

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00680/2019

Monday, the 12th day of July, 2021

CORAM

**HON'BLE MR.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE MR.K.V.EAPEN, ADMINISTRATIVE MEMBER**

V.Prajith,S/o.late.Korukutty, aged38 years
Thejus House, Thamarakuzhi,
Malappuram Dist.-676505(9745297432)

-Applicant

(By Advocate: Mr.C.S.G Nair)

Versus

1. Chief Commissioner of Central Tax & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin- 682018.
2. Principal Commissioner of Central Tax & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin-682018
3. Union Of India,
Represented by its Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110001. -Respondents

(By Advocate: Mr. S.R.K Prathap)

The O.A having been heard on 9th March 2021 , this Tribunal delivered the following order on 12.7.2021.

O R D E R

HON'BLE MR.P.MADHAVAN, JUDICIAL MEMBER

This is an Original Application filed seeking the following reliefs:

“i. To direct the respondents to appoint

the applicant as Tax Assistant or in any other suitable post on compassionate grounds within a stipulated period.

ii. To grant such other reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

iii. To allow the OA with costs.”

2. Applicant is the son of Late Mr.V.Korukutty who was working as Havildar under the Central Tax and Customs Department. He expired on 2.3.2007 after a prolonged treatment for cancer and he left behind his wife and two children. The entire family was depending on the salary of Late Mr.V.Korukutty. The family had to spend about 20 lakhs for his treatment. The death benefits like gratuity etc received were not sufficient to repay the loans taken for the treatment of the deceased employee. The applicant in this case is seeking compassionate appointment as per the scheme of compassionate appointment issued by the DoP&T in O.M No.14014/6/94-Estt.(D) dated 9.10.1998, which is produced as Annexure A-1.

3. The applicant is a graduate and is also having a diploma in Electronics and Communications and he is also a holder of PGDCA. The applicant had submitted an application for compassionate appointment on 26.3.2007, which is produced as Annexure A-2. But there was no response from the respondents. Hence he filed O.A No.196/2012 before this Tribunal. The said Original Application was dismissed on the ground that the applicant's case was considered continuously for three years, but the respondents had not

given appointment as there were more deserving candidates. While so, in 2016, he received a memorandum directing him to attend the Physical Endurance Test for the post of Havildar and Data Entry Speed Test for the post of Tax Assistant on 15.1.2016. The applicant cleared both the tests and he was also short listed along with other 23 candidates, but he did not get any appointment.

4. According to the applicant, he had filed O.A 382/2015 before this Tribunal for granting appointment as Tax Assistant or any other post. According to the applicant, appointment was not given after considering proper criteria for the same. It was also submitted that there existed more vacancies and the Department has not filled up the same. He had also produced various documents including the Minutes of the Meeting etc to show that the respondents had not fully filled up the vacancies and the procedure was not proper. This Tribunal as per common order in O.A Nos.283/16, 380/17, 631/2017, 658/2017 and 382/2017 directed the respondents to give appointment to the candidates already short listed for the post of Tax Assistant and Havildars on Compassionate Grounds within a period of one month from the date of that order. A copy of the above judgment is produced as Annexure A-12. Since the said order of the Tribunal was not complied with, the applicants filed three Miscellaneous Applications (M.A No.3/18, 4/18 and 5/18) for implementing the order of this Tribunal. The Tribunal as per order dated 5.6.2018 converted the M.As into Contempt Petitions and had initiated contempt proceedings against respondent no.1. The respondents thereupon filed O.P (CAT) No.125/2018 against the order in

O.A No.382/2015. It appears that the Hon'ble High Court has set aside the order of the Tribunal in O.A No.382/2015 and disposed of the O.P(CAT) with a direction to the respondents to consider the claim of the applicant who was short listed in the future vacancies. Accordingly, the respondents had considered the case of the applicant along with 99 persons, which included fresh applicants and as per the Minutes dated 24.10.2018 (Annexure A-16), the respondents again did not grant any appointment to the applicant herein

