

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.545/2010

Dated this the 21st day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.B. Sebastian
House No. 14/515
A.R. Nair Colony
Kunnathur Medu
Palakkad - 678 013.

..... Applicant

(By Advocate Mr. C.S.G. Nair)

Vs

1 Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S. Press Road, Cochin - 682 018

2 Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S. Press Road, Cochin - 682 018

3 Chairman
Central Board of Excise & Customs
North Block, New Delhi

4 Union of India
represented by its Secretary
Department of Revenue, North Block,
New Delhi - 110 001

..... Respondents

(By Advocate Mr. M.V.S. Nampoothiri, ACGSC)

The Application having been heard on 11.1.2011 the Tribunal
delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is the son of K.B.Benjamin, a Havildar in the Central Excise Department who retired from service on invalidation on medical grounds on 22.10.1997. The grievance of the applicant is that he was denied appointment on compassionate ground despite having passed Pre-degree, typewriting lower, Diploma in Computer Management, possessing driving licence and played for Central Excise Football Team for two years and that the mere pension is not sufficient enough for purchase of medicine for his sick father. He had earlier filed O.A. 758/2004 which was rejected on the ground that there was no vacancy to accommodate him. He filed WP(C) 18813/2005 before the High Court of Kerala upon which the matter was remanded. The main grounds raised by the applicant are that (i) poverty, legitimate expectation of getting employment under compassionate appointment scheme, denial of compassionate appointment is violation of fundamental rights under Article 14 of the Constitution of India, he is qualified to be appointed to the cadre of Sepoy/LDC/Driver, if he has been denied appointment for want of vacancy the next vacancy should have been offered to him instead of filling the vacancies with fresh applicants, in previous cases filed by him except the first one, the respondents were directed to consider him for appointment, the word consider should have been taken as a command and that he was denied appointment due to negligence on the part of the respondents in not filling the vacancies.

2 The respondents filed reply statement stating that the grounds raised in the O.A are untenable, that no assurance was given to the

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applicant and that when 5% ceiling limit is applied there was no vacancy to accommodate the applicant, there were more deserving applicants whose case had to be considered for appointment. They filed additional reply statement to the effect that the Committee for consideration of applications for appointment on compassionate grounds was held on 29.1.2003 pursuant to the instructions contained in OM No. 14014/6/94 dated 9.10.1998 of the DOPT. All the 35 pending applications were considered in the light of the instructions issued from time to time. The Committee went through the verification reports. Twenty four applications were considered and recommended for appointment in four categories. The applicant has been included in the category of undergraduates and he stood at Sl. No. 7. As per the extant orders, the maximum period upto which a person's name can be kept under consideration for offering compassionate appointment is 3 years. After 3 years, if compassionate appointment is not possible to be offered, his case will be finally closed and will not be considered again. Thus the applicant's name was deleted from the list of applicants, pending for appointment on compassionate grounds.

3 The father of the applicant retired from service at the age of 53 years on invalidation on medical grounds on 22.10.1997. Aggrieved by the denial of appointment on compassionate grounds the applicant filed O.A. 758/04 which was dismissed by order dated 16.12.2004. The applicant moved the High Court through WP(C) No. 18813/2005 upon which the case was remitted to the Tribunal for fresh disposal in accordance with law. Again he moved the Tribunal through M.A. 596/08 in O.A. 758 of 2004 which was allowed by order dated 31.12.2008.

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4 In para 8 & 9 of the order, there was a clear finding that the respondents failed to follow the proper procedure and hence there was an element of arbitrariness in the manner of selection and therefore the O.A. was allowed. The relevant paras are extracted below:-

(8) It is evident from the above details seen in the records that the respondents have not objectively assessed the financial condition of the family of the family of the applicant in comparison to other applicants. Candidates with higher financial status have been given appointment. The inescapable conclusion that I can draw from the records is that the respondents have not followed the procedure prescribed in the Scheme while considering the applicant for compassionate appointment. Similar conclusion was also drawn by this Tribunal in OA 761 of 2004 and OA 757 of 2004 in respect of the same respondents and in respect of the same period. Both the aforesaid orders of this Tribunal have been upheld by the Hon'ble High Court in WP(C) No. 20920 of 2005 and WP(C) No. 17279 of 2008. The reason for rejecting the application of the applicant is that three year period is over after the date of his father's medical invalidation. This contention was not accepted by the Hon'ble High Court in WP (C) 18813 of 2005 on the ground that the applications of various candidates in which the breadwinners death took place between 1997 and 2004 were given appointment in 2004 and also because the Committee did not have a meeting for three years after 1998. The grounds on which this Tribunal allowed the prayers of the applicants in OA 761/2004 and OA 757/2004 are also applicable to this case. There is clearly an element of arbitrariness in the manner in which the respondents have considered the claims of various applicants.

