

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 49/91
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DATE OF DECISION 30-4-92

Smt Gracy Joy

Applicant (s)

Mr V Rajendran

Advocate for the Applicant (s)

Versus

The Director, Air Headquarters,
New Delhi-110 011 and others

Respondent (s)

Mr KA Cherian, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member

~~The xxxxxxxx~~

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

The applicant is the widow of Late Sergeant Joy Abraham (601793) who died of 100 per cent burns at the Army Hospital, Delhi on 11.8.85. The applicant requested for compassionate employment. This has been rejected by the Annexure A1 letter dated 11.2.1988 of Respondent-1. It was stated therein that the scope of employment on compassionate ground is limited because of the large number of requests being received. However, such requests have been considered on the basis of comparative financial status of the concerned families and the families found to be most destitute are offered employment assistance. It was further stated that though the financial condition of the applicant's family was not very sound, it was found to be better than those who were chosen for compassionate appointments during that period.

2 When a further representation was made to the Hon'ble Prime Minister, this was also turned down by the Annexure AII letter dated 12.11.90 of Respondent-1. It was stated therein that the applicant's request for employment assistance had already been examined thrice for the quarters ending September, 85, December, 85, and March, 86 alongwith other similar cases and that relatively her pension was better than those deserving persons to whom alone the benefit of the limited opportunities of employment could be given.

3 The applicant has, therefore, prayed for the following reliefs:

- "(i) issue an order setting aside Annexure A1 and Annexure AII orders of the 1st respondent;
- (ii) issue directions to the 1st respondent to give a suitable employment to the applicant on compassionate ground;
- (iii) issue directions to the 1st respondent to consider the claim of the applicant for an appointment to the clerical cadre in the service of the 1st respondent on compassionate grounds."

4 The respondents have filed a reply in which the facts mentioned above are generally admitted.

5 The main contention is that for compassionate appointments only a certain number of vacancies are available for consideration. Thus, only 4.45 % of the Group D vacancies and 14.5% of Group C vacancies in a year may be filled up in this manner. Therefore, within the available vacancies, the most needy persons are granted reliefs based upon their financial conditions

judged on the basis of the terminal benefits received by the families and the number of dependants etc. They also submitted that the case of the applicant has been considered thrice and rejected which cannot be reconsidered again.

6 When the matter came up for final hearing, the Respondents were directed to indicate the basis of their submissions that for the purpose of compassionate appointments, only 4.45% of the Group D vacancies and 14.5% of the Group C vacancies to be filled up by direct recruitment may alone be taken into consideration. The respondents have not been able to produce any such authority in support of the aforesaid conditions. However, it is stated as follows in this regard in the additional reply.

" The appointment of dependents of employees dying in harness is to be made against the quota for direct recruitment. It is not to be made against the vacancies reserved for filling up by promotions. Only 50% of the direct recruitment quota is to be filled up otherwise than on merits. There is already reservation of Scheduled Castes, Scheduled Tribes, Ex-servicemen and physically handicapped persons. Therefore, the total number of vacancies available for appointment in group (C) posts by compassionate appointment is the difference between 50% of the vacancies minus the aggregate of recruitments to be made for SC/ST etc. Thus, in class C post, maximum is 14.5% of the direct recruitment vacancies could be filled up by the compassionate appointments. In the year 1986, 14.5% of it is nearly 46. This is divided into 4 to allot to each quarters. Each quarter is getting around 12 posts only. Applicant was considered during the 3rd and 4th quarters of 1986 and in the I quarter of 1987. In the 3rd quarter of 1986, 12, and in the 4th, 14 vacancies were filled by the compassionate appointment but the applicant could not be appointed on the basis of the criteria adopted for selection. In the year 1987, 52 vacancies were set apart for compassionate appointment, i.e., 14.5 % of total vacancies which were anticipated to arise in that year. However, another 3 vacancies arose on account of unutilisation during 1986 for non acceptance of compassionate appointment by the selected persons. Therefore, a total of 17 vacancies including the carried forward vacancies were available during the 1st quarter of 1987. The applicant could not be appointed against the vacancies in 1986 or in 1987, even after due consideration was given to the

applicant as per the provisions of relevant Government instructions. The notings on which approval of the appointing authority was accorded for making compassionate appointment against the vacancies available during the quarter ending, September 1986, December 1986 and March 1987, are produced herewith and marked as Annexure R1(D), E and (F)."

