

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.5/2002.

Friday this the 13th day of December 2002.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. T.C.Cheriyar,
Kanicheril Thekkekara Padukottukal,
Thatta P.O., Pathanamthitta-691 525.
2. Alex K.Cheriyar,
Kanicheril Thekkekara Padukottukal,
Thatta P.O.,
Pathanamthitta-691 525. Applicants

(By Advocate Shri Hariraj)

Vs.

1. The Senior Superintendent, Railway Mail Service,
Trivandrum Division, Thiruvananthapuram-33.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram-33.
3. The Director General, Department of Posts,
New Delhi.
4. Union of India represented by its Secretary
to Government of India, Ministry of
Communications, Department of Posts,
New Delhi. Respondents

(By Advocate Shri S.K.Balachandran, ACGSC)

The application having been heard on 13th December 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

There are two applicants in this case. The first applicant, Shri TC Cherian, who was a Lower Selection Grade (LSG) Sorting Assistant, was medically invalidated on account of a number of diseases which incapacitated him in the matter of discharging duties any longer. The 2nd applicant, Shri Alex Cherian is the youngest son of the 1st applicant. He had passed SSLC and was 22 years of age at the relevant point of time. It

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would appear that the 1st applicant who was ill, had sought for retirement on medical grounds by A-1 representation dated 8.11.97 along with a medical certificate. After ~~more than~~ ^{nearly} a year, he was allowed to go on retirement on medical grounds by Annexure A-3 order dated 6.10.1998 issued by the first respondent. The first applicant himself, by A-4 representation dated 15.10.1998, requested for granting compassionate appointment to his youngest son, Alex Cherian in the light of the family circumstances explained therein. It would appear that the applicant's family consisted of five members i.e. self, wife and three unemployed sons. Thereafter the first applicant made several representations viz. A-5 and A-6 dated 12.7.99 and 7.3.2000 respectively. Annexure A-7 dated 31.10.98 is a declaration in which the 2nd applicant undertook to look after the family including his invalid father, if he was given an appointment on compassionate grounds. By A-8 order dated 31.3.2000, the first respondent communicated the second respondent's order, rejecting the first applicant's request for compassionate appointment in favour of his youngest son Alex Cherian. The reason for rejection of the representation was that, the 1st applicant had crossed 55 years when he retired on medical invalidation and the request could not be acceded to since, as per rules, such a consideration was not permitted. The first applicant thereupon made a representation (A9) to the 2nd respondent. The applicants, aggrieved by order A-8, have come up before this Tribunal by filing this O.A. seeking the following reliefs:

- i. "To quash A-8.
 - ii. To direct the respondents to consider the 2nd applicant for compassionate appointment and to grant him such appointment without delay, if found suitable.
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- iii. Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and,
- iv. Grant the costs of this Original Application."

2. The respondents in their reply statement would contend that the first applicant having attained the age of 55 years at the time of his retirement on medical grounds, his case would not be covered by the Scheme of Compassionate appointment. Further, the medical certificate did not certify that he was permanently incapacitated to do any work.

3. In their rejoinder, the applicants state that the deficiency in the medical certificate was never communicated to him and that therefore such a ground could not be taken. Since the 1st applicant had submitted his request for retirement on medical invalidation even before he attained the age of 55, there was no valid ground for rejecting his claim on the ground that he had crossed 55 years when he was ultimately allowed to go on retirement on medical grounds.

4. We have heard Shri Hariraj, learned counsel for the applicant and Shri S.K.Balachandran, learned ACGSC. The pleadings and contentions on record are reiterated by the learned counsel on either side. Shri Hariraj has specifically contended that the order of rejection has no force. It depends upon the various norms which should be taken into account, while considering the request of the applicant seeking compassionate appointment. It is also further stated that in the instant case, the retired Government employee himself is a dependent on the family on account of his total incapacity to work and therefore, the condition is worse than what is caused by the death of the

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bread winner. The first applicant is dependent on his children for sustenance. In any case, the order is not a speaking order. There is no proper application of mind with regard to the actual facts and circumstances of the case and the norms laid down in the matter of compassionate appointment. The whole order is based on the untenable ground that, as per rules, when a person who is retired on medical grounds is over 55 years, the claim of the dependent for compassionate appointment cannot be considered.

5. The learned Additional C.G.S.C. would defend the order stating that as per rules, the applicants' case could not be considered as the 1st applicant had already attained 55 years when he retired on medical grounds, and that the delay in processing the case was quite reasonable.


6. We have examined the facts. We find that, in the instant case, the 1st applicant had made all efforts to get himself retired on medical grounds since he was afflicted with a number of diseases. He had made the request in that regard well before he attained the age of 55. The authorities ought to have taken the matter sympathetically having regard to the fact that the applicant was physically unfit to carry out his official duties. They ought to have taken sufficient efforts to retire him on medical grounds. If that were done in good time, the 1st applicant would have got a fair chance to be considered for compassionate appointment in favour of his dependent son. It was also made clear that his other children were not capable of sustaining the family for various reasons. The applicant himself had to depend on others not only for food and clothes but also

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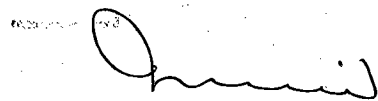
for medicines. That being so, the respondents ought to have considered all the relevant facts in a fair and judicious manner. Having failed in their duty, we are constrained to remit the matter back to them by setting aside the impugned order A-8 and direct the respondents to consider the matter in accordance with the norms laid down in this regard and keeping in mind the principles enunciated in various decisions of the Hon'ble Supreme Court.

7. In the light of what is sated above, the application is disposed of directing the 2nd respondent to consider the 2nd applicant's request for appointment on compassionate grounds and pass an appropriate speaking order and communicate the same to the applicants within a month from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 13th December, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the representation dated 8.11.97 submitted by 1st applicant to the 1st respondent.
2. A-2: True copy of the Medical Certificate issued by the Deputy District Medical Officer (H) Pathanamthitta.
3. A-3: True copy of the Memo No. B/3/25/11 dated 6.10.1998 issued by 1st respondent.
4. A-4: True copy of the representation dated 15.10.1998 submitted by the 1st applicant to the 1st respondent.
5. A-5: True copy of the representation dated 12.7.99 submitted to the 1st respondent.
6. A-6: True copy of the representation dated 7.3.2000 submitted to the 2nd respondent.
7. A-7: True copy of the declaration dated 31.10.1998 given by the 2nd applicant to the 1st respondent.
8. A-8: True copy of the Memo No. B/3/25/Vol. II dated 31.3.2000 issued by the 1st respondent and addressed to the 1st applicant.
9. A-9: True copy of the appeal submitted by the 1st applicant on 10.4.2000 to the 3rd respondent.
