

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 563 OF 2009

Thursday, this the 5th day of November, 2009.

CORAM:

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

Bindu E.B.,
W/o. Late N. Girish Babu,
residing at Erakkattukuzhiyil House,
Velur, Trissur District-680601. **Applicant**

(By Advocate Mr. M.R. Hariraj)

versus

1. Union of India, represented by
the Secretary to the Govt. of India,
Ministry of Finance, New Delhi.
2. The Chief Commissioner of Income Tax,
C.R. Building, I.S. Press Road,
Ernakulam, Cochin-682018. **Respondents**

(By Advocate Mr. Sunil Jose, SCGSC)

The application having been heard on 05.11.2009, the Tribunal on the same day delivered the following:

ORDER

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

The applicant is a widow of one Shri. N. Girish Babu who unfortunately expired on 16.04.2005 while working as Senior Tax Assistant in the Office of the 2nd respondent. She had submitted an application for compassionate appointment on 30.09.2005. Certain formalities were then completed and in the Screening Committee meeting held on 28.11.2007 after full consideration of her case, the applicant was placed in the 4th rank. However, as there was only one vacancy of Group 'D' Peon, she was not offered any appointment. It is by Annexure A1 order dated 10.12.2008 that the applicant has been communicated that she cannot be offered compassionate

appointment on account of the following reasons :-

"a. Since you did not qualify for appointment to the post of Tax Assistant, your case was considered for the post of Notice Server and Group 'D' Peon. The Committee which examined your financial status vis-a-vis 14 applicants considered for the post, found your place as 04. In view of your position in the order of priority fixed by the Committee, as there was only one post of Group 'D' Peon available for compassionate appointment, it had been found not possible to appoint you to the post.

b. Since the period of retention of your application for compassionate appointment exceeded the maximum period of three years, your application will not be considered further as per DOP&T's OM. No.14014/23/99-Estt(D) dated 05.05.03 read with F.No.A-12012/16/2005-D.VII dated 16.06.2005. This is brought to your notice."

2. By this time, the applicant had completed her Degree course and had duly informed of the same to the respondents.
3. The applicant has filed this O.A. challenging the Annexure A1 impugned order on various grounds as contented in para 5 of the O.A.
4. Respondents have contested the O.A. According to them, the case of the applicant was considered in the light of Annexure R1 order dated 16.06.2005 read with Annexure A2(2) order dated 05.05.2003. As per order dated 16.06.2005, deserving cases for compassionate appointment upto a period of 3 years would be considered and after 3 years if appointment is not recommended/offered the case will be finally closed and will not be considered again. As such the applicant's case has been rejected.



5. Counsel for the applicant submitted that the orders on the subject brought for consideration for 3 times which has not taken place in this case. Again in O.A. No.655/2008, this Tribunal vide its order dated 06.08.2009, took into consideration order dated 14.06.2006 whereby the mode of calculation of vacancy has undergone substantial change to accommodate larger number of vacancies and the same has also to be considered in the instant case. As such, according to the counsel for the applicant, the case deserves a re-look at the hands of the respondents.

6. Counsel for the respondents submitted that appropriate orders may be passed.

7. Arguments were heard and documents perused. In O.A. No.655/08 the decision of the Tribunal inter alia is as under :-

"7. Arguments were heard and documents, including the official records perused. The records reflect the recommendation of the Committee as under:-

"He passed M. Com from the Kerala University in May 2000. His family now consists of besides himself, a younger sister, not married aged 26 year, and their mother. He has an elder sister who had been married before the death of the Govt. Servant. Himself has no regular source of income. The younger sister, an M.A. B. Ed., is now working in an unaided private school on a salary of Rs 1,200 p.m. The only source of income of the family is the family pension of Rs 11,556/- p.m. And the relevant bank pass book shows a balance of Rs 1,29,094/- only, maintained for the girl's marriage. The only property of the family is a house in 18 cents of land at Mangaram, Pandalam. It is stated that there is liability of Rs 10000/- to a local co-operative society and the personal loan of Rs 10,000/-.

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8. Considering the poor financial condition of the family, the case is recommended."

8. On the basis of the above the applicant's case was considered. In so far as the vacancies are concerned, as per the respondents, for the first time in November 2006 when the vacancies were cleared for Direct recruitment for the period 2001-2, 2002-03 to 2005-06. Such vacancies in so far as Tax Assistant is concerned was reflected as 17 and for Notice server the number of vacancies was 6. It was for this reason that the vacancies under 5% quota was for compassionate appointment taken as one each. And, since the applicant did not qualify in the eligibility test for Direct Recruitment for Tax Assistant (for that matter none out of ten qualified, and the applicant had maximum key depressions of 5449 while others had done less only) no appointment was made on compassionate ground to that post. However, in respect of notice server, the applicant's order of preference was kept at 7 and hence he could not be selected for the same as well.

