

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO:423/2006

WEDNESDAY THE 20TH DAY OF DECEMBER, 2006

CORAM:

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

M.Jayan
VIII/393, Jayapriya
Panamkalam,
Chandranagar (P.O.),
Palakkad – 678 007. ... Applicant

By Advocate Mr.C.S.G.Nair

V/s.

1. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road,
Cochin-682 018.
2. The Chief Commissioner of Central Excise,
Central Revenue Buildings,
I.S. Press Road,
Cochin – 682 018.
3. Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi
4. Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001. Respondent

By Advocate Mr. TPM Ibrahim Khan SCGSC

This OA having been heard on 20th December, 2006, the Tribunal on the same day delivered the following:-

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The applicant is the son of a former Driver of Central Excise

Department who retired on Medical grounds on 30/9/1997. He submitted a

representation for compassionate appointment way back on 11/11/1997. According to him, the respondents did not take any action on his representation inspite of a number of reminders for nearly seven years and finally rejected his request on 15/4/2004 stating that for want of vacancy he was not considered for appointment and he will be considered favourably as and when vacancy arises. He, therefore, approached this Tribunal vide OA 761/2004 and vide order dated 31/3/2005, it was disposed of with the following observations and directions.

"10. I have heard the learned counsel for the parties and given due consideration to the arguments, material and evidences placed on record. It is an undisputed fact that under the scheme for employment assistance on compassionate ground the employment is to be given immediately on the death of the Government servant, since the idea is to provide immediate relief to the family and such appointment can be granted to a dependent family of a Government servant dying in harness or on invalidation. Only 5% vacancies in Group C and D are earmarked in that behalf. The contention of the respondents is that though the applicant's case was considered for three years, it was not possible to grant him employment assistance on compassionate ground because of the meagre number of vacancies and that the period of three years elapsed it was not possible for them to consider the case of the applicant. The case of the applicant is that his father retired on invalidation on 30/9/1997 at the age of 47 years and as there was no other earning member in the family and it very difficult to pull on since a lot of expenses have to be incurred for treatment of applicant's father. The applicant has to look after the father, mother and sister and none of them was employed. The applicant had made Annexure A1 representation on 11/11/1997 which was support and reminded by various other representations including Annexure A6 representation dated 12/2/2004. In the meantime, to his surprise, Annexure A7 has been issued on behalf of the 2nd respondent which reads as follows:-

"OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE, KERALA ZONE, C.R.BUILDING, I.S.PRESS ROAD,

COCHIN – 682 018.

C.No 11/3/135/2003 CC(KZ)/128

Dated: 15/4/2004

Sub: Request for early appointment on compassionate grounds- reg.

Please refer to your representation on the above subject dated 12/3/2004 with enclosures.

You are hereby informed that you cannot be considered for appointment to the cadre of Tax Assistant on

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compassionate grounds at present for want of vacancy.

Your case will be considered favourably as and when vacancy arises.

Sd/-

(E.Kesavan Kutty)
Asst.Commissioner(CCO)
For Chief Commissioner(KZ)

To

Shri M.Jayan,
S/o.M.Chenthamarakshan,
VII/393, Jayapriya,
Panamkalam,
Chandranagar(PO)
Palakkad- 678 007."

11. The claim of the applicant was rejected solely on the ground that there was no vacancy. When the reply statement is filed, the respondents are now taking recourse in Annexures A8 and A9. The operative portion of Annexure A9 shows

"3. The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again.

4. *The instructions contained in the above mentioned OM stand modified to the extent mentioned above..."*

(Emphasis supplied)

12. Accordingly, based on this OM, the impugned order Annexure A8 was passed rejected the claim of the applicant on 22/9/2004.

13. On the very outset, I want to make it clear that the OM dated 5th May, 2003 (Annexure A9) fixing the time limit for making compassionate appointment has been passed in true spirit of the procedures, based on the decision of the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana {(1994) 4 SCC 138}, wherein it was held that consideration for compassionate appointment is not a vested right which can be exercised at any time in future. It is also in fortification of the dictum laid down by the Hon'ble Supreme Court on compassionate appointment prescribing that it can be made only if vacancies exist which was settled by the Judgment of the Apex Court in Himachal Road Transport Corporation Vs. Dinesh Kumar {(1996) 4 SCC 560}. This Court fully endorse the dictum laid down by the Hon'ble Supreme Court in those decisions and declare that Annexure A9 Office Memorandum dated 5th May, 2003 has been issued in good spirit of the procedures as indefinite waiting of the candidates in the queue will hold to diminish the spirit of other employees unnecessary giving them hope or

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expectations, which the department may not be able to fulfill. Therefore, the prayer to quash Annexure A9 cannot be entertained.

