

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 481 OF 2011

Wednesday , this the 14th day of March, 2012

CORAM:

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. Smt. Janakiamma, aged 68 years
W/o.Late R Thankappan, residing at
'Kalluvirathu House' Chalapally P.O
Ezumattoor via
Pathanamthitta District
2. K.J Ajithakumary, aged 36 years
D/o.Late R Thankappan, residing at
'Kalluvirathu House' Chalapally P.O
Ezumattoor via
Pathanamthitta District

Applicants

(By Advocate – Mr.Shafik M.A)

Versus

1. Union of India
Represented by the Secretary
Department of Posts/Director General, Posts
Ministry of Communications, New Delhi – 110 011
2. The Chief Postmaster General
Kerala Circle,
Trivandrum – 695 033

Respondents

(By Advocate Mr.Varghese P Thomas, ACGSC)

The application having been heard on 07.03.2012, the Tribunal
on 14.03.2012 delivered the following:

ORDER

1. The applicants have filed this Original Application challenging Annexure A-1 order by which the respondents have rejected the second

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applicant's claim for appointment under compassionate ground appointment scheme.

2. The first applicant's husband late Shri R Thankappan, Postal Assistant, Pathanamthitta died while in service on 28.08.1996 due to cardiac arrest. He was also an asthma patient and was under treatment for a long time. The family consisted of the applicant, elder daughter and the younger daughter (second applicant). Elder daughter is married. The second applicant was doing her B.Com graduation at the time of death of her father. The family was indebted when the first applicant's husband was alive, to the tune of Rs.1,00,000/-. The family was living in the Government quarters for the last 12 years. They neither have any landed property nor a house of their own. The family received Rs.1,20,000/- as terminal benefits which was entirely utilised for clearing outstanding debts on account of the treatment of the late employee and to meet the expenditure incurred in connection with the marriage of the first daughter. Therefore, the applicants are surviving only on the family pension which the first applicant receives. The family is in extremely penurious condition since their only means of livelihood is the meager amount of family pension. Therefore, soon after her father's death the second applicant submitted her request for a job in the department vide Annexure A-3. The Circle Relaxation Committee considered her case and rejected it. Since, the second applicant was not approved for appointment under the Compassionate Ground Appointment Scheme the family was evicted from the quarters and they had to move to the house of the brother of 1st applicant. They are compelled to stay there as they do not have the means to acquire any property or rent out a house. Under such circumstances, the applicants submitted Annexure A-4 representation dated

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23.10.2006. This too was rejected by the respondents vide Annexure A-2 order. The applicants came to know that the respondents have offered compassionate ground appointment to wards of better placed families, in the same Division. It also came to the notice of the applicants that the verification report submitted by the Sub Divisional Inspector was not exactly correct as he had noted that the family of the applicants possess landed property and a house and is not in indigent position. However, a copy of the said report is not being made available to the applicants even on their written requests. At that particular point of time the first applicant was a house wife and the second applicant was a student and hence they had no other means of income other than the family pension. In fact, the respondents approved the case of another ward for appointment after a lapse of 7 years. Therefore, the applicants had submitted a mercy petition to the Hon'ble President of India on 26.03.2006 seeking his kind indulgence vide Annexure A-5. The same too was rejected by Annexure A-1 order mechanically without even bothering for calling a fresh report on the financial condition of the family. The second applicant is already 36 years old and is still unmarried. Due to the fact that the applicants are reduced to destitution the second applicant is permitted to work as substitute in the vacancy of Gramin Dak Sevaks in the Sub Division. As the applicants continue to suffer they again submitted a representation for consideration by the respondents (Annexure A-6). As there is no efficacious and alternate remedy for redressal of their grievances, the applicants have approached this Tribunal seeking for a declaration that the applicant is entitled to be granted compassionate appointment under the prescribed scheme.

3. The applicants have filed M.A 384/11 with a prayer to condone a delay

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of 1578 days in filing this Original Application. The respondents filed objection to the M.A for condonation of delay and detailed reply statement. The respondents have submitted that such an inordinate delay of 1578 days cannot be condoned in view of the decision of the Hon'ble Supreme Court in the case of State of Haryana vs Miss Ajay Walia reported in 1997 Lab.IC (SC) 286, wherein it is held that repeated representations to various authorities cannot extend the time limit for approaching courts of law. They also placed reliance on the decision reported in JT 1998 (7) SC 21, wherein it is held that there has to be satisfactory reason for condoning the delay. The applicant has stated that her case could not be considered favorably by the respondents as the initial verification report made by the Sub Divisional Inspector was not correct. They produced Annexure R-5 which is a letter of recommendation from the Senior Superintendent of Post Offices, Pathanamthitta Division. His recommendation in her favour is not reflected in the minutes of the meeting which might have led to wrong decision making on the part of the Circle Relaxation Committee. As per DOPT Letter No.14014/6/94-Estt(D) dated 09 Oct 1998, belated request for compassionate appointment can also be considered. The relevant portion is extracted below:-

"8. BELATED REQUESTS FOR COMPASSIONATE APPOINTMENT

(a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of

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circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned. "

In order to avoid any injustice being shown to the second applicant, I condon the delay.