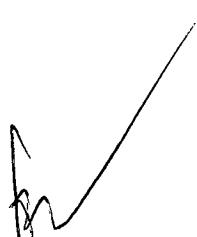
9. The question is whether 5% of the vacancy under direct Recruitment should be restricted to that under the optimization scheme or 5% of total number of direct recruitment vacancies. In its rejection order dated 29th June 2006, the respondents have clearly stated that they had worked out the vacancies for direct recruitment out of the the vacancies cleared by the Screening Committee, which is one third of the total number of direct recruitment vacancies. However, clarification had been given by the Ministry of Personnel, Department of Personnel and Training, vide order dated 14th June 2006, which reads as under:-

"No. 14014/3/2005-Estt.(D)
Government of India Ministry of Personnel,
Public Grievances & Pension
Department of Personnel & Training

.....
New Delhi, dated the 14th June, 2006

Subject: Scheme for compassionate appointment under the Central Government - Determination of vacancies for.

The undersigned is directed to say that the existing Scheme for Compassionate Appointment is contained in this Department's



O.M. No. 14014/6/94-Estt.(D) dated the 9th October, 1998 as amended from time to time. Para 7 (b) of this O.M. provides that compassionate appointment can be made upto a maximum of 5% of vacancies under Direct Recruitment quota in any Group 'C' or 'D' post.

2. After coming into effect of DOP&T instructions No. 2/8/2001-PIC, dated the 15th May, 2001 on optimization of direct recruitment to civilian posts, the direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. As a result of these instructions, there has been a continuous reduction in the number of vacancies for direct recruitment, consequently resulting in availability of very few vacancies or no vacancy under 5% quota for compassionate appointment. Because of this, the various Ministries have been facing difficulty in implementing the Scheme for Compassionate Appointment even in the most deserving cases.

3. On a demand raised by Staff Side in the Standing Committee of the National Council (JCM) for review of the compassionate appointment policy, the matter has been carefully examined and taking into account the fact that the reduction in the number of vacancies for compassionate appointment is being caused due to operation of the orders on optimization of Direct Recruitment vacancies, the following decisions have been taken:-

While the existing ceiling of 5% for compassionate appointment may not be modified but the 5% ceiling may be calculated on the basis of total direct recruitment vacancies for Group 'C' and 'D' posts (excluding technical posts) that have arisen in the year. Total vacancies available for making direct recruitment would be calculated by deducting the vacancies to be filled on the basis of compassionate appointment from the vacancies available for direct recruitment in terms of existing



orders on optimization.

4. That instructions contained in the O.M. No. 14014/6/94-Estt.(D) dated 9th October, 1998, as amended from time to time stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

6. Hindi version will follow.

Sd/-
(Smita Kumar)
Director (E.I)"

10. The above order does not appear to have been taken into account while working the total number of vacancies that could be filled up under the compassionate appointment scheme.

11. Yet another aspect is about consideration for three years. Respondents have considered the case of the applicant only once and by that time the period of three years passed and hence included that also as a reason for rejection. This is inappropriate. The rules stipulate, "*The maximum time a person's name can be kept under consideration for 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 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.*" (Emphasis supplied).

12. In the instant case, the applicant's case has been considered only once and on the ground that he could not make it through for Tax Assistant and that he is not No. 1 for the post of Notice Server his case has been rejected and quoting the three years' stipulation, his case stands closed once for all. This is unjustified for the two reasons as aforesaid viz., that vacancy ought to be at 5% of total number of direct recruitment vacancies without any truncation on account of optimization principle and secondly, the case of the applicant has to be considered for the second and third time.

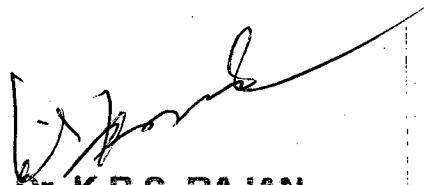


13. In view of the above, the OA is disposed of with a direction to the respondents to work out the total number of vacancies in the grade of Tax Assistant as well as Notice Server for the past years keeping in view the provisions of the DOPT letter dated 14th June 2006 and consider the case of the applicants along with other eligible candidates and if the applicant makes it through he be given compassionate appointment and if not he be informed accordingly."

8. In the instant case, it is seen from the pleadings that the applicant's case was considered and found deserving as per the Screening Committee's report dated 28.11.2007, that was the first year in which the case of the applicant was considered. As such, the case of the applicant should have been considered for a total of three years which exercise has obviously not been completed.

9. In view of the above, this O.A. is disposed of with direction to the respondents to work out the total number of vacancies in those grade in which the applicant's case could be considered keeping in view, the provisions of DOP&T's letter dated 14th June, 2006 and consider the case of the applicant alongwith other eligible candidates and if the applicant makes it through, she be given the compassionate appointment and if not, she be informed accordingly. No time limit is specified as the matter involves re-working of the vacancies and also consideration of other cases. No costs.

(Dated, the 5th November, 2009.)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER