

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.555/2003.

Wednesday this the 31st day of December 2003.

CORAM:

HON'BLE MR. T. N. T. NAYAR, ADMINISTRATIVE MEMBER

Smt.K.P.Rose Mary,
W/o Late V.K.John,
residing at Veliyil House, Kerala Road,
Thevara P.O., Kochi-682 013. Applicant

(By Advocate Shri. Manoj Ramaswamy) 22

vs.

1. Union of India represented by its Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff (for DCP), Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief, Headquarters, Southern Naval Command, Cochin-682 004.
4. The Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, New Delhi.

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 31st December 2003, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. T. N. T. NAYAR, ADMINISTRATIVE MEMBER

The applicant, widow of late V.K.John who died in harness while working as Turner HS-II under the 3rd respondent, is aggrieved against A-1 order dated 17.4.2003 rejecting her request for compassionate appointment although this Tribunal had, by A-3 order in O.A.532/02 dated 15.1.2003, directed the respondents to consider the applicant's case in the light of the relevant facts and against the relevant vacancies since the respondents had failed earlier to consider the applicant's case in accordance with the spirit of the Scheme for granting Compassionate

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Appointment to the dependant of Government Servants dying in harness. This Tribunal had also observed that the earlier order rejecting the applicant's claim for compassionate appointment was not based on a proper appreciation of the facts of the case, in as much as, not a pie was received by the applicant by way of terminal benefits in view of the outstanding House Building Advance (HBA for short) to be repaid, as the applicant's small parcel of land extending to 3 cents remained mortgaged to the Government and as the family pension amount of Rs.2250/- was subjected to a further deduction of Rs.1000 on account of repayment of HBA. The extent of the widow's liabilities on account of dependent parents in law and a sister in law of unsound mind as well as bringing up of two very young children were also not appreciated by the respondents, according to the Tribunal. It was under these circumstances that the matter was remitted to the respondents to reconsider the case and to pass a speaking order within a time frame. According to the applicant the present order also betrays lack of application of mind and is based on irrelevant grounds. Applicant seeks this Tribunal's interference by directing the respondents to reconsider the claim of the applicant strictly in accordance with A-3 order and declare that the applicant was entitled to an appointment on compassionate grounds. The applicant prays for a direction to the respondents to take immediate action in that regard.

2. In the reply statement the respondents have contended that the applicant's case could not be considered favourably even after evaluating the case on the basis of instructions. The applicant had immovable property comprising 3 cents of land and a building thereon. According to the respondents the building was constructed by availing House Building Advance of Rs.2,15,000/which is also to be added to the asset value. The

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applicant's case has to be considered together with several other similar cases where landed properties were mortgaged and/or where no landed property was owned at all. It is also stated in the reply statement that only 5% of the direct recruitment vacancies were earmarked for compassionate appointment, leaving a large number of really deserving cases against one or two vacancies only and that it was therefore not possible to accommodate all the candidates, when the norms are applied. The applicant along with others was kept in the waiting list after filling up the 5% vacancies for the purpose of considering those wait listed cases against future vacancies. Thus the applicant's case could not be singled out for review. The applicant's case was considered against the vacancies available for the period from 1.4.2001 to 31.3.2002 and since there were several persons already waiting for compassionate appointment the respondents were under an obligation to consider the case on the basis of seniority in the waiting list. According to the respondents 97 such cases were considered and rejected. Therefore, the applicant was not discriminated against, the respondents would maintain.

3. While the case was in progress, the applicant filed a M.A.No.996/03 seeking to bring on record a document (A8) which is O.M.No.14014/19/2002-Estt(D) dated 5.5.2003 which contained certained instructions regarding time limit for compassionate appointment. The Government was convinced that the one year limit prescribed for grant of compassionate appointment would very often result in depriving the genuine cases seeking compassionate appointment on account of regular vacancies not being available within the prescribed period of one year and the prescribed ceiling of 5% of the direct recruitment quota. Accordingly, the Government issued A-8 O.M., the relevant portion of which is extracted as under:

"2. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration of offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed and will not be considered again."

The earlier instructions on the matter were accordingly modified in the light of the above instructions.

4. I have gone through the records and also heard Shri Vishnu S.Chempazhanthiyil learned counsel for applicant and Shri C.Rajendran, SCGSC for respondents.

5. According to the learned counsel for the applicant, though the impugned A-1 order apparently is a speaking order, it does not touch upon the specific observations made by the Tribunal in A-3 order. By A-2 order, which was eventually set aside by the Tribunal, the applicant's claim had been rejected on the ground that all death benefits had been given to the applicant, that the applicant possessed three cents of land worth Rs.1,30,000/- and that the applicant's priority position being 21, her case could not be considered for compassionate appointment against three vacancies available in 2001-2002. However, in A-1 which was issued in purported compliance with A-3 order, the respondents have virtually repeated the same grounds without considering the

fact that the land was mortgaged and without appreciating the reality of the situation with regard to the applicant's possession of landed property. Similarly, non-receipt of terminal benefits in actual terms was also not taken into consideration. Relying on the decisions of the Hon'ble Kerala High Court in Canara Bank Vs. Priya Jayarajan (2001 (I)KLT (Short Note at Page 71) and Suma Mohan Vs. Union Bank of India, the learned counsel has argued that, granting of terminal benefits and family pension could not be a reason for denying the benefit of compassionate appointment. Another aspect which the respondents did not consider was, each year's vacancy position, in order that the applicant might receive a proper consideration, not only for 2001-2002 but also for the subsequent years. He would therefore, submit that the impugned order A-1 is vitiated by non-application of mind in spite of a clear and definite direction of this Tribunal as per A-3 order. He would, ~~lay~~ ^{greater} emphasis on A-8 O.M.dated 5.5.03. Learned counsel for the applicant would pray for setting aside A-1 order with a direction to the respondents to consider the applicant's case for the vacancies relating to the subsequent 2 more years as enjoined by A-8.

6. Shri C.Rajendran learned SCGSC has pointed out that, the applicant's case was considered in detail, keeping in view of all the directions of the Tribunal in A-3 order. It is incorrect to say that the various aspects of the case were not taken into consideration because of any lack of application of mind. If the deceased has taken a loan for building of house (i.e.HBA) the liability is set off by an asset in the shape of building. Having regard to the Family pension although Rs.1000/- is being deducted towards HBA repayment, the applicant still gets more than Rs.2400/- as pension including Dearness relief. There is no

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case that the applicant was discriminated against. It was necessary to appreciate the immensity and intensity of the family problems of each and every candidate involved. Since those cases are not before the Tribunal, it would be unfair to bestow all attention on the applicant's case to the exclusion of other deserving cases. It is also pointed out that A-8 instructions were issued on 5.5.03 which was after the date of issue, of the impugned order. The respondents, therefore, could not have taken a decision on the basis of the liberalised instructions (A8). The applicant could not, therefore, be considered against the vacancies for the three years, as laid down in A-8 O.M. If the respondents are given an opportunity, they would certainly consider this aspect and also apply their mind on any other aspect which has not been dealt with or highlighted in A-1 order and pass appropriate orders within a time frame, learned SCGSC would urge.

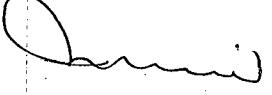
7. On a consideration of the facts and contentions as also the submissions made by the learned counsel on either side, I find that A-1 order does not throw sufficient light on the various aspects highlighted by the Tribunal as per A-3 order whereby A-2 order was set aside. Though A-1 order is an improvement on A-2 order, it does not show that the applicant's family background, the financial liability and other relevant aspects were considered with the gravity with which those were to be considered as per the directions of the Tribunal. Further A-8 O.M. was issued a few days after the issue of the impugned order, lays down that for the purpose of compassionate appointment vacancies arising in 3 consecutive years soon after the death could be considered. This aspect has been fairly conceded also by the learned Standing counsel. I therefore, deem it fit to remit the entire matter to the respondents to

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reconsider the applicant's case in detail and with due sympathy and seriousness with which the relevant aspects were directed to be considered as per A-3 order. Respondents are therefore, directed to reconsider the applicant's case in the light of A-8 O.M. by taking into account the vacancies of 3 years as stipulated therein and indicating the applicant's relative position vis-a-vis other claimants, if any. Respondents are directed to pass appropriate orders afresh within four months from the date of receipt of a copy of this order.

8. O.A. is disposed of as above. No order as to costs.

Dated the 31st December 2003.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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