14. In this case, the position canvassed by the learned counsel for the applicant is on a different footing i.e. if the right thing had happened at the right time, the applicant could have been considered and selected for compassionate appointment at the appropriate time. Annexure R1 shows that dependent of a person who died on 25/2/1989 was given appointment on compassionate ground against a vacancy in the year 2003. Admittedly, the claim of the applicant arose in the year 1997 and till 2004 his claim was not processed. On the other hand, vide Annexure A7 order dated 15/4/2004, the applicant was informed that his case cannot be considered for want of vacancies. The ground that has been taken in Annexure A8 is conspicuously absent in Annexure A7. Therefore, the contention of the applicant's counsel that the three years period as per the OM has been incorporated in Annexure A8 is only an after-thought as far as the applicant is concerned. Besides, such a consideration was not analyzed/scrutinized by the Screening Committee. If so, there could have been a reference in Annexure A7 and A8. On going through Annexure R1(4), I find that in 1997 there were 3 vacancies for compassionate appointments taking into account 5% vacancies. In the year 1998 – 2 vacancies, 1999- 2 vacancies, 2002- 2 vacancies and in the year 2003 – 2 vacancies. Admittedly, Annexure A9 office memorandum prescribing three years period has come into effect on 5th May, 2003. It appears from the records that the assessment was made in the year 2004 and there were cases pertaining to the year 1997 and even earlier, which were considered and granted the relief. It is quite obvious from the record that had the claim of the applicant been processed in 1997, 1998 or 1999, without clubbing the other claims of 2000, definitely he could have had a place for appointment as per the vacancies notified in Annexure R1(4). It is also borne out from the records that the claims of many other who have been selected were made their claim only after the applicant had preferred his claim. When in Annexure A7 it was clearly stated that the applicant's claim was rejected for want of vacancy, it goes without saying that the applicant has fulfilled all other conditions as mentioned above. It is borne out from the records that there were enough vacancies during the period 1997 to 2003 before Annexure A9 was introduced to accommodate the applicant. The scheme also provides that:-

"It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the Committee subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year."

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15. This denotes that as per the original Office Memorandum every year a prescribed Committee has to evaluate these cases separately and review such cases which warrants extension by one more year. Respondents have no case that the applicant's case has been considered in 1997, 1998 or 1999 earlier than 2004 which, according to the original Office Memorandum, should have been done. The prescribed procedure that should have been adopted in considering such cases has not been done in the case on hand and the respondents have committed an error in not holding the Committee at the appropriate time. Though the learned counsel for the applicant submitted that the Committee has not properly constituted and their recommendations have no legal backing, on going through the pleadings and evidences on record it is clear that the formation/constitution of the Committee cannot be faulted. So also, the contention of the applicant that the case of K.Bina, married sister of an Inspector who was granted compassionate appointment in preference to the applicant also cannot be compared with that of the applicant's case considering the pleadings taken in paragraph 4 of the reply statement dated 11th January, 2005.

16. However, considering the entire aspects as discussed above, I am of the considered view that the procedures that should have been adopted in granting compassionate appointment as per the original Office Memorandum have not been followed in this case and there is a procedure irregularity. I find great force in the argument of the applicant that if his case had been considered all the appropriate time he could have had a bright chance for appointment on compassionate ground.

17. In the conspectus of facts and circumstances, I am of the view that the applicant's case has not been properly considered and the procedure adopted in not appointing the applicant against vacancies from 1997 to 2004 was not in the true spirit and objectives of Annexure A9 office memorandum. Therefore, though there is no necessity of setting aside Annexure A-9 order, I declare that the impugned order Annexure A-8 rejecting the claim of the applicant is not justified. Accordingly, the impugned order Annexure A-8 is set aside to the extent it rejects the claim of the applicant for consideration for compassionate appointment. Respondents are directed to consider and review the decision of the committee as far as the applicant is concerned taking into consideration the vacancies available from 1997 to 2003 (the date of Annexure A9) and place the applicant in the appropriate place without disturbing others, if found otherwise eligible, and pass appropriate orders within a period of four months from the date of receipt of a copy of this order.

18. The Original Application is allowed as above. In the circumstances, there is no order as to costs."

13 judgment dated 6/12/2005. However, the Hon'ble High Court has granted three months time to the department to comply with the direction of this Tribunal in the aforesaid order dated 6/12/2005.