(9) For the reasons stated above, the OA is allowed. The rejection order dated 22.9.2004(A/4) is quashed and set aside in so far as it relates to the applicant. The respondents are directed to make an objective assessment of the financial status of the applicant vis-a-vis, the other applicants in the light of the observations made in this order and consider the appointment of the applicant on compassionate grounds accordingly without disturbing the appointments already made, within a period of three months from the date of receipt of a copy of this order."

5 The applicant's father was compelled to leave the service because he was too ill to work. Immediately, after his invalidation, the applicant submitted his application on 07.11.1997. However, his case was not included in the list of candidates considered in the meeting held on 15.06.1998. Out of six candidates, two were selected. One of the candidate's family got terminal benefit of Rs. 2.14 lakhs and had a house

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in 11 cents of land besides owning $5\frac{1}{2}$ cents of another plot. She was appointed on 01.06.1998 when she just turned 18 years old, even though the date of approval of her case was 15.6.1998. The date of death of her father was 03.01.1998. Her case was not recommended by the committee as she was not shown to be in the panel. However, there were three unmarried daughters in the family and she belonged to SC community. On the other hand the applicant's family got Rs. 59,000/- as terminal benefits and the lion share of the pension is spent towards medical treatment of the employee. Due to the delay which occurred in processing the case of the applicant, his case was clubbed along with 34 other cases out of which 11 did not meet the eligibility condition and hence not processed. In the remaining 24 applicants, the applicant was placed in category III and ranked at Serial No. 7. The Committee recommended his case in its meeting held on 29.1.2003. The select list of those selected between 1997-2004 furnished by the respondents in another OA is produced as Annexure A-5 by the applicant. One Vimal Chandran who was placed, just above the applicant in the list dated 2003 mentioned above was selected. He was the son of a Superintendent. The family got Rs. 2.25 lakhs terminal benefit but the one son was unemployed, two daughters were students at the time of death of the employee and for the son who was working abroad, the visa was stated to be cancelled. These two cases are cited to illustrate the point that no yardstick was formulated to measure the degree of indigence to choose those wards/wives who are the most deserving. There was an element of arbitrariness in the manner of selection. The BSNL has devised a scheme awarding positive and negative points to the family of ex-employee, thus making the procedure more transparent. In the interest of the welfare of their staff and to avoid unnecessary litigation the respondents are well advised to device such a

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scheme of awarding points to arrive at the comparative indigence of the family of the deceased employee.

The applicant is also aggrieved by the fact that he was told all along that his case would be favourably considered under the compassionate scheme of appointment and thus reassured, he played for the foot ball team of the respondents. Hence he waited for 7 years before he finally moved O.A.758/04.

6 An identical issue came up in OA 761/2004 when the claim for compassionate appointment arose in 1997 and was not processed till 2004. In para 14 of the OA, the number of vacancies for compassionate scheme, as given by the respondents in R-I(4) are shown as 3,2,2,2 and 2 for years 1997, 1998, 1999, 2002 and 2003 respectively. Since the claim of the applicant did not receive consideration before 2004, the OA was allowed. It was upheld in WP (C) No. 20920/2005 (S) and the respondents were granted three months time to comply with the orders of the Tribunal. This figures in para 8 of this Tribunal's order dated 31.12.2008 in MA 596/08 in O.A. 758/2004, extracted supra.

7 Ordinarily, the Tribunal will not interfere with the decision made by the Committee of officers constituted for the purpose of assessment of the applicants for grant of compassionate appointment. But in view of the facts and circumstances of the case and keeping in mind the orders of the Tribunal in the earlier OA filed by the applicant, I am of the view that the interference of the Tribunal is warranted. Accordingly, I allow the O.A and quash Annexure A-12 and direct the 1st and 2nd respondents to consider appointment of the applicant in the next



arising vacancy of Group-C post on compassionate ground. There shall be no order as to costs.

Dated 21 - 1 - 2011


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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