

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 450/2011

Monday, this the 13th day of August, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Abdul Hameed Khan P,
S/o late Syed Ali T.K.,
Pandal House, Kadamat Island,
U.T of Lakshadweep.

Applicant

(By Advocate Mr M.P.Krishnan Nair)

v.

1. Administrator,
U.T of Lakshadweep,
Kavaratti.
2. Secretary (Power),
Dept. of Electricity,
U.T of Lakshadweep,
Kavaratti.

Respondents

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 07.08.2012, the Tribunal on 13.08.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The father of the applicant, while working as a Junior Engineer in the Electrical Department of Union Territory of Lakshadweep died on 10th of December 2002. On 6 February 2003 the applicant filed an application for appointment under compassionate grounds. As no action was taken, the applicant renewed his request by another application, this time addressing the same to the Minister for Power, New Delhi in 2005. This was forwarded to the

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Lakshadweep administration for appropriate action. According to the applicant no action was taken on the same. The inaction on the part of the administration, according to the applicant, is illegal, arbitrary, malafide in nature and discriminatory in character. Hence, this application, seeking the following reliefs:-

- (i) To call for the entire records of the applicant's case from the application dated 6.2.2003 and the entire File No.40/9/89/Est/Ele (1)/ 504 Ref. File No.1/1/2001/Ele/126 dated 19.2.2003 and all action taken in pursuance of the applicant's application forwarded from the Power Ministry, New Delhi and all action taken on other representations of the applicant;
- (ii) To declare that the applicant is entitled to get a suitable appointment considering his qualification and experience under dying in harnesses scheme of the Government of India applicable to the U.T of Lakdhsdweep due to the untimely death of his father, Shri T.K.Sayed Ali, Jr. Engineer, Electrical Dept., who expired on 10.12.2002;
- (iii) To direct the respondents to appoint the applicant to a suitable post considering his qualification and experience under dying in harness scheme of the Government of India applicable to the U.T of Lakshadweep due to the untimely death of his father, Shri T.K.Sayed Ali, Jr. Engineer, Electrical Dept, who expired on 10.12.2002;
- (iv) To direct the respondents to act according to law.

2. By way of a Miscellaneous Application, the applicant has filed a copy of one of his earlier representations dated 29 July 2003 submitted before the first respondent. In addition, a circular dated the 22nd October, 2010 issued by the Lakshadweep Administration directing all concerned to take necessary steps to accommodate all the applicants applied for compassion appointment who were willing to do the work in the wage rate of Rs.147 per day under the NREGA scheme was also annexed to the said MA.

3. Respondents have contested the OA. According to them, the initial application dated 20th of December 2002 was returned due to procedural defects. When the applicant submitted the application in February, 2003, the same too containing certain defects, was to be returned again in April 2003. After the said application was resubmitted, the same was sent to the Secretary (Administration) Secretariat, Kavaratti on 6th September, 2003. By that time, as the Government of India had revised the forms for the scheme of compassionate appointment, the application was to be returned to the applicant for resubmission in the revised format. On his resubmission of the application in October 2003, the same was sent to the Secretary, Administration. The committee constituted for the purpose of considering such applications did examine the case of the applicant but it had to reject the case on the sole ground that one of the dependents of the deceased is already employed. Thus the applicant was communicated the decision by letter dated 10th of April 2008. Compassionate appointment is normally granted on need, economic status basis. Number of vacancies which could be filled up under compassionate appointment scheme is always far less than the number of aspirants. The Apex Court in a number of cases held that it is only cases where immediate need of assistance was warranted that compassionate appointments can be granted. Respondents cited a few decisions of the Apex Court and prayed that the OA be dismissed.

4. In his rejoinder the applicant has contended that the one who has been employed is the sister of the applicant who got long back married during the very lifetime of the father or the applicant and who is living separately. As such, on the ground that one of the dependents has been employed, the case of the applicant cannot be thrown out. The applicant is now 37 years of age and he would not be getting any outside employment elsewhere nor is there any

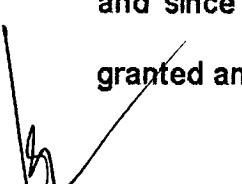
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possibility of his employment with and Lakshadweep Islands and as such it would be in the interest of justice in the case of the applicant is considered for compassion appointment.

