

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 500/89

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DATE OF DECISION 11/06/1990

N.C. Mary Applicant (s)

S.Sreekumar, Advocate Advocate for the Applicant (s)

Versus

Director General, R&D Respondent (s)
M/o Defence and two others

P.Santhoshkumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P. Mukerji, Vice Chairman**

The Hon'ble Mr. **N.Dharmadan, Judicial Member**

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

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 25th July, 1988 filed under Section 19 of the Administrative Tribunals Act, the applicant is the widow of late A.G. Joseph who died in harness while working as a civilian N.T.Driver Grade II in the Naval Physical Oceanographic Laboratory(NPOL) Cochin on 5th March, 1985. She has prayed that the impugned orders Appendices I and II dated 30th June, 1988 and 16th November, 1988 respectively rejecting her representation for compassionate

appointment due to non-availability of a suitable post in NPOL should be set aside and the respondents be directed to appoint her in a suitable vacancy under the second respondent.

2. The brief facts of the case are as follows.

The applicant's husband was an ex-serviceman and was reemployed after release from the Army as Civilian Motor Transport Driver Grade II under the respondent No.2 with effect from 17.9.1982. On 5th March, 1985 he died while in service after putting in 2½ years of service.

He left behind the widow and three minor daughters ^{now} aged 16 years, 13 years and 11 years. According to the applicant she was unemployed and the family had ^{now} no source of income or property except 25 cents of land in Edapalli North Village. In accordance with the Government of India's Circular of 25.11.1978 and 15.3.82/compassionate regarding appointment she applied for the same on 29.1.1986.

In the application she mentioned that she got Rs.20,000/- from CGEIS and was owning one acre of land in which she is getting only an annual income of Rs.3000/-. Even though she was in receipt of family pension from the Defence Services, she did not mention the same in the

application. The application was rejected by the second respondent (Director, NPOL) holding that it had no authority to make appointment and the first respondent (Director General, Research and Development) is the appointing authority. According to the applicant she ~~had~~ submitted another application dated 9th April, 1986 to the second respondent but without any response. She submitted another application to the Scientific ~~Adviser~~ to the Ministry of Defence on 10th July, 1986 ~~6/~~ on which she was asked to submit an undertaking regarding her property. That undertaking was submitted in April, 1987 but when no action was taken she ~~had~~ submitted another representation to the Scientific Advisor on 12.9.1987.

3. According to the respondents, however, ^{after her application dated 29.1.86 was rejected on 13.2.86.} the applicant sent an application dated 29.1.87 wherein she mentioned to be owning 25 cents of land in her own name and 186 cents in the names of three minor children and an annual income of Rs.1800/- from the coconut trees. This application was forwarded to the Scientific Advisor in February, 1987 to which a reply was received in

October, 1987 requesting the Director, NPOL to examine the case and forward the same to the R&D Headquarters with his comments. The Director gave his comments as follows:

- "a) Sri George Joseph was an Ex-serviceman and his wife Smt. N.C. Mary opted for military family pension.,
- b) As per the statement given by her, she and her minor children inherits about 2 acres 11 cents of land out of which 50 cents are paddy fields within Corpn. of Cochin.
- c) Amount of Group Insurance received Rs. 20,000/-.
- d) The family is in receipt of annual income of Rs. 1,800/- from the sale proceeds of coconuts.
- e) He has served only 2 1/2 years in NPOL."

A communication dated 23.3.88 was received from the Headquarters with the request to resubmit the case duly completed in all respects confirming that the post for which she is recommended is within the prescribed quota of compassionate appointment. In the meantime the applicant was representing repeatedly to the ~~Ex~~Executive Scientific Advisor, Defence Minister and the Prime Minister. The applicant was asked by the second respondent to submit some further particulars in April, 1988 which she gave on 12.5.88 and the same were

forwarded to the R&D Headquarters on 18.5.88 stating the vacancy position. It was indicated that she was qualified for the post of Helper only but at that time there was no vacancy of Helper existing in the NPOL. After consideration of her case the R&D Headquarters intimated by the impugned letter dated 30.6.88 at Appendix-I that due to non-availability of a suitable post in the NPOL it was not possible to accept her request.

4. To the applicant's contention that after the death of her husband, the widows of two employees who died in harness on 8.9.85 and 11.9.86 were employed vide orders dated 3.1.86 and 31.3.87, the respondents have argued that the widow of Shri Vasudevan who died on 8.9.85 applied for compassionate appointment on 30.10. 1985 i.e., before the applicant in the present case applied for such appointment. As regards the widow of Shri Sankaran who died on 11.9.86 the respondents have stated that his widow was appointed on 31.3.87 as she was duly qualified. The applicant was qualified only for the post of Safaiwala and since that work had been given to Ex-servicemen's Cooperative Society on

contract the applicant could not be appointed on compassionate grounds.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not denied that the applicant

had three minor daughters ~~aged~~ *** when she applied for compassionate appointment

on 29.1.86 i.e., 11 months after the death of her husband.

It is true that she is in receipt of military family pension and had received Group Insurance money of Rs.

20,000/- and that she and her minor children had two acres and 11 cents of land including 50 cents of paddy

field within the Corporation of Cochin and that the annual income from coconut trees is Rs. 1800/-; but, we

feel that on that account she cannot be considered to be disqualified for compassionate appointment. The

respondents also do not seem to have rejected her case on that ground. The only ground advanced by the

respondents ^{is} ~~is~~ that she was qualified for the post of Helper and since no post of Helper was available, she

cannot be appointed. We are not convinced by the

argument of non-availability of vacancies. The scheme of compassionate appointment cannot be implemented even for a moment if the appointment is always made subject to availability of vacancies. Even the limit of such appointments not exceeding 8 per cent of the number of posts was abolished by the letter of 18.3.82 (Annexure A.1). It has also come out that two widows whose husbands died subsequent to the death of the husband of the present applicant had been given compassionate appointment.

6. In the facts and circumstances we allow this application with the direction to the respondents that the applicant should be given suitable ^{compassionate} appointment like that of Safaiwala by creating supernumerary post if necessary. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

11.6.90


11.6.90
(S.P. MUKERJI)
VICE CHAIRMAN

11.6.90

Ksn.