

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.541/2002

Wednesday this the 13th day of November, 2002.

CORAM

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

Dipu Elias George
Srambical Chamakalayil House
Mulathuruthy P.O.
PIN : 682 314.

Applicant

(By advocate Mr.Pirappancode V.Sreedharan Nair)

Versus

1. Union of India represented by
the Secretary to the Government
Ministry of Defence, New Delhi.

2. Director
Naval Physical and Oceanographic Lab
Thrikkakara P.O.
Kochi-682 021.

Respondents.

(By advocate Mr.M.R.Suresh, ACGSC)

The application having been heard on 13th November, 2002,
the Tribunal on the same day delivered the following:

ORDER

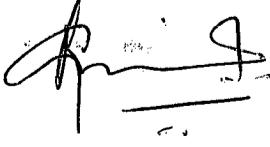
HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, aggrieved by A-6 letter dated 9.7.2002 issued by the office of the 2nd Respondent rejecting the application of the mother of the applicant for applicant's appointment on compassionate ground, filed this Original Application seeking the following reliefs:

- i) Call for the records leading to the issuance of Annexure A6 and quash the same.
- ii) Direct the respondents to appoint the applicant in a suitable post in tune with his qualifications in the service of the 2nd respondent under the scheme for compassionate appointment of son/daughter/near relatives of the deceased Government servant.
- iii) Grant such other reliefs as this Tribunal deems fit and proper in the circumstances of the case, including the costs of this Original Application.



2. According to the averments of the applicant in the OA, he was the son of one C.A. Gedge who died in harness on 4.1.2001 while working as Administrative Assistant 'C' in the service of the 2nd respondent. The family of the applicant consisted of his unemployed mother, 'sister' and 'himself' and that apart from the salary that the deceased was getting, the family had no other source of income. According to him, in order to tide over the financial crisis and for survival of the family, one of the family members was entitled to get employment on compassionate grounds. He submitted that his father because of very serious financial difficulties and liabilities committed suicide and the lion share of what his mother received as retirement benefits was used for settling those liabilities, which included a loan of Rs.43,027/- availed by his father from the HDFC, Rs.66,093/borrowed from the Service Cooperative Bank Ltd., Mulathuruthy and Rs.9596/- incurred by his father in connection with the purchase of a scooter. Applicant also averred that the deceased had left behind 23 cents of property where they had built a house after mortgaging the 23 cents. It was further submitted that the family possessed 35 cents of paddy field which was also pledged with the Service Cooperative Bank, Mulathuruthy for availing a loan by the deceased. Applicant claimed that on the death of 'his' father, the family had nothing left, but only liabilities to meet. He submitted that he had completed his B.Sc degree course and his sister was studying for LLB. He claimed that the family, since the death of their breadwinner was virtually reduced to penury and was forced to depend on others for their survival and in this background, the mother of the applicant submitted an application before the 2nd respondent seeking employment on compassionate grounds to the applicant



(Annexure A-4 series). A-5 is the proforma submitted by the applicant to the second "respondent" as demanded by him. In response to the application, applicant's mother received A-6 reply dated 9.7.02. Assailing A-6 as illegal, the reasons stated therein would not "stand" legal scrutiny and that granting of terminal benefits was of absolutely no consequence while considering compassionate "appointment", the applicant filed this OA seeking the above reliefs.

3. Respondents' filed reply statement resisting the claim of the applicant. According to them, after scrutiny of the information furnished by the applicant, the respondents found that financial "condition" of the family was not indigent warranting compassionate "appointment." According to them, the whole object of granting compassionate appointment was to enable the family to tide over sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Taking into consideration of the extant government orders on the subject, and Hon'ble Supreme Court/High Court judgements, the condition of the family was considered not indigent and the request was not agreed to. They relied on the judgement of the Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and others and submitted that the applicant was not entitled for the reliefs sought. According to them, the OA was liable to be dismissed.

4. Applicant filed rejoinder.



5. Heard the learned counsel for the parties, Learned counsel for the applicant took us through the factual aspects as contained in the OA. She submitted that the respondents have considered the terminal benefits received by the applicant. In the light of the judgement of the Hon'ble Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India and Others (2000) 6 SCC 493 and the judgement of the Hon'ble High Court of Kerala in Case No.86 Canara Bank Vs. Priya Jayarajan 2000(1) KLT Short Notes P.71, she submitted that receipt of terminal benefits is not a substitute for compassionate appointment and that granting of terminal benefits is of no consequence in considering compassionate appointment. She submitted that the applicant had produced documentary proof in support of his contention that the applicant's father had incurred financial liabilities and except his salary there was no other source of income for the family. According to her, "A-6" had been issued without application of mind of the authorities concerned. While issuing A-6 the respondents had not taken into consideration the relevant materials and irrelevant materials had been taken note of.

