

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 52/2003

Friday this the 10th October 2003

C O R A M

Hon'ble Mr.A.V.Haridasan, Vice Chairman
C.K.Prajeesh, Veena, Palappuzha, P.O.Kakkengad
Via Peravoor, Kannur Distt, working as GDSBPM
Aralam Branch Post Office.

Applicant.

(By Advocate Sh.M.C.Nambiar)

Vs.

1. Union of India represented by its Secretary, Ministry of Communications, Department of Posts, New Delhi.
2. The Director General, Deptt. of Posts, New Delhi.
3. The Chief Postmaster General, Kerala Circle, Thiruvananthapuram
4. The Superintendent of Post Offices Thalasserry Division, Thalasserry.

Respondents

(By Advocate Sh.C.Rajendran, SCGSC)

This application having been heard on 10.10.2003 and on the same day this Tribunal ordered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Sh.K.C.Lakshmanan who while working as GDSBPM in Aralam Farm Branch Post Office under Thalasserry Division since 1973 was on leave on medical ground since September 1998. On 17.3.2001 Sh.Lakshmanan made a representation to the competent authority to appoint his son, the applicant, on the post on which Sh.Lakshmanan was working, on compassionate ground as he was no more in a position to carry on his duties. While so, the 4th respondent issued an order dated 5.11.2001 terminating the services Sh.Lakshmanan as he was unfit to continue the work on account of his physical disability. The applicant was however temporarily appointed to the post and he continued even after termination of service of Sh.Lakshmanan. On 8.11.2001, Sh.Lakshmanan made a fresh representation requesting for

appointment of the applicant on the post on compassionate grounds. The request was rejected. The applicant filed O.A No.24/2002 and the Tribunal granted interim order directing that the applicant should not be relieved. O.A No.24/02 was disposed of by order dated 18.3.02 directing the respondents to take a decision on the claim of the applicant on compassionate appointment keeping in view the decision of the Full Bench of the Tribunal in O.A 220/1998 of the Ernakulam Bench that the benefit of the scheme of employment assistance on compassionate grounds could be available to the dependents of ED Agents discharged prematurely on medical grounds. In obedience to the above direction, the impugned order dated 10.1.2003 has been issued by the 3rd respondent rejecting the claim of the applicant on the ground that the Hon'ble High Court of Kerala in CMP 16174/02 in OP 9074/02 has stayed the operation of the order of the Tribunal in O.A No.220/98 and therefore, as per the extant rules and instructions on the subject, dependents of ED Agents (GDS) discharged on medical grounds do not come under the purview of granting for compassionate appointment. The applicant has challenged the decision and pleaded, that the 3rd respondent has rejected the claim of the applicant without application of mind to the facts and the fact that the Hon'ble High Court of Kerala had been stayed the operation of order in O.A No.220/98, is not a good reason for rejecting the applicant's claim.

2. The respondents in their reply statement contended that since the Hon'ble High Court of Kerala stayed the operation of the order of the Tribunal in Full Bench case O.A No.220/98 in terms of the rules which are prevalent the benefit of employment assistance on compassionate grounds cannot be extended to the dependents of ED Agents discharged prematurely on medical ground.

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3. I have gone through the pleadings and materials on record and have heard Sh.M.C.Nambiar, the learned counsel of the applicant and Sh.C.Rajendran, SCGSC, the learned counsel of respondents.

4. The only contention in the reply statement of the respondents as also in the impugned order to justify the rejection of the claim of the applicant for employment assistance on compassionate grounds is according to the extant rules dependents of ED agents discharged prematurely on medical ground on invalidation do not come under the purview of compassionate appointment scheme and that the decision of the Full Bench of the Tribunal to the contrary has been stayed by the Hon'ble High Court of Kerala on 1.8.02.

5. Since the claim in the application that the applicant's family is in indigent circumstances and that the claim is a genuine one for employment assistance on compassionate grounds, has not been disputed in the reply statement. The request for employment assistance has been turned down solely on the ground that there is no rule to grant such appointment and that the decision has been stayed by the Hon'ble High Court of Kerala. It is well settled that because the High Court has stayed the operation of an order of the Tribunal does not debar the Tribunal from following the earlier orders. The effect of order in stay is only that in the order of the Tribunal what has been stayed shall not be implemented. The Full Bench in O.A No.220/98 resolved the issue whether employment assistance would be available to the dependents, son or daughter of an ED Agent prematurely discharged on medical grounds or not. The Full Bench of the Tribunal in O.A 220/98 held the point in the affirmative. The fact that the Hon'ble High Court of Kerala has

granted and interim order of stay of the operation of order in O.A No.220/98 of the Ernakulam Bench does not mean that the principle settled in that ruling has been upset or modified by the High Court. Therefore, there is no legal embargo for the Tribunal in following the law declared by the Full Bench ~~unless~~ ^{unless} rulings and until it is modified or set aside by the High Court. ^m

6. In the light of what is stated above, I dispose of this application directing the respondents to consider the appointment of the applicant on compassionate ground as the indigent situation of the family is not in dispute treating that the benefit of employment assistance on compassionate grounds is available to the dependents of the ED Agents discharged prematurely on medical grounds also. The above direction shall be complied with and the resultant orders issued by the respondents within one month from the date of receipt of a copy of this order and the applicant's ^{such} provisional service shall not be dispensed with till an order is passed. No costs. ^m



(A.V. Haridasan)
Vice Chairman.