5. Thereupon, the applicant had filed a Contempt Petition No.60 of 2019 before the Hon'ble High Court for not implementing the order in O.P No.125/2018. While the said C.P(C) was pending , the Hon'ble High Court has got a clarification from the Division Bench which disposed of O.P (CAT) No.125/2018 and as per the said clarification, the direction issued by the Division Bench in O.P (CAT) 125/2018 was only a direction to consider the case of the applicant for the future vacancies and there was no direction to appoint the applicant as such. The C.P(C) was disposed of recording the same and while disposing the C.P(C) , the Hon'ble High Court has permitted the applicants to file Original Application against the order of the respondents.

6. This Original Application is filed against the said decision of the Committee which is produced as Annexure A-16 to Annexure A-18 giving appointment to other persons. According to the applicant, the said decision of the respondents was made for favouring certain persons and according to him, the decision of the Committee is arbitrary, discriminatory and illegal and against the directions of the Hon'ble High Court. The respondents did not

consider the direction in Annexure A-1 judgment in its true spirit. There was no need for subjecting the applicant to another selection as he is already in the short listed panel. He is also aggrieved against the decision to consider the name of the applicant along with fresh applicants. They considered the same along with 99 others who were fresh applicants. Applicant submits that the respondents had given 15 points in addition to the widows of the deceased employees and it is arbitrary and discriminatory. The appointments were given overlooking the claim of the present applicant and it is against his fundamental rights. The appointments were given to those candidates who have applied much later than others who are waiting for years together and it is contradictory to the instructions of the Government.

7. The respondents filed a detailed reply statement denying the allegations in the Original Applications. According to them, the applicant is unnecessarily dragging the respondents into litigation. According to them, the applicant is very well aware that he is not entitled to be appointed under the compassionate scheme. The Government of India has formulated the scheme of Compassionate Appointment in order to help the family of the deceased from indebtedness so that the candidates who have not got appointment in a particular year is considered in the next chance as a fresh candidate and his or her selection will be counted from the candidates who is suffering from grave indebtedness. The number of vacancies calculated by the applicant is wrong. The number of vacancies available under compassionate quota is calculated as on 1st January of each year. The applicant has filed this Original Application without knowing the methodology to ascertain the quota for

appointment on compassionate basis. He has calculated the vacancies by counting the backlog vacancies occurred every year due to non-joining of duty by others directly recruited and it is a wrong method. Hence the applicant's statement that there were 19 vacancies of Havildar and 7 vacancies of Tax Assistant under the compassionate ground quota is wrong. The committee held on 30.10.2018 considered the name of the applicant along with other candidates and he was graded according to the parameters prescribed in the scheme and based on the ranking system adopted to recommend the candidates. The 7 candidates who secured highest merit point for compassionate appointment was given appointment. The applicant was not coming among the 7 candidates recommended for appointment. As per the clarifications issued by DoP&T, widows who are applicants for compassionate appointment can be granted 15 additional points as grace points as per O.M dated 20.1.2010. Central Administrative Tribunal, Mumbai Bench in ***Smt. Rohini Mangesh Khamkar.. vs. Department of Posts*** in O.A No.437/2010 dated 2.9.2014 has approved the granting of 15 marks for the widows. The Madras Bench of the C.A.T has also approved this in O.A 1178/2012. According to the respondents, there is no illegality or infirmity in the selection process.

8. The respondents has filed additional reply statement regarding the order passed by the Hon'ble High Court in O.P(CAT) 125/2018 and the clarification obtained by the Division Bench during the proceedings in Contempt case and submits that the respondents has fully complied with the order.

9. We have heard both sides and gone through the pleadings filed by the applicant as well as the respondents in this case.