6. Learned counsel for the respondents took us through the reply statement and reiterated the points made therein. He submitted that the question before the authorities was to decide whether the family was in "indigent" circumstances or not. He submitted that the applicant's contention that the true financial position of the applicant's family was given to the Department was not correct. Except the HDFC loan, other liabilities with Cooperative Bank Ltd. and Popular Vehicles & Service Ltd. had in fact become property of the family and they were enjoying the comfort from them. The family owned 23 cents of land, 35 cents

John S. Sargent

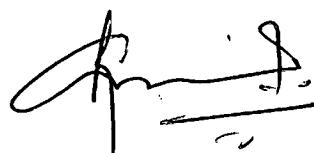
of paddy field and a house worth Rs.1.50 lakhs. Further the family had received Rs.2,57,209 as terminal benefits and the family was in receipt of family pension and DA amounting to Rs. 3737 per month. He cited the judgement of the Hon'ble Supreme Court in 'Umeshkumar Nagpal Vs. State of Haryana and another JT 1994 (3) SC 525 and submitted that the whole object of granting compassionate "appointment" was to enable the family to tide over sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency, and that the Hon'ble Supreme Court held that compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased was not legally permissible. Respondents had considered this case and found that compassionate appointment was not warranted in this case.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record. The impugned order A-6 which is under challenge in this OA reads as follows:

"Sub: Employment on compassionate grounds in R/o Shri Dipu Elias George, S/o late Shri C.A.George.
Reference your application dated 22 Feb. 2001.

Your application for appointment to your son Shri Dipu Elias George on compassionate grounds was considered at the appropriate level. However, it is regretted to inform you, that taking into consideration the financial conditions of the family, liabilities left by the deceased and also Hon'ble Supreme Court directives, it has not been found administratively feasible to accede to the request for compassionate appointment in respect of Shri Dipu Elias George, son of late Shri C.A.George.

Sd/-
(JA.Parambil)
Sr.Admin. Officer Grade-I
for Director"



8. It is this letter that the applicant is assailing on the ground that the same had been issued without considering the relevant materials. "From the reply statement, we find that only 5% of the direct recruitment vacancies arising in a recruitment year is earmarked for the purpose of appointment on compassionate grounds. The applicant has not denied the same." When a ceiling on the number of vacancies that can be used for appointment on compassionate ground in a year is fixed, it is naturally necessary for the authorities to weigh competing claims and decide as to which among them are the most deserving ones against which appointment on compassionate grounds are to be granted. In this process, one of the prime considerations will be the financial condition of the family. Death of a breadwinner is an act of God, but the Government have decided that some solace can be brought to the family in case the family is in penury and for this the authorities have to consider the state of the family on the basis of the financial position obtaining to the family, apart from the other aspects such as family size etc. In this context, they have to consider all the income that the family would be deriving monthly from whatever sources and decide whether the family is in penury or not. From the facts obtaining in this case, it is not disputed that the family owns a house, 23 cents of land and 35 cents of paddy field. In addition, the family is getting family pension plus dearness allowance amounting to Rs.3737/- per month. When such is the case, even though it may not be possible to consider the family as very well off, it cannot be taken that it is in penury.



9. It is in such circumstances, weighing the competing claims of the cases before the Department, if the respondents have come to the conclusion that the applicant's case for compassionate appointment is not a deserving one, the same cannot be faulted.

10. We have also come across a recent judgement of the Hon'ble Supreme Court in Union of India v. Joginder Sharma JT 2002 (7) SC 425 wherein it was held:

".....The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in queue indefinitely, the policy laid down by the government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs) & Anr. [JT 1994 (2) SC 183] held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the scheme in force governed by rules/regulations/instructions....."

11. Under the circumstances, we do not find any reason to interfere in A-6 order issued by the Department. In the light of the above, we are of the considered view that the applicant in this OA is not entitled for the reliefs sought for. Accordingly, we dismiss this OA with no order as to costs.

Dated 13th November, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the letter dated 15.1.2001 issued by the Housing Development Finance Corporation Ltd.
2. A-2: True copy of the certificate issued by the Service Co-operative Bank Ltd., Mulathuruthy dated 19.1.2001.
3. A-3: True copy of the certificate issued by the Popular Vehicles and Service Ltd.
4. A-4: True copy of the application submitted by the mother of the applicant before the 2nd respondent.
5. A-4a: True copy of the Affidavit of the mother of the applicant.
6. A-4b: True copy of the Affidavit of the mother of the applicant.
7. A-4c: True copy of the Affidavit of the sister of the applicant.
8. A-4d: True copy of the Affidavit of the applicant.
9. A-5: True copy of the proforma regarding employment of dependants of Government Servants dying while in service.
10. A-6a: True copy of the Cash Receipt No.133265 dated 8.1.2001 issued by the H.D.F.C.Ltd.
11. A-6b: True copy of the Cash Receipt No.150822 dated 28.2.2001 issued by the H.D.F.C.Ltd.
12. A-6c: True copy of the Cash Receipt No.153323 dated 5.4.2001 issued by the H.D.F.C.Ltd.
13. A-6d: True copy of the Cash Receipt No.158599 dated 10.4.2001 issued by the H.D.F.C.Ltd.
14. A-6e: True copy of the letter No.ACCTS:PREPLET: of the H.D.F.C.Ltd.

npp
20.11.02