

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.488/06

Tuesday, this the 4<sup>th</sup> day of July 2006

**C O R A M :-**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

R.Sreemathy,  
Working as Lower Division Clerk,  
Office of CIT, Thiruvananthapuram.  
D/o.A.Kunjukrishnan Nadar,  
Residing at Vattakkala Puthen Veedu,  
Irumbil, Aruvippuram P.O., Neyyattinkara,  
Thiruvananthapuram District.

...Applicant

(By Advocate Mr.P.A.Noor Mohammed)

**Versus**

1. Union of India represented by  
Secretary for Finance Affairs,  
New Delhi.
2. Central Board of Direct Taxes  
represented by its Secretary,  
New Delhi.
3. The Chief Commissioner of Income Tax,  
C.R.Building, I.S.Press Road, Cochin.

...Respondents

(By Advocate Mr.P.M.Saji,ACGSC)

This application having been heard on 4<sup>th</sup> July 2006 the Tribunal on the same delivered the following :-

**ORDER**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN**

The applicant herein was appointed as a Group D Peon in the Salary Ward of the Income Tax Department at Thiruvananthapuram under the Compassionate Employment Scheme due to the death of her father in harness. She passed the Departmental Examination for promotion to the post of Record Keeper in the year 1996 and the Examination for promotion

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to the post of Lower Division Clerk in the year 1998. She had represented to the Commissioner of Income Tax for promotion to the post of Lower Division Clerk and since 2001 she had been working as a Daftry Peon. As there was no action on the representation she filed O.A.55/06 before this Tribunal. The said O.A was disposed of directing the Chief Commissioner of Income Tax to consider her representation and dispose it of by a speaking order. Now the respondents have passed an order stating that she has already been promoted as Lower Division Clerk vide order dated 29.7.2005 and therefore her representation cannot be considered for appointing her as a Lower Division Clerk on compassionate grounds.

2. The main contention of the applicant is that at the time of compassionate appointment to a Group D post she was educationally qualified for a appointment to a Group C post which she justifiably deserved and that even after getting qualified for promotion as Lower Division Clerk she had not been considered for such promotion till 2005. She has filed this application seeking the following reliefs :-

1. To call for the records leading to Annexure A-5 and set aside Annexure A-5.
2. To issue appropriate direction or order commanding the respondents 2 and 3 to treat that the applicant's very appointment itself is in a Group C post and to grant her all the service benefits flowing therefrom.

Or in the alternative

3. To issue appropriate direction or order commanding the respondents 2 and 3 to grant the applicant promotion to the post of Lower Division Clerk with retrospective effect from 15.10.1998 (the date of Annexure A-2) and grant her all the service benefits flowing therefrom.

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3. When the matter came up for admission, counsel for the applicant submitted that the respondents had not considered her educational qualification at the time of providing an appointment under compassionate grounds and therefore, she is entitled for a consideration to a higher Group C post on the basis of her qualification and having passed the tests. It is submitted that Annexure A-5 order was not at all justified in that context.

4. We are unable to appreciate the arguments of the counsel. The Scheme of Compassionate Appointment is intended to provide an immediate succor to the family on account of the untimely death of the head of the household. The father of the applicant passed away in 1993 and she had been given appointment as a Group D Peon considering her family circumstances. She had accepted the appointment and continued. If she had a case that there was a Group C post to which she was eligible to be appointed she should have contested the matter at that stage instead of appearing in various Departmental Tests to qualify for the appointment in Group C post. She became fully qualified to be a Lower Division Clerk in the year 1998. Merely becoming qualified and eligible for a post does not confer any legal right for appointment which would depend upon various other considerations like availability of vacancies, seniority etc. and no such contentions have been taken by the applicant that there existed a vacancy between 1998 – 2005 and that she was the senior most employee eligible to be considered. We also find from the impugned order that she had already been promoted on 29.7.2005. Any request for ante dating this promotion has to be based on furnishing of material to prove that there existed a vacancy at that point of time and that she was the prime

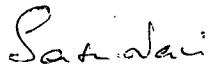
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contender for that vacancy. In the absence of any such factual averments, the reliefs asked for by the applicant are, in our view, exaggerated and not in conformity with the Service Rules relating to either compassionate appointment or promotion. We, therefore, do not find any merit in this O.A and the same is dismissed at the admission stage itself. No order as to costs.

(Dated the 4<sup>th</sup> day of July 2006)

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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**SATHI NAIR**  
**VICE CHAIRMAN**