3 The Respondents have now issued the Annexure A 14 letter dated 16/3/2006 in compliance of the direction of this Tribunal in OA-761/2004 stating that there was no scope to consider the Applicant for compassionate appointment during 1/11/1997 to 5/5/2003. The said letter reads further as under:-

"Accordingly, the Committee re-considered all the Compassionate appointments who have got appointment in Group "C" and "D" cadres during the year 1997 (From 11.11.1997), 1998, 1999, 2000, 2001, 2002 and 2003 (upto 05.05.2003) separately and compared the case of Shri Jayan. The Committee observed that during the entire period in question most of the appointments on compassionate ground were given to the near relatives of the Government Servants who died while in service. When compared to that of Shri Jayan, the financial as well as the family conditions of the person who got appointed, deserved more consideration as the family conditions of the persons who got appointed, deserved more consideration. Moreover, the dependent family member of a Government Servant who dies while in service is given preference over dependent family member of a Government Servant who retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972, or the corresponding provision in the Central Civil Service Regulation before attaining the age of 55 years.

The Committee further observed that in a couple of cases where appointments were given to the dependent family members of the Government Servants who were retired on medical grounds were deserving cases than the case of Shri Jayan. The Committee also tried to find out whether there were any vacancy for compassionate appointment was kept unfilled for considering the cases of Shri Jayan. The Committee found that there was no vacancy kept unfilled during 1997 to 2003. Hence, the case of Shri Jayan can not be considered for appointment on compassionate grounds during the period 1997 (from 11/11/1997) to 2003 (upto 5/5/2003) over and above others who got appointment without disturbing them and also there was no unfilled vacancy in Group "C" or Group "D" cadres."

4 I have gone through the entire pleadings. I have also carefully gone through the order of this Tribunal dated 31/3/2005 in OA 761/2004 earlier filed by the Applicant for the redressal of the same grievances. This is a classic case where the Applicant had to suffer because of the absolute apathetic attitude of the Respondents. It is only an indicator of a request

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for compassionate ground appointment can be dealt with in this indifferent manner, how the Respondents in this OA would deal with other matters. This Tribunal had observed in para-14 of its previous order "if the right thing had happened at the right time, the applicant could have been considered and selected for compassionate ground appointment at the appropriate time." The fact of the matter is that when the claim of the applicant was before the Respondents for compassionate ground appointment in 1997, it was simply not considered for 7 years till 2004. His repeated reminders fell on the deaf ears of the Respondents. By then Rule position has changed. The period of consideration was limited to three years subject to availability of vacancies. It was the clear finding of this Tribunal that if the claim of the applicant was duly processed in 1997, 1998 & 1999 without clubbing the other claims of 2000, definitely he could have had a place for appointment as per the vacancies notified.

5 In my considered view, the applicant has been denied compassionate appointment purely because of the callous and indifferent attitude of the respondents in considering his application for solid seven years. It is seen that the respondents have shown absolute apathy in the matter when the applicant's father retired on medical grounds on 30/9/1997 and the applicant had made a request on 11/11/1997 itself for appointment on compassionate grounds. The respondents did not show any interest or urgency in the matter and kept the case pending till 15/4/2004 (Annexure A-7) only to tell the applicant that his case was considered with reference to his last representation dated 12/3/2004 and since there was no vacancy in the cadre of Tax Assistant on Compassionate Appointment at that point of time, his case was rejected. He was assured that his case will be favourably considered as and when vacancy arises. The Respondents should have fulfilled their promise. Therefore, the applicant had to again



approach this Tribunal with the present OA. It is seen that the direction given to respondents to consider his case once again on the basis of the earlier findings of this Tribunal has not been complied with in the spirit of the order passed by this Tribunal. The applicant though had no vested right to be appointed on compassionate grounds as per the various judgments of Apex Court, there is no denying of the fact that he had the valuable right for consideration at the appropriate time based on the Rules and Regulations then prevailing. The delay in considering the case of the applicant for compassionate appointment for seven years by the respondents has defeated his case. The Applicant cannot be made to suffer for the lapses on the part of the respondents.

6 In the above facts and circumstances of the case, I direct the respondents to appoint the Applicant as Tax Assistant on compassionate grounds against the direct recruitment quota of the current recruitment year, if necessary, in relaxation of age. In case vacancies are not available for the current recruitment year, his appointment may be adjusted against the vacancies for the next recruitment year. This direction shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated the 20 th December, 2006.



GEORGE PARACKEN
JUDICIAL MEMBER

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