

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 562/2011

Tuesday, this the 22nd day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

S.Santhosh,
S/o late V Sivankutty,
Siva Bhavan, Thunduvilakam,
Kattakada.P.O.
Thiruvananthapuram.Applicant

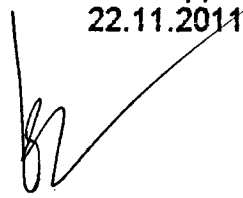
(By Advocate Mr CSG Nair)

v.

1. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings,
IS Press Road, Cochin-682 018.
2. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
IS Press Road, Cochin-682 018.
3. Commissioner of Central Excise & Customs,
ICE Bhavan, Press Club Road,
Thiruvananthapuram.
4. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001.
5. Union of India represented by
its Secretary,
Department, of Revenue,
North Block, New Delhi-110 001.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 18.11.2011, the Tribunal on 22.11.2011 delivered the following:

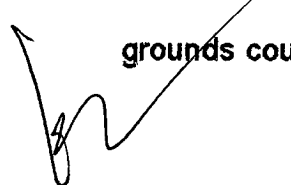


ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

Facts of the case relating to the applicant, his family, his qualifications and the fact of his having applied for compassionate appointment not having been in dispute, the same obviates debate. The only aspect to be considered in this O.A. is the legal aspect about the total number of times the applicant has to be considered and the vacancies against which he could be considered. Yet, for the purpose of having a hang on the subject matter, brief facts of the case are narrated and the same are as under:-

2. The applicant's father was working as a Sepoy in the Central Excise Department and he unfortunately expired on 15-10-2006. He was at that time 47 years of age and was survived by his wife and two sons. The applicant had applied for grant of compassionate appointment and his qualifications included Higher Secondary and he is possession of a valid driving license. As the applicant was awaiting some positive response from the respondent, he received a communication dated 31-12-2010 stating that his name was included in the list of applicants considered for appointment on compassionate ground and he could not be offered appointment and his case is therefore, closed. It is against this order vide Annexure A-6 that the applicant has preferred this OA seeking quashing of this said order and for a direction to the respondents to grant compassionate appointment as driver or Sepoy or any suitable job.

3. Respondents have contested the O.A. According to them, the case of the applicant has been considered in proper perspective and the Committee of Officers for consideration of the applications for appointment on compassionate grounds could not recommend the case of the applicant, due to the twin facts –

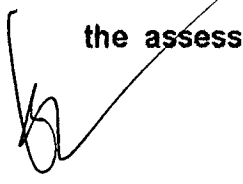


(a) limited number of vacancies and (b) more deserving cases being available for grant of compassionate appointment.

4. Counsel for the applicant contends that there has been consideration only on two occasions while, as per the extant rules, three time consideration is permissible. Again, according to the counsel for the applicants, there are vacancies in the grade of Drivers, though not in the ordinary grade but in the higher grade and the applicant who is qualified to be a driver could well be considered and accommodated against any one of the higher vacancies.

5. According to the respondents, the case of the applicant had been considered more than thrice and in this regard, the records were produced. It is seen therefrom that the respondents had considered the case of the applicant on 09-12-2008, 31-03-2009, 14-08-2009 and 15-10-2010 and in view of limited number of vacancies for being filled in under compassionate appointment scheme, and due to more deserving candidates available for such appointment, the applicant could not be appointed. As regards, the vacancy of driver, the counsel for the respondents submitted that in the number of drivers in the ordinary grade is in excess while for the higher grades, no appointment on compassionate grounds could be made.

6. Compassionate appointment has very limited scope. But when a case is considered for compassionate appointment, the available concessions etc., should be religiously afforded to the applicants, as otherwise, the action on the part of the employer would be vitiated due to non following of the guidelines. In the instant case, the facts are not in dispute. Records clearly show that the applicant had been considered for more than three occasions but could not in the assessment of the Committee come within the most deserving category'.



Thus, one argument of the counsel for the applicant (that consideration was there only twice and not thrice as per the guidelines) has been successfully met by the respondents on the basis of documents produced by them and perused by this Bench.

7. As regards the next contention that there are many vacancies in the grade of Drivers, admittedly these are not in the ordinary grades but in the higher grades. The higher grades are tenable by promotion and not by direct recruitment and compassionate appointment could be made only by carving out certain percentage of vacancies from out of the direct recruitment quota. Thus, no provision exists for appointment to a post which does not have the D.R. Quota. As regards the post of drivers in the ordinary grade, the submission of the respondents is that the same is in excess. As such, there is no vacancy much less diverting any such vacancy for direct recruitment. Hence, no case has been made out by the applicant. The O.A. is therefore, **dismissed** with no orders as to cost.


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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