10. The applicant in this case had earlier filed O.A 382/2017 and he got an order for appointment from the Tribunal. But the Hon'ble High Court in O.P(CAT) 125/2018 had set aside the order holding that the Tribunal cannot direct the respondents to appoint the applicant as it is illegal. While disposing of the said OP(CAT), the Hon'ble High Court had directed the respondents to consider the name of the applicant for future vacancies without undergoing any further test. Even according to the respondents, they have considered the name of the applicant in the selection Committee meeting as per Annexure A-17 and according to them, the applicant did not get sufficient gradings and he did not come up among the first 7 selected candidates. They had given the details of consideration in Annexure A-17 Minutes of the Meeting and it is clear that there is no illegality or arbitrariness in the selection process conducted by the respondents in the selection. Even though, the applicant has alleged favoritism and arbitrariness in this O.A, counsel for the applicant could not substantiate his allegations before the Tribunal. The Minutes of the Selection Committee Meeting shows clearly that they had followed the scheme contemplated by the Central Government as per Annexure A-1 issued by the DoP&T on 9.10.1998 and subsequent thereto. There is nothing wrong in granting 15 marks to the widows of the employees who had applied for compassionate appointment. There is a clear provision for granting the same in the clarification issued by the DoP&T, which is produced as Annexure R-2

in this case. The said provision came on 20.1.2010 and granting of 15 marks to the widows was considered by C.A.T Mumbai bench as well as the C.A.T Chennai Bench and those benches of this Tribunal had approved the same and the applicant cannot argue that this is an illegality and against the scheme. On going through the judgment in C.P(C) 60/2019, it can be seen that the Hon'ble High Court has only directed the respondents to consider the applicant for future vacancies. The respondents had considered the name of the applicant also in the meeting held in the year 2018 and he was not compelled to undergo any physical endurance test or data entry test as he had already passed the same. According to the respondents, the applicant has not come up in merit points and it is only because of that, he did not get an appointment.

11. In view of the above, facts revealed in the pleadings and arguments, **we find that there is absolutely no merit in the contentions put forward by the applicant in this case. There is no reason to interfere with the finding of the Selection Committee. Hence the applicant is not entitled to get any relief as prayed for. In the result, the Original Application is dismissed.**

No costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

List of Annexures

- Annexure A1 - True copy of the OM No.14014/6/94-Estt.(D)
dt:9.10.1998.
- Annexure A2 - True copy of application dt: 26.03.2007
- Annexure A3 - True copy of Memo C.No.II/3/25/2014 Estt.54
dt:8.1.2016
- Annexure A4 - True copy of the letter dated:08.01.2016
- Annexure A5 - True copy of the results of Physical Endurance Test
conducted on 18.6.2015
- Annexure A6 - True copy of the results of Physical Endurance Test
conducted on 15.1.2016
- Annexure A7 - True copy of the Minutes
- Annexure A8 - True copy of the Minutes dt:19.11.2014
- Annexure A9 - True copy of the Letter under RTI Act
- Annexure A10 - True copy of the Letter under RTI Act and reply
- Annexure A11 - True copy of the Chart
- Annexure A12 - True copy of the Order dt.8.11.2017 in OA
382/2017
- Annexure A13 - True copy of the Letter C.No. 11/3/7/2016-
Estt.Dt:29.12.2017 along with Minutes dt.8.11.2017
- Annexure A14 - True copy of the Common Order dt 5.6.2018 in MA
No.s 3/2018, 4/2018 and 5/2018
- Annexure A15 - True copy of the common judgement dt.13.8.2018 in
OP(CAT) No.125/2018 and connected cases of
Hon'ble High Court of Kerala
- Annexure A16 - True copy of the Minutes of the meeting held on
24.10.2018,30.10.2018 and 9.11.2018
- Annexure A17 - True copy of the Minutes of the meeting held on
30.10.2018
- Annexure A18 - True copy of the Minutes of the meeting held on
9.11.2018
- Annexure A19 - True copy of the judgement dt.23.7.2019 in
Con.Case No.60 of 2019 of High Court of Kerala.

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