5. In their additional reply respondents have stated that compassionate appointment is in the nature of exception purely made on humanitarian grounds and is granted only to those who do not have any source of livelihood. In the instant case applicant's family received provident fund, accumulation of Rs. 1.21 lakhs, death-cum- retirement gratuity to the tune of 2.75 lakhs and is in receipt of family pension @ Rs 2875 per month.

6. Counsel for the applicant argued that the lone reason for rejection of the case of the applicant is that one of the dependents of the deceased is employed. This individual married five years even prior to the demise of the father the applicant and is living separately with her spouse and children. Under no stretch of imagination can it be said that the married daughter would continue be a part of the family of the deceased. Thus no other grounds has been indicated in the recent rejection.

7. Counsel for the respondents on the other hand argued that while the general rule may be that a married daughter may not be a part of the family of her paternal house, insofar as natives of Lakshadweep are concerned the same does not hold good. The tradition in respect of such natives is that the daughter remains a part of the family of the paternal house even after marriage. It is keeping in view the about tradition that the case of the applicant was considered and since one of the dependents is gainfully employed, the applicant was not granted any compassionate appointment.



8. Arguments were heard and documents perused. The lone question for consideration is whether the rejection order has to be quashed and set aside as illegal and unjust. As earlier stated, the only reason given is that one of the dependents is already employed. The respondents have not refuted the fact that the said dependent is the daughter of the deceased who got married even five years prior to the very demise of the deceased. It is not denied that the said individual is not residing with the other members of the family of the deceased.

The compassionate appointment scheme includes the following:-

"10. Where there is an earning member:

(a) in deserving cases even when there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to the number of dependents, assets and liabilities left by the government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the government servant and whether he should not be a source of support to other members of the family."

9. In the instant case, no attempt seems to have been made for making reference to the Secretary for his consideration. The administration at its own level has rejected the case. The administration is expected to consider whether the case of the applicant is such that compassionate appointment shall have to be given even when one of the family members is already employed. If other conditions are fulfilled and it is purely on account of the fact that one of the dependents is an earning member, that the appointment has to be denied to the individual, it is for the secretary of the Department to consider and decide the same. Rejecting the case of the applicant reflecting that the case is rejected on account of the fact that one of the family members is employed would mean that the powers of the Secretary, Ministry of Home Affairs, have been usurped by the local administration which is impermissible. The matter will have to be referred to

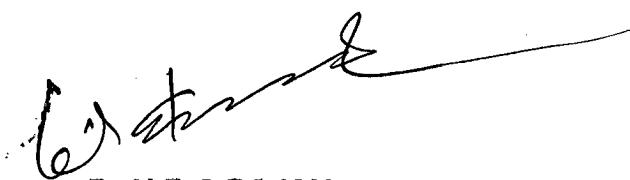
the Ministry of Home Affairs for consideration by the Secretary about the grant of compassion appointment to the applicant. Needless to mention that while referring the case to the ministry, full details of the family particulars, the extent of assets and liabilities etc will have to be furnished to the Ministry along with the recommendation of the Administrator.

10. It would have been a different matter, had the OA been dismissed at the appropriate time on the ground of financial conditions or belated application etc., for which it is the Administrator who is the authority. But since the reasons for rejection are not the same and the reason indicated is one for which it is the Secretary of the Administrative Ministry alone who can consider and decide, respondents shall have to refer the case to the said Authority.

11. In view of the above, the OA is disposed of with a direction to the respondents to consider the case of the applicant keeping in view the fact that the applicant's sister is married and living separately and is over-aged and if there be justification in regard to the grant of compassionate appointment but for the fact of an earning member being there, the case be placed before the Secretary, Ministry of Home Affairs for his judicious consideration.

12. The entire action should be performed within four months from the date of communication of this order. It is made clear that no observation has been made by the Tribunal over the merit of the case.

13. No costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER