

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.447/98

THURSDAY, THIS THE 25TH DAY OF JUNE, 1998.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. K. Sasidhara Kurup S/o Gopala Pillai
Mattathukalayil, Vayala P.O.
Parakode-691554
2. M.S. Sunil S/o K. Sasidhara Kurup
Mattathukalayil, Vayala P.O.
Parakode-691554.

..Applicants

By Advocate Mr. M.R.Rajendran Nair

Vs.

1. The Secretary to the Government of India
Department of Posts,
Ministry of Communications,
Dak Bhavan, Sansad Marg,
New Delhi-110 001
2. The Chief Postmaster
Kerala Circle,
Trivandrum.
3. The Sub Divisional Inspector of Post Offices,
Adoor Postal Sub Division,
Adoor, Kerala.

..Respondents

By Advocate Mr. George Joseph, ACGSC

The application having been heard on 25.6.98, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant No.1, presently aged 48 years, has been working as Extra Departmental Delivery Agent (EDDA for short), Vayala Parakkode E.D. Sub Office w.e.f. 27.10.1981. Unfortunately, he has been afflicted with the dreaded disease of cancer and is suffering from chronic attack of it. As is seen from the certificate issued by the Associated Professor of Surgical Oncology in the Regional Cancer Centre,

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Thiruvananthapuram, dated 22.11.96, the applicant No.1 was suffering from Carcinoma (R) Lower Alveolus and is not fit to work involving physical strain.

2. The first applicant has been availing leave on medical grounds putting the second applicant as his substitute. Ultimately, finding that it may not be possible for him to continue long, he made a request for discharge on medical grounds and for grant of compassionate appointment to the second applicant by his representation dated 10.2.97 and 1.4.97. In reply to these letters, the first applicant was told that as per rules, compassionate appointment cannot be given to the dependents of Extra Departmental Agents invalidated from service. Thereafter, by letter dated 19.2.98, the Sub Divisional Inspector, Post Offices has informed the first applicant that the leave sought for by him would not be recommended unless he nominated another substitute than the second applicant. Apprehending that the claim of the applicant for grant of compassionate appointment to the second applicant on the discharge of the first applicant on the ground of medical invalidation, would not be considered and the applicants would be left without any means of livelihood, the applicants have filed this application for a declaration that the second applicant is entitled to be considered for compassionate appointment as EDDA, Vayala Parakkode Sub Office and for a direction to consider the second applicant for such appointment if necessary by relaxing the rules and for a direction to the respondents to grant leave to the first applicant by arranging 2nd applicant as substitute. The applicant has stated that there has been instances where compassionate appointments were given to dependents of EDDAs discharged on medical incapacitation and

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a copy of such an order (A9) has also been annexed. The stand of the respondents that as per the existing rules, compassionate appointment cannot be granted to dependants of E.D. Agents, according to the applicant is arbitrary, discriminatory and violative of the Article 14 of the Constitution.

3. The respondents in their reply have contended that the extant rules do not permit appointment on compassionate grounds of dependants of E.D. Agents quitting service on medical invalidation but have stated in para 12 of the reply statement that there have been instances where as special case such benefit has been given to the dependants of E.D. Agents who were discharged on medical incapacitation. The respondents have further contended that as the first applicant is still in service his claim for compassionate appointment to his son cannot be considered. The respondents justified the action taken by the SDI in asking the first applicant to nominate another substitute than his son on the ground that it is the prerogative of the SDI to continue or discontinue a substitute nominated by an E.D. Agent.

4. We have gone through the pleadings and materials placed on record and have heard the learned counsel appearing for the parties.

5. We find that it is not for some trivial reasons that the applicant wishes to get discharge from service. In fact, the first applicant has been affected by one of the most dreaded diseases and he feels that his days are counted. Under these circumstances the first applicant has opted to get discharged on medical grounds and to seek employment to his son, the second applicant on compassionate ground. The stand of the respondents taken in A7 as also in R1 that the

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extant rules do not permit grant of employment assistance on compassionate grounds to dependants of E.D. Agents quitting service on medical invalidation does not appear to be true or consistent with the statement made by them in the reply statement. The employment assistance on compassionate grounds itself is a dispensation in relaxation of the provisions of the Recruitment Rules. The respondents themselves have admitted in the reply statement that there have been instances where the rules have been relaxed and dependants of E.D. Agents who quit services on medical invalidation have been given employment assistance on compassionate grounds. Therefore, it is difficult to understand why the respondents should not adopt the same yardstick in the case of the applicants if the first applicant is making a request for compassionate appointment to the second applicant on his discharge on medical invalidation.

6. The respondents are right in saying that the first applicant would not be entitled to seek employment assistance to the second applicant on compassionate grounds while he is still continuing in service. However, if the first applicant is discharged on medical invalidation by the respondents, they are bound to consider the request for employment assistance to the second applicant in accordance with the rules and instructions and if necessary by relaxing any existing rules as had been done in the case of Smt. Leelamma George by A9 order.

7 The stand of the respondents that the leave applied for by the first applicant would be recommended only if he

nominates another substitute also does not appear to be supported by any reason. It is true that the competent authority should have a right to reject a nominee and insist on another. In this case, the son of the first applicant has been engaged continuously for long time as a substitute of the first applicant as and when he goes on leave with the approval of the competent authority. There is no case for the respondents that the second applicant had been wanting in any respect and that he was not acceptable to the respondents for any good reasons. In the circumstances of the case, it would be highly uncharitable to deny employment to the second applicant as substitute of the first applicant while he enters on leave since the family would be deprived of the income. Therefore, the respondents should reconsider this stand in the interest of justice and equity.

8. In the light of what is stated above, the application is disposed of with the following directions:

- i) If the first applicant considers that his health condition would not permit him to continue any longer as EDDA, Vayala-Parakode ED Sub Office, he may make a request to the competent authority for his discharge on medical grounds;
- ii) If the respondents accept the request and discharges the first applicant, the applicant may make a request to the competent authority for employment assistance on compassionate grounds to the second applicant and the authority if such a request is made, shall consider the case in the light of the instructions on the subject and in the same manner as the case of Smt. Leelamma George (A9)

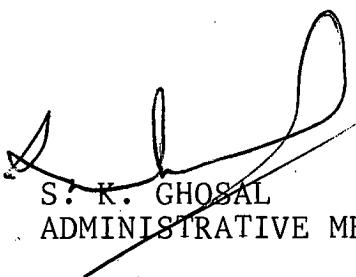
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was considered by them;

iii) If the applicant applies for leave nominating the second applicant as his substitute, unless there is any valid reason, the respondents shall not refuse to grant leave on the ground that they would recommend leave only if some other person is nominated as substitute.

9. The application is disposed of as aforesaid. No costs.

Dated the 25th June, 1998.


S. K. GHOSAL
ADMINISTRATIVE MEMBER


A. V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A7: Letter No.B3/57/II dated 4/97 issued by the Superintendent of Post Offices, Pathanamthitta Division, Pathanamthitta.
2. Annexure A9: Order dated 5.1.1995 No.Rectt/7-32/92 issued by the Assistant Director (Accounts/Rectt.) Office of the second respondent.
3. Annexure R1: Letter No.B3/57/II dated 8.1.1998 by the Superintendent of Post Offices, Pathanamthitta Division to the applicant.

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