

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.472/08

Tuesday this the 16th day of June 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

1. Achamma John,
W/o.A.John,
Residing at Roy Vilasam,
Perumpuzha P.O., Kollam.
2. Roy John,
S/o.A.John,
Residing at Roy Vilasam,
Perumpuzha P.O., Kollam.Applicants

(By Advocate Mr.K.S.Bahuleyan)

Versus

1. Union of India represented by the Secretary,
Govt. of India, Ministry of Communications,
New Delhi.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. The Senior Superintendent of Post Offices,
Kollam Division, Kollam.Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 16th June 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicants are aggrieved by the Annexure A-9 letter dated 18.10.2007 by which the 2nd respondent has rejected the request of the 2nd applicant for employment on compassionate grounds.



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2. The brief facts of the case are that Shri.A.John, a Postal Assistant at Kundara Post Office, died while in service on 16.1.2005 after undergoing prolonged treatment for cancer from the year 2002 onwards. He was survived by his wife, the 1st applicant, two daughters and a son who is the 2nd applicant herein. Immediately after the death of Shri.John, the 2nd applicant submitted the Annexure A-6 representation stating that while Shri.John was alive, he had taken loan of considerable amount from the Co-operative Societies to meet his medical expenses, his mother was unemployed, his two sisters aged 24 years and 26 years were got married in recent time after taking substantial amount as loan to meet their marriage expenses and the entire burden of repayment of the loan was on his shoulders. He further submitted that the family has got only 22 ½ cents of land with a small house built thereon with the House Building Advance taken from the Department by his late father and has no other assets or source of income. After his death, the respondent department has deducted Rs.1,29,486/- on account of the outstanding advance from the DCRG amount of Rs. 2,11,922/- due to him and only the balance amount of Rs.82,436/- was paid to the family. In the GPF account also, there was only Rs.4537/- As regards his educational qualifications were concerned, he submitted that he had passed SSLC and Pre-Degree Examinations.

3. Later, the applicants have filed M.A.No.414/09 annexing therein Annexure A-10 letter No.C1/10805/2009 dated 18.5.2009 issued to him by the Director, Vocational Higher Secondary Education certifying that the Vocational Higher Secondary course with Non Vocational subjects as



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optional conducted by the Department of Vocational Higher Secondary Education, Government of Kerala is equivalent to the two year Higher Secondary Course at Plus two level with the corresponding subjects conducted by the Department of Higher Secondary Education, Government of Kerala as declared vide G.O. (Rt.) No.2700/03/GE, dated 10.7.2003. Further, it has been stated that the 2nd applicant is a holder of the Certificate No.VE 91288 and has studied the Vocational Course in Maintenance and Repairs of Domestic Appliances with Non Vocational subjects in Part III Physics, Chemistry and Mathematics.

4. The applicant has also relied upon the judgment of the Apex Court in **Govind Prakash Verma Vs. Life Insurance Corporation of India and others** [2005 (10) SCC 289] where it has been held that compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. Para 6 and 7 of the said order was as under :-

“6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates

the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.

7. In the result, the appeal is allowed and the orders passed by the High Court are set aside. The respondents on consideration of the request of the appellant for compassionate appointment, shall pass appropriate order in the light of the observations made above, within a period of three months from today."

5. The respondents vide the impugned Annexure A-9 letter dated 18.10.2007 informed the applicant that his request was considered by the Circle Relaxation Committee (CRC for short) which met on 22.3.2006 but it "did not recommend it as no indigent circumstance which warrants relief to family by way of compassionate appointment" was noticed. The respondents have further elaborated the reasons for rejection as under :-

" Appointment on compassionate ground is intended to render immediate assistance to the family of the Govt. servant who dies in harness or retire on medical grounds leaving his family in financial crisis. Further, it is not intended to ensure employment for each and every member of the family. Consequently it becomes essential to ensure that only more deserving cases are approved as per the purpose stipulated for the scheme of such compassionate appointments. The Supreme Court has also observed that the only grounds which can justify the compassionate employment is the penurious condition of the deceased family and be offered only as a relief



against destitution. Compassionate appointments are to be limited to 5% of Direct Recruitment vacancies and only most deserving cases are considered."

6. The respondents in their reply statement has submitted that his father died as early as on 16.1.2005 and the family has survived all this while without a job to him and the Apex Court in its judgment dated 17.7.2006 in **Civil Appeal No.6642 of 2004 (State of J&K and others Vs. Sajad Ahmed Mir)** held that providing employment on compassionate grounds is not mandatory if the family survives for long after the death of the breadwinner and such employment cannot be claimed as a matter of right. The respondents have also submitted that the CRC considered the following parameters in respect of each candidates to arrive at the findings regarding the relative indigency of the families :-

1. Number of dependents.
2. Number of unmarried daughters.
3. Number of minor children.
4. Annual income from other sources.
5. Whether family owns a house or not.
6. Details of landed property.
7. Details of the liability of the family.

