

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 448 OF 2008

Dated the 14<sup>th</sup> January 2009

CORAM:-

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN**

O.K. Anil Kumar,  
S/op late OK Kumaran,  
Sajith Nivas,  
PO. Chemanchery, Koyilandy,  
Kozhikode-673 374.

.... Applicant

[By Advocate: Mr Muhammed Shafi. M.]

-Versus-

1. Union of India, represented by the Secretary,  
Ministry of Finance, Dept. of Revenue,  
Central Board of Excise & Customs,  
New Delhi.
2. Commissioner of Central Excise & Customs,  
Cochin Commissionarate,  
I.S. Press Road, Chochin-18.

...Respondents

[By Advocates: Ms Jisha for Mr TPM Ibrahim Khan, SCGSC]

This application having been heard on 14<sup>th</sup> January, 2009 the Tribunal delivered the following -

ORDER

Applicant, Anil Kumar, is the son of late O.K. Kumaran, who had died in harness while working as Havildar in Central Excise Department on 11.7.2002.

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[2] Within a short period, his wife had made an application to the Department requesting that their son Sini may be considered for compassionate appointment. However, Sini had met with an accident and a revised application has been filed on 2.12.2002 for compassionate appointment to be given to the applicant, the second son. After repeated representations by Annexure-A/2 the applicant had been advised that it is not possible to entertain the request, since Department could not embark on any vacancy in the meanwhile. This order is under challenge.

[2] Mr. Muhammed Shafi, learned counsel for the applicant has submitted that it was a case of extreme necessity, since whatever amount received as gratuity had been spent for the treatment of Sini, referred to above and also for treatment of daughter of the deceased who unfortunately later on passed away. The family is in utter penury. Although the application has been filed belatedly it is found that it is not to be rejected for reasons of delay. Ms Jisha appearing for Mr TPM Ibrahim Khan, SCGSC, however points out that a compassionate circumstance solely can be the basis for resting a decision. According to her all parameters to be considered had been appropriately taken note of and within the three years period as authorised by the Standing Instructions on the subject, there arose no vacancy, possible to be earmarked for appointment of the applicant. Of course, there were vacancies in Group-C cadre, but as the applicant is not a Graduate he could not be considered for Group-C post. As per educational qualification

of the applicant he was eligible for appointment in Group-D cadre, but as there was no vacancy he could not be appointed within the three year's period. It is stated that the Committee of Officers constituted for the purpose had gone into the details and found that it is not possible to offer compassionate appointment to the applicant and the decision duly had been conveyed.

[3] Mr. Muhammed Shafi submits that even if the appointment could not be given within the period of three years, considering the nature of the claim of the applicant his case could have been taken up by the respondents at a later stage. He also submits that the contention taken by the respondents that there were no Group-D vacancies available for the period of three years is unacceptable, and further probe in this area is necessary. However, I find it difficult to accept the above contention. Three years period as has been fixed by the Government is with due reference to the views expressed by Hon'ble Supreme Court. Compassionate appointments are not a vested right in itself which can be exercised any time in future. The object of the scheme is to enable a family to get over the financial crisis, which it faces at the time of disappearance of the sole bread earner. A large number of applications are received for compassionate appointment as found disclosed. As per the instructions the maximum time a person's name can be kept under consideration for compassionate appointment is three years and the quota is

restricted to 5% of total direct recruit vacancies in a year. These are accepted situations.

[4] It is not the case of the applicant that his claim for compassionate appointment was not considered within the time prescribed and, therefore, it cannot be termed as irrational. The second submission also does not appeal to me to be on any firm ground. Respondents have stated in their reply statement that there were no vacancies of Group-D staff available to be filled up in the reckonable period of time. Although rejoinder has been filed, no further materials have been produced by the applicant sufficient to cast a doubt about the veracity of the counter statement. Therefore, even if it might be a case for compassionate appointment, which was in dire need, in view of the nature of disposal of the claim, I am not in a position to direct the respondents that the matter has to be reconsidered. Hence, the application is dismissed. No costs.



(Justice M Ramachandran)  
Vice Chairman