

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 497 of 2001

Monday, this the 1st day of April, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. T.D. Ouseph,
S/o late T.K. Devassy,
Thayattu Line, Athirakom,
Mundayadu PO, Canannore.Applicant

[By Advocate Mr. C.S.G. Nair]

Versus

1. Station Commander,
Station Head Quarters,
Defence Security Corps,
Canannore - 670 013

2. The Director General,
Defence Security Corps, G.S.Branch,
Army Headquarters, West Block-III,
Ramakrishnapuram, New Delhi.

3. Director of Staff duty,
General Staff Branch,
Army Head Quarters, DHQ PO, New Delhi-110011.

4. Union of India, represented by the Secretary,
Ministry of Defence, South Block,
New Delhi - 110 011Respondents

[By Advocate Mr. P. Vijayakumar, ACGSC]

The application having been heard on 1-4-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A5 order dated 28-3-2001 of
the Army Headquarters (3rd respondent) rejecting his request
for compassionate appointment has filed this Original
Application seeking the following reliefs:-

"i) To direct the respondents to appoint the
applicant on compassionate grounds in any post
within a stipulated period.

ii) To grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper."

2. According to the averments of the applicant in the Original Application, he is the third son of late T.K.Devassy, who was working as a Conservancy Safaiwala under the 1st respondent. Sri Devassy who joined the service in 1963 died on 10-7-2000 while in service. The applicant has two elder brothers. The eldest was a manual labourer, married and was staying separately. The 2nd brother was also a manual labourer and his whereabouts are not known. The applicant and his mother stay in a portion of a rented house. The applicant had to look after his mother. The applicant's mother filed A1 representation dated 27-7-2000 for appointment of the applicant on compassionate grounds. The 1st respondent asked the applicant to furnish a family income certificate from the revenue authorities and a physical fitness certificate. The applicant obtained A2 certificate from the Village Officer and A3 physical fitness certificate from the Assistant Surgeon, Government Hospital, Kannur and submitted the same to the 1st respondent. By A4 letter, the 1st respondent forwarded the application for compassionate appointment along with the required particulars to the Sub Area Headquarters, Bangalore on 5-9-2000. By A5 communication the 3rd respondent rejected the request of the applicant. According to the applicant, his mother had not received any terminal benefit other than CGEIS and the amount of leave encashment. According to him, the family pension had also not been sanctioned. A2 income certificate showed that the annual income was Rs.10,800/- from manual labour. This amount included the income of applicant's brother who was not staying with them at present. According to the applicant, the rejection of the request for an appointment on compassionate grounds without following the guidelines is a

violation of the Article 14 of the Constitution of India. The rejection order A5 is a printed format just filled in with the name of the applicant. The rejection by the 3rd respondent was mechanical without application of mind. The family did not own any property and they have no other assets. They were below the poverty line. The 1st respondent who was the local officer had sent his recommendation favourably and the 3rd respondent had no material to substantiate his findings.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, the application did not have any merit. They averred that the application for compassionate appointment of the applicant was considered by the competent authority and after considering all the relevant materials according to Rules and Government Orders, it had been found that the applicant was not eligible for compassionate appointment. While considering the applicant's claim for compassionate appointment the following elements were taken into consideration:-

- "i) Payment of Family Pension in favour of the widow under Pension Payment Order, effected on 9-7-2001;
- ii) Enhanced Family Pension at the rate of Rs.1,755/- per month, being received by the widow;
- iii) 1/4th Gratuity received by the widow - Rs.39,830/-;
- iv) Central Government Employees' Insurance Scheme, paid on 19-9-2000 - Rs.21,460/-;
- v) Claim for encashment of leave paid on 19-12-2000 - Rs.976/-."

According to them, the widow of the deceased had already been paid substantial amounts. Further, she was to receive the family pension till her death/re-marriage. According to them, the applicant who was aged about 23 years at the relevant time

could not be readily inferred as a person with no means as he had been doing some manual labour. Taking this into consideration along with the fact that the widow of the deceased had already received her share of gratuity, insurance amount etc. over and above being the regular recipient of family pension, it had been found by the authorities that the applicant and his mother were capable of maintaining themselves even without the benefit of compassionate appointment. According to them, as only 5% of the vacancies arising was earmarked for compassionate appointment, the authorities had to make a strict evaluation of the merits of each claim after scrupulously considering each of the separate source of income. As all the information required could be gathered from the records including the statements and testimonials given by the claimant, it was not necessary to separately state as to the nature of enquiry. A5 had been issued after proper application of mind as to all the relevant materials and ignoring irrelevant considerations. The same could not be legally faulted. They also referred to R1(a) guidelines dated 9-3-2001 issued by the Ministry of Defence governing the procedure for selection for compassionate appointment. According to them, A5 order had been issued according to the existing rules, instructions and Government orders.

