

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 438/90
T.A. No. 189

DATE OF DECISION 12.7.91

K.S. Manohar _____ Applicant (s)

M/s D.V. Radhakrishnan & Advocate for the Applicant (s)
K. Radhamani Amma.
Versus

Sr. Superintendent of Post Respondent (s)
offices, Alwaye & 3 others.

Mr. P. Sankarankutty Nair, Advocate for the Respondent (s)
ACGSC

CORAM:

The Hon'ble Mr. NV Krishnan Administrative Member

The Hon'ble Mr. N Dharmadan Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

SHRI N DHARMADAN, JUDICIAL MEMBER

Two orders Annexure A-3 and A-5 challenged in this case read as follows:-

"The Chief PMG, Kerala Circle, Trivandrum in his letter No. Rectt/7-48/89 dated 16.10.89 has directed the undersigned to inform you that the Circle Relaxation Committee which met on 29.9.89 have carefully considered your request for appointment as Postman and rejected." (Ann.-3)

"The Chief Postmaster General Kerala Circle, Trivandrum in his letter No. Rectt/7-48/89 dated 28.3.90 has directed to inform you that the Circle Relaxation Committee which met on 14.3.90 have carefully reconsidered your request for appointment in relaxation of normal recruitment rules and rejected as two sons of the retired official are working though not in formal employment and there is substantial property." (Annexure-5)

These orders were passed by Sr. Superintendent of Post Office, Alwaye and Assistant Superintendent of Post Office for Sr. Superintendent of Post Office, Alwaye respectively considering the claim of the

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applicant for compassionate appointment.

2. The applicant is the 3rd son of Shri Shri M. Sivasankaran Nair, who retired from the service on invalid pension at the age of 54 while holding the post of Higher Grade Post Master, Kothamangalam. The retirement was on 28.2.89 under the provisions of Rule 38 (1&2) of the Central Civil Services (Pension) Rules 1972. Annexure A-1 Memorandum proves this. Annexure A-II representation dated 16.3.89 was submitted for the grant of an employment on compassionate appointment to his 3rd son, K.S. Manohar in the Postal Department. According to the applicant, Government of India, Department of Personnel & Training O.M. No. 14014/6/86-Estt.(D) dated 30.6.1987 empowers the respondents to provide compassionate appointment to the near relatives/son/daughter of the government servant, who was permitted to retire on medical ground under Rule 38 of the Central Civil Services (Pension Rules, 1972) before attaining the age of 55, when they are satisfied that the condition of the family at the time of retirement is such that it cannot pull on without some financial assistance. Since the applicant was permitted to retire under the above said rule in the year 1989 the applicant is entitled for compassionate

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appointment. The applicant submitted that the position of the family is in a very pathetic condition that financial assistance is an urgent necessity. The applicant's family consists of four sons and a wife. The pensioner's eldest son, Shri Ajay Kumar, is an employee in a Tea Shop and he is living separately with his wife. The second son Shri Premkumar is unemployed. The third son is the applicant and the 4th son Shri Manoj is studying in the VIIIth standard. The mother of the applicant is unemployed. The applicant's father is getting an invalid pension of Rs.375/- + DA per month. The annual family income including the income from properties is only Rs.1600/-. As such, one of the sons/^{of 4} the applicant, is eligible to get an employment under the scheme for compassionate appointment. Without considering any of these aspects, the request was rejected as per the impugned orders. Since these orders do not indicate any valid reason for rejection of the claim of the applicant, he has filed this application under section 19 of the Administrative Tribunals' Act, 1985.

3. Annexure-3 does not give any reason. But, Annexure-5 indicates that the claim was rejected on the ground that two of the sons of invalid pensioner are employed and their income

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would/sufficient to meet the difficult situation.

In the reply statement it is stated that the Committee which met on 29.9.89 considered the case of the applicant and found that two sons of the pensioner viz., Ajayakumar and Premkumar are owners of 102 cents and $15\frac{1}{2}$ cents of landed property and they are employed in certain private establishments and therefore they are not prepared to accept any employment in this department on compassionate ground. Thus, the committee was of the view that the family of the invalid pensioner was not in any indigent circumstances justifying relaxation in favour of the 3rd son for granting compassionate appointment as prayed for in this application.

4. Having heard the matter and after perusing the records we are of the view that the applicant's claim for compassionate appointment has not been considered fairly after applying the provisions in the Government of India, Deptt of Personnel & Training O.M. No. 14014/6/86-Estt. dated 30-6-87. The eldest son of the pensioner who is admittedly employed and owner of 102 cents of property is living separately with his wife. Hence, his income from the job and the property is not available for the family of the pensioner, despite of the moral duty, if any, to look after his parents. The next son, Sh. Premkumar is

unemployed and there is no income from 15½ cents of property owned by him. The respondents have not stated any thing about the nature of the job of the second son and his income thereof. No enquiry seems to have made in these lines. Without examining the correct financial position of the family and entering a finding thereof it may not be proper to reject the claim of the applicant. In fact the applicant submitted that his case is an exceptional one and it requires special consideration in view of the pathetic condition of the family. He has stated that the invalid monthly pension received by the applicant and total annual income from the property available for the family are hardly sufficient for maintaining the family consisting of the invalid father, mother and three children.

5. Though in the reply statement the respondents have stated that two of the elder brothers M/s Ajayakumar and Premkumar are owners of the 102 cents and 15½ cents of landed property they have not clearly indicated whether there is any income from the property and whether the said property are being enjoyed by the brothers separately by themselves, particularly when the eldest brother is stated to be living separately with the family. A further statement in the reply

statement that two of the elder brothers of the applicant are employed in certain private establishments cannot be taken for denying the employment to the applicant without any further materials as to the nature of the employment and the income derived by them from such employment and as to whether that income is also available for the family and it is being used for the livelihood of the members of the family in which the applicant is now residing. Simply because of the ~~fact~~ that the two brothers ~~who~~ are employed in certain private establishments and they had not applied for compassionate appointment would not be sufficient for rejecting the prayer of the applicant. It is the duty of the committee to examine and find out the present financial position of the family and enter a finding as to whether such income is sufficient for meeting the bare necessities of the family of the invalid pensioner. Without such an enquiry and consequent finding it may not be fair and proper to reject the request of the applicant. The Supreme Court in Smt. Sushma Gosain and others Vs. Union of India and others, AIR 1989 SC 1976 observed "The purpose of providing appointment on compassionate ground is to mitigate the hardships due to death of the bread winner in the family".

6. As indicated above the impugned orders do not give any indications about the actual income and a finding thereon. Under these circumstances, we are of the view that these orders are liable to be set aside. Accordingly we do. We remand the matter to the second respondent to conduct a detailed enquiry and pass fresh orders in the light of the relevant O.M. taking into account the above observations. This shall be done by the second respondent within a period of two months from the receipt of the copy of the judgement.

7. In the result this application is ~~dismissed~~ ^{disposed of} ~~or abat.~~ ⁴ No order as to costs.

N. Dharmadan
(2.7.91)

(N Dharmadan)
Judicial Member

NV Krishnan
17/7/91

(NV Krishnan)
Administrative Member