7 It is thus seen that the relief to dependants of Government servants dying in harness by granting compassionate appointment to a member of the family of the deceased is also treated as a reservation in respect of recruitments. The Government of India have, no doubt, fixed various percentages for recruitment of special categories of people by reserving these vacancies for them and adopting a roster system to ensure that the vacancies are filled up by the reserved groups. Such reservation exists for SC/ST candidates etc. What is stated by the respondents is that, already, such reservation exists for 35.5% of the vacancies for various groups. Therefore, compassionate appointment cannot be made to vacancies in excess of the balance of 14.5% of the annual vacancies so that the total reservation including compassionate appointment does not exceed 50%.

8 I am of the view that there is no material or document to support the contentions of the respondents that compassionate appointment is also in the nature of ^a fact, ^{deserving} reservation. In/as and when a/case arises, appointment on this ground ~~is made in deserving cases and others~~ against the next vacancy or if necessary, by even creating a post

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for this purpose as was directed by the Supreme Court
Sushama Goswami Vs. U.O.I. (AIR 1989 SC 1976).

in / There is also another difference. Vacancies
are reserved for SC/ST in the normal course in advance
and a roster is prepared. For obvious reasons, vacancies
for appointment on compassionate grounds cannot be
reserved in advance. For the same reason, such vacancies
cannot be carried over also. In other words, they are
totally different from reservation vacancies. They do not
come within the field of reservation.

9 Therefore, it cannot be inferred that the number
of posts against which compassionate appointments can
be made should be equal to the difference between 50% of
the vacancies to be filled up by Direct recruitment and
the percentage of vacancies already reserved for various
other categories like SC/ST etc.

10 In the circumstance, I am of the view that the
entire approach of Respondent-1 to the issue appears to
be wrong. May be, in the Defence Forces the requirements
for compassionate appointments may be much larger considering
the exigencies of service. It could also be that if
compassionate appointments are permitted on a large scale
without any limit, it might affect the efficiency of the
establishment. If that be the case, the Ministry of Defence
ought to have issued suitable instructions, in consultation
with the Ministry of Personnel, specifying the limits upto
which compassionate appointment could be made and giving
suitable guidelines in this regard for observance by the

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subordinate authorities. Until that is done, there is no justification whatsoever, to reject the application on the ground that the number of Vacancies against which such appointments can be made is limited and has been exhausted.

11 I would also like to make it clear that the basic considerations for granting compassionate appointment perhaps has been enunciated in the Ministry of Home Affairs Memo dated 25.11.78 referred to in Annexure- R1(6). Those consideration alone ought to apply to the Defence Ministry. In summary form, the approach is that this relief is given in suitable cases where it is considered necessary because of the indigent circumstances of the family of the deceased government servant. In other words, if assistance is considered necessary, compassionate employment will have to be given. If on the contrary, the family does not suffer from such indigence, the compassionate employment should not be given. Grading on the basis of relative indigence will be appropriate only if a specified number of posts are earmarked for compassionate appointment. As I have already stated, no such reservation for compassionate appointments exists. Therefore, the question of grading indigence of various applicants will not arise at all. Each application has to be considered on its own merit.

12 In the circumstance, the impugned Annexure A1 and A2 are quashed. The respondents are now directed to consider the case of the applicant afresh in the light of

the observations made above.

13 Copy of this order be sent to the Ministry of
Personnel for information to issue such directions as
may be considered necessary.

[Signature]
27/9/82

(NV Krishnan)
Administrative Member