4. Heard the learned counsel for the parties. Learned counsel for the applicant referred to A5 order dated 28-3-2001 and submitted that the applicant's request for an appointment on compassionate grounds has been rejected only on the basis of the terminal benefits received by the applicant's mother and this was against the dictum laid down by the Hon'ble Supreme Court in Balbir Kaur and Another vs. Steel Authority of India Ltd. and Others [2000 (6) SCC 493]. He also cited the judgement of the Hon'ble High Court of Kerala in Canara Bank &

Others vs. Priya Jayarajan [2001 (1) KLJ 411] and the order of this Tribunal in the case of Smt. Anar Kali & Another vs. Union of India & Others [2001 (2) ATJ 387]. After taking us through the reply statement and R1(a) instructions of the Ministry of Defence, the learned counsel for respondents submitted that the case was not deserving and accordingly the applicant's request had been rejected. At the same time, he fairly conceded that the consideration done by the respondents are not fully reflected in A5 order dated 28-3-2001.

5. On a careful consideration of the rival submissions and pleadings and on a perusal of A5 order and other materials, we find the eligibility of the applicant for appointment on compassionate grounds and the decision as to whether the family is in indigent circumstances or not had been decided only on the basis of the family pension, gratuity, insurance amount etc. which have been received by the family. There is no indication whether any other factors have been taken into consideration in deciding his claim. From R1(a) instructions of the Ministry of Defence, we find that the factors which have to be considered for deciding whether the family is in indigent circumstances requiring assistance in the form of compassionate appointment. While considering such cases, the authorities have to take into account not only the family pension, terminal benefits, monthly income of earning members, income from property, movable/immovable property etc., but also the number of dependents, the number of unmarried daughters and number of minor children, the left over service etc. There is no indication in A5 that these factors have been taken into consideration. Moreover, we also find considerable force in the applicant's contention that A5 dated 28-3-2001 had been issued without application of mind. A5 appears to be a cyclostyled letter and only the blanks had been filled up and



issued and this would indicate routine issue of the letter. For the above reasons, we are unable to sustain A5 order dated 28-3-2001.

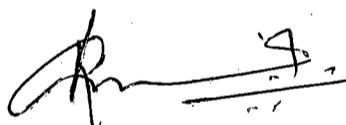
6. Accordingly, we set aside and quash A5 order dated 28-3-2001 with a direction to the 3rd respondent to consider the case of the applicant for appointment on compassionate grounds afresh in accordance with the instructions contained in R1(a) and pass a detailed speaking order in the matter. If on such re-consideration the applicant becomes eligible for an appointment on compassionate grounds, then the same shall be granted to him as expeditiously as possible. We direct that the whole matter shall be completed within a period of four months from the date of receipt of a copy of this order.

7. The Original Application stands disposed of as above with no order as to costs.

Monday, this the 1st day of April, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

APPENDIX

Applicant's Annexures:

1. A-1 : A true copy of the representation dt.27.7.2000.
2. A-2 : A true copy of the Income certificate No.941/2000, dt. 25.8.2000 along with its English Translation.
3. A-3 : A true copy of the Physical fitness certificate No.Nil dt.24.8.2000 issued by Dr.Sinesh, Assistant Surgeon,Kannur.
4. A-4 : A true copy of the forwarding letter No.4001/25/Est.5.9.2000 issued by the 1st respondent.
5. A-5 : A true copy of the letter No.4001/15/Est. dt.10.4.2001 enclosing the copy of the letter No.92842/S.C/ASD-7 Adm. Sec./37 dt.28.3.2001 from the 3rd respondent along with its English Translation.

Respondents' Annexures:

1. R-1 : True photocopy of the guidelines dated 9.3.2001 issued by the Ministry of Defence governing the procedure for selection for compassionate appointment.