4. The respondents have taken up the main contention that the Original Application is barred by limitation. To support their plea of delay, they have relied upon the decision of the Hon'ble Apex Court in the case of M.L Cecil D'Souza vs Union of India (AIR 1975 SC 1269).

5. According to the respondents, the Circle Relaxation Committee which met on 14.07.1997 rejected the second applicants' case as the family was found to be in less indigent circumstances when compared with the others. A copy of the minutes was produced as Annexure R-2. They maintained that as it is evident from the minutes, cases of 15 candidates including the second applicant were considered for the post of Postal Assistants. After considering various aspects and evaluating the relative indigence of all the candidates the CRC found 13 families to be in indigent conditions and hence two cases including that of the second applicant were rejected. They added that an amount of Rs.2272 + dearness relief is being paid to the wife of the late official as family pension and an amount of Rs.1,07,998 was paid to the family as terminal benefits. They relied on the judgment of the Hon'ble Supreme Court in civil appeal No.6642 of 2004 (State of J&K and others Vs Sajad Ahmed Mir), wherein it was held that providing employment on compassionate grounds is not mandatory if the family survives for long after the death of the breadwinner.

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6. The applicants filed their rejoinder. They strongly refuted the contention of the respondents and relied on the decision of the Hon'ble Supreme Court in the case reported in 2005 SCC (L&S) 590 wherein it was held that receipt of pension and terminal benefits are no ground to deny compassionate appointment. They added that for the past 14 years they were waiting for some consideration from the respondents as they are in penurious condition and are at the mercy of the first applicant's brother. They stated that the case of one Kum.R Remya was considered after the lapse of 7 years eventhough her family is well off. The applicants case was more deserving one as compared to 13 wards who have been offered appointment.

7. The respondents have filed additional reply statement and produced proforma in respect of wards whose cases were rejected at Annexure R-4 (a-d) series. They also produced Annexure R-5 which is a letter of recommendation dated 23.3.1997 from the Superintendent of Post Offices, Pathanamthitta Division. The respondents stuck to their stand that the case of the second applicant had to be rejected only on comparative merit and relative indigency of the cases considered. They maintained that the applicants can not compare their case with that of Kum.R Remya who was selected by CRC later.

8. Heard the counsel for the parties and perused the documents.

9. A perusal of the minutes of C.R.C which met on 14.07.1997 shows that as stated by the respondents 15 cases were considered for appointment in the post of Postal Assistants on relaxation of recruitment rules. Only two cases were rejected on the basis of satisfactory financial status of the family. It is seen that

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in respect of the cases at serial No.3, 6 and 15, the conditions regarding the availability of one earning member in the family was waived and the cases were recommended for appointment under compassionate ground appointment scheme. According to DOPT letter No.14014/6/94-Estt(D) dated 09.10.1998, the cases of those families where there is an earning member, the decision is to be approved only on exceptional circumstances and to offer appointment is to be taken at the level of the secretary of the department. The relevant rule is extracted below:-

“ 10. WHERE THERE IS AN EARNING MEMBER

(a) In deserving cases even where there is already an earning member in the family, a dependant family member may be considered for compassionate appointment with prior approval of the Secretary of the Department. ”

10. This particular relaxation committee did not care to check the rules properly before waiving one of the essential conditions for offering appointment under relaxation of Recruitment Rules in respect of not one but in three cases. Had this been done, the second applicant would have stood a fair chance of being offered appointment under the relaxation of the Recruitment Rules. Moreover, the CRC has not gone by the recommendation of the Superintendent of Post Offices, Pathanamthitta Division who had stated that the family was in a pathetic condition. The later events also bear out the fact that the family is facing penury because the second applicant neither got married nor secured a job. They do not have the means to rent out a house since the family pension is the only source of income. Therefore, they are compelled to stay with the first applicant's brother ever since the death of her husband. Therefore, I find force in the contention of the applicant that the committee has not gone into the merits

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of case as presented by the R4 or any independent verification made by any other authority. There was also an element of discrimination as similarly placed candidate Kum.R Remya was considered and offered appointment after a lapse of 7 years. Therefore, respondents now cannot take the contention that this O.A should be dismissed on the basis of delay.

11. In view of the foregoing the second respondent is directed to instruct ; the CRC to review her case once again for the post of Postal Assistant. The respondents are liberty to make further verification regarding the present financial status of the family and taken an appropriate decision and intimate the applicant within a time line of three months. The Original Application is disposed of with the above direction. No costs.

(Dated, this the 14th day of March, 2012)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER

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