

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 31.5.1990

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.416/89

K.V Sivakumar

.. Applicant

v.

1. The Director General, Archeological Survey of India, Janapath, New Delhi-11.
2. Union of India, represented by Secretary to Government of India, Ministry of Home Affairs, New Delhi.
3. The Administrative Officer, Archeological Survey of India, Fort St. George, Madras-9.

.. Respondents

Shri M.R Rajendran Nair

.. Counsel for the applicant

Mr.K.Prabhakaran, ACGSC

.. Counsel for the respondents

J U D G M E N T

Hon'ble Shri N.Dharmadan, Judicial Member

The grievance of the applicant in this case is that his request for compassionate appointment was rejected by the respondents without considering the relevant orders, Government of India letters and rules governing the same. He has challenged Annexure-1 order of Director(Admn) dated 8th September 1988. It reads as follows:-

"With reference to your letter No.13/143/76-Adm/7186 dated 2.12.1987 on the subject mentioned above I am to inform you that the case of Shri K.V. Sivakumar for appointment on compassionate grounds has duly been considered but it is regretted that the same cannot be acceded to under the rules on the subject. The individual concerned may be informed accordingly."

2. The applicant's counsel did not press his prayer to quash Annexure-VI OM No.14014/10/80-Estt(D) dated 18th March 1982 at the time of hearing.

3. The facts are as follows. The applicant's father while working at Peruvanam Temple, Trichur District

fell ill and was bed-ridden from 29.10.1984. He could not continue the job and he retired on invalidation with effect from 30.7.85 at the age of 57 before the normal age of superannuation viz 60 years.

4. Since the family was in indigent circumstances in order to ameliorate the difficulties and for maintaining the family and also for meeting the medical expenses of the applicant's father, at the direction of the department, the applicant's father submitted a request on 27.10.86 for an employment on compassionate grounds to his son, the applicant. But very soon the applicant's father expired on 19.2.87. Thereafter in view of the pathetic condition of the family the applicant pursued the matter and submitted repeated representations. It appears from Annexure-III and IV that the Superintending Archaeologist, Madras Circle forwarded the applicant's request to the Director General with recommendations for granting compassionate appointment to him. But the impugned letter was issued without taking into consideration the above recommendation, the relevant Government of India letters, orders and the deplorable condition of the family of the applicant after the death of his father.

5. Learned counsel for the applicant relied on Annexure-VII Office Memorandum dated 1.3.1984 and submitted that sub-para ii of para 3 of this OM is applicable in this case. It is extracted below:-

"Office Memorandum No.14014/6/83-Estt.(D) dated 1.3.84.

xxx

xxx

xxx

3. Requests for compassionate appointments in cases of retirements on medical grounds after attaining the age of 55 years, which may be pending with Ministries/Heads of Departments, will fall in one or the other categories as follows:

xxx

xxx

xxx

xxx

xxx

xxx

ii) Those who retired on medical grounds after attaining the age of 55 years on or after 18.3.82, but before the revised orders had been circulated by the Ministry concerned to their Sub Ministry formations."

He has also brought to our notice Annexure-V Office Memorandum dated 25th November, 1978, the relevant portion of the OM reads as follows:

" In exceptional cases when a Department is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter/near relative of Government servant retired on medical grounds under rule 38 of the Central Civil Service (Pension rules) 1972 or corresponding provisions in the Central Civil Regulations".

According to us the applicant has made out a *prima facie* case for consideration.

6. The respondents did not deny in the counter affidavit that this is an exceptional case and that the condition of the family of the applicant is such that it is in great distress and it deserves some assistance on compassionate grounds. They have not examined the claim of the applicant in the light of the provisions in Annexure-V O.M dated 25th November, 1978. But they have denied, in paragraph 9 of the counter affidavit, the application of para 3 of Annexure-VII in his case in the following manner:

" However, the case of the petitioner does not fall in any of the first two categories mentioned in para 3 of the said office memorandum dated 1.3.84 because of the facts already brought out previously in this reply."

7. Having considered the matter anxiously and carefully, we are not satisfied that the respondents have examined the relevant aspects including the present pathetic condition of the family and the orders, etc. rules/applicable to the compassionate appointment before passing the impugned order. Even though it has been

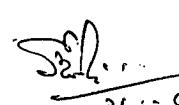
stated in Annexure-1 letter that the request of the applicant "cannot be acceded to under the rules on the subject", they have not indicated as to which rule they were having in mind at the time when this order was passed and how it is not applicable/^{especially when b} they have no case that the family of the applicant is in affluent circumstances. In the counter affidavit also it has not been explained as to why the provisions of Annexure-VII and Annexure-V are not applicable in the case of the applicant. Hence having regard to the facts and circumstances of this case, we are of the view that a careful reconsideration of the applicant's claim for compassionate appointment requires to be made by the respondents in the light of the provisions of Annexure-VI, Annexure-V and other relevant rules applicable to the compassionate appointment.

8. Accordingly we set aside Annexure-1 and direct the respondents to take up the application submitted by the applicant claiming compassionate appointment and pass appropriate orders in accordance with law taking into consideration the above observations and all relevant orders, letters and rules applicable to compassionate appointment. They shall dispose of the same as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of this judgment.

9. This application is disposed of as above. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

31.5.90


(S.P. MUKERJI)
VICE CHAIRMAN