7. I have heard Advocate Shri.K.S.Bahuleyan for the applicants and Advocate Smt.Asha on behalf of Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. The actual reason for rejecting the request for employment on compassionate ground to the 2nd applicant given by the CRC and the reasons given in the reply statement filed by the respondents are entirely different. In fact the CRC considered the case of the 2nd applicant along with other 28 cases for appointment as PA as well as Group 'D' at its meeting held on 22.3.2006. They were also



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convinced about the indigent circumstances of the family of the deceased Government employee and the 2nd applicant was in fact considered for appointment. According to Annexure R-1 minutes made available by the respondents along with their reply statement, 10 posts of PA have been earmarked for compassionate ground appointment for the year 2005. The CRC did not recommend the 2nd applicant for appointment as PA because he possessed the educational qualification of only VHSC whereas the minimum qualification required was Pre-Degree. He was also considered for the post of Postman in the Group 'D' cadre and found him eligible but he could not be recommended for appointment because there were no vacancies available for appointment on compassionate grounds in the said category for the year 2005.

8. According to the Annexure A-9 Scheme for compassionate ground appointment issued by the Government of India "the object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency." In order to achieve the aforesaid object, the Scheme itself has provided the procedures to be followed in the matter of compassionate appointment. According to Para 12 of the said Scheme, the prescribed pro forma is to be used by Ministries/Departments/Offices for ascertaining necessary information and processing the cases of compassionate appointment. A



welfare officer in each Ministry/Department is required to meet the members of the family of the deceased Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him. To give immediate assistance, the Committee may meet during the second week of every month to consider cases received during the previous month and the recommendation of the Committee should be placed before the competent authority for a decision. If the competent authority disagrees with the Committee's recommendation, the case should be referred to the next higher authority for a decision.

9. In the present case, it is seen that father of the 2nd applicant died on 16.1.2005. Immediately thereafter, he made the application for appointment on compassionate ground. There were many lacunae in the application. The respondents department did not make available any assistance to the family to submit the application form properly filled in with all the required documents. The details were collected in peace meal. Finally, the case was placed before the CRC only on 22.3.2006 ie., after more than one year from the date of death of the Government servant. The applicant has thus lost more than one precious year for consideration of his case. When the respondents themselves have not considered the case of the 2nd applicant for such a long time, it is quite unjustified on their part to say that the family has survived all

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the while without a job to the applicant and, therefore, it is not necessary to provide him any compassionate ground appointment. By such inaction, any department can make the cases of the applicants for compassionate appointment infructuous by quoting the aforesaid judgment of the Apex Court. Again, by considering the applications in terms of certain parameters prescribed by the respondents, without assigning any merit points for those parameters, such consideration becomes a meaningless exercise. The indigent situation of an applicant was to be compared with such situations of similarly placed persons. Even according to the information furnished to the CRC, the monthly family pension received by the wife of the deceased Government servant is only Rs.4607/- and about Rs.6000/- as annual income from other sources. As regards the liabilities of the 2nd applicant was concerned, it was assessed as Rs.6,57,350/-. However, since the CRC has already considered the 2nd applicant for appointments as PA as well as Group 'D', aforesaid submissions of the respondents in their reply is quite meaningless. He was not given any appointment as PA only because he has not satisfied the condition regarding educational qualification and he could not be offered the post of Group 'D' because there were not sufficient number of vacancies for the year 2005. The number of Group 'D' posts available for compassionate ground appointment for the year 2005 was only two but there were already four cases approved for appointment as Postman. The excess two cases approved for appointment were to be adjusted against the future approved vacancies. Therefore, the relative lack of indigency as stated in the



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Annexure A-9 letter was not the reason for the CRC to reject the case of the 2nd applicant. He was denied appointment as PA on compassionate ground against the vacancies of 2005 merely on the ground that he did not have the minimum qualification of Plus two (Pre-Degree). Since the 2nd applicant has now produced the Annexure A-10 certificate of equivalence stating that the Vocational Higher Secondary Course passed by him is equivalent to the two years Higher Secondary Course at Plus two level, the respondents have to reconsider his case for appointment as PA or any other post for which Pre-Degree is the minimum qualification. Since there were 10 posts of PA for the year 2005 and only 3 have been utilised, the CRC would have recommend the case of the 2nd applicant for appointment as PA, if they were satisfied that he had the minimum qualification of Plus two (Pre-Degree).

10. I, therefore, direct that the 2nd respondent shall consider the case of the 2nd applicant for appointment as PA taking into consideration of his qualifications as VHSC which is declared as equivalent to Plus two by the competent authority. Since his case has already been considered by the CRC and its members have satisfied themselves that his family was in indigent circumstances, it is not necessary to place his case once again before it. While considering his case, the 2nd respondent shall ignore the question of delay as the same was not attributable to the applicant. In case the vacancies of PA earmarked for compassionate appointment for the years 2005 to 2008 have already been exhausted, the 2nd applicant shall be offered the post of PA or any other equivalent post against the direct



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recruitment vacancies under the 5% quota which is now available or would arise in future. Necessary decisions in this regard shall be communicated to the 2nd applicant by the 2nd respondent within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 16th day of June 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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