were

afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which

otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that

defence must be tried upon principles substantially equitable Two circumstances, always important in such cases, are, the length of the delay and the

nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the

other, so far as it relates to the remedy.

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a

person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of

this Court in *Moon Mills Ltd. v. M. R. Meher*, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle

that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following

words:

9. . . .the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is

inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in

exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated

resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ

jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third

parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an

important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

After considering the aforesaid legal position and facts of the case, this Court is of the opinion that the case of applicant does not come under the

purview of directing the respondents to consider the case of applicant for grant of compassionate appointment as the cause of action arose on

22.10.2003 i.e. death of father of applicant Late Ramanand Singh and the O.A. has been filed in the year 2023 seeking compassionate appointment,

along with delay condonation application. Since the issue related to grant of compassionate appointment has already been dealt in several

pronouncements by the Hon'ble Supreme Court and in the facts of case, this Tribunal is also of the opinion that the applicant is not entitled for

considering his case for compassionate appointment at such belated stage i.e. after 20 years.

10. In view of the above, the delay condonation application No. 3012/2023 is rejected and consequently the O.A. No. 628/2023 is also dismissed. No

order as to cost. All the pending MAs shall be deemed to have been disposed of.