

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 568/2004

Friday, this the 29th day of July, 2005.

C O R A M:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

Smt. K.R. Mani,
W/o. late K.C. Purushan,
Kochuthara House,
Veliyatham Parambu,
Nayarambalam P.O.
Ernakulam District

... Applicant.

(By Advocate Mr. M.M. Saidu Mohammed)

versus

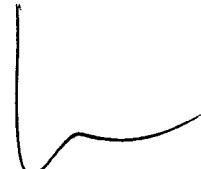
1. Union of India represented by the
Secretary to Government,
Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi - 682 004 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan)

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

In this case, the applicant is claiming for appointment on compassionate grounds. The husband of the applicant was working in the Naval Ship Repair Yard, Naval Base, Kochi as Lascar. While returning from duty, he died on 26.11.2005, leaving behind the applicant



and three minor children. The deceased and the applicant belong to Scheduled Caste community. The applicant vide A/2 application dated 8.1.2002 requested for compassionate appointment. Due to vigorous follow up by the applicant, vide A/3 order dated 31.3.2003 the Naval Headquarters granted sanction for appointment of the applicant as Lower Division Clerk and thereafter, by A/4 communication dated 28.4.2003, the applicant was asked to report for medical examination. Accordingly, she underwent the medical examination on 2.5.2003 and found fit for employment. Finding no reply from the respondents for quite sometime, the applicant represented to the 2nd respondent vide A/5 dated 28.9.2003 followed by A6 and A7 reminders dated 19.12.2003 and 18.6.2004 respectively. It is averred that the deceased was only the sole bread winner of the family and the applicant and the children are in indigent situation and it is very difficult to sustain themselves. Even after completing all formalities, the applicant has not been favoured with the appointment letter. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A. seeking the following main reliefs:-

- "(a) Call for the records relating to Annexures A1 to A7.
- (b) Direct the respondents to appoint the applicant on the basis of Annexure A3 order under the first respondent forthwith."

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2. The respondents have filed a detailed reply statement contending that prior to 2001 the dependents of the employees died in harness or retired on invalidation were being considered for appointment as per their seniority in the claim and for the purpose, a roster was being maintained. But in 2001, the second respondent had received revised guidelines (R2(A)) for appointment of dependents on compassionate scheme, which states that "providing employment assistance to the dependents after years of death of an employee would defeat the very purpose for which the scheme was introduced." As per the revised Scheme, some weightage points have to be assessed in regard to eligibility of the dependents for consideration of such appointments and recommending most deserving cases by the Board of Officers. It was submitted that out of hundred case pending, only three deserving cases were recommended by the Board of Officers. Some of the candidates, whose cases were rejected, had approached this Tribunal vide different OAs challenging the rejection of their claim for employment assistance. In O.A. No. 555/2003, this Court directed the respondents to consider the applicant therein as per Annexure R2(B) order annexed in the said case. As per this direction, the respondents decided to review all the rejected deserving cases including the recommended cases of 2002 for next three years so as to have a genuine assessment and to give a fair consideration to those rejected with deserving aspect. Accordingly, a Board was constituted for the purpose and they have reviewed all the

81 pending cases as on September, 2004, and a panel was drawn. The applicant did not figure in the panel. In the said panel, the individuals who were placed at serial Nos. 1 to 4 have scored marks between 82 and 84 and have been recommended for employment assistance under compassionate appointment. The applicant in OA 569/2002, who have scored 84 marks at the time of rejection, has been found to be 4th in the Annexure R2(C) panel and recommended for appointment. The applicant, who has scored only 71 weightage points was placed at Sl. No. 20 in the Annexure R2(D) panel. Hence, her case cannot be considered for compassionate appointment within the limited quota of 5%. It is stated that the case of the applicant had to be kept in abeyance pursuant to the order of this Tribunal dated 4th December, 2002 in O.A. 569/02 directing to consider appointment of the applicant therein on a Group 'D' post which would arise next in the 5% quota to be filled by granting employment assistance on compassionate grounds. Orders in that regard should be issued by the respondents without any delay as soon as next vacancy in the quota would arise.

3. The applicant has filed a rejoinder contending that the applicant's case was considered alongwith 21 other cases on 4.7.2002 by the Board of Officers against the vacancies which occurred till July, 2002, and she had secured highest points at the relevant point of time. Therefore, her case was recommended for appointment. As per Annexure A/3 order



dated 31.3.2003, competent authority issued sanction for appointment of the applicant to the post of L.D. Clerk and the necessary pre-appointment formalities were initiated pursuant to the aforesaid sanction. The respondents never informed the applicant that her case is being delayed in view of orders of this Tribunal mentioned above. Had it been informed, she could have approached this Tribunal earlier and submitted her case. She has been put to darkness and denied her legitimate right.

4. The respondents have filed additional reply statement reiterating the contentions made in the reply and further submitting that the review was undertaken in view of the orders of this Tribunal.

5. I have heard Shri M.M. Saidu Mohammed, learned counsel for the applicant and Shri TPM Ibrahim Khan, learned counsel for the respondents.

6. The learned counsel for the applicant argued that the deceased was the sole bread winner of the family and the applicant and children are put to great difficulties and in indigent condition. Three minor children are studying. There is no income for the applicant to maintain the children and meet their educational expenses. They are living at the mercy of others and they cannot sustain without an employment

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assistance from the respondents. There was no justification in denying the appointment when it was originally granted to the applicant. Learned counsel for the respondents, on the other hand, persuasively argued that subsequent to O.M dated 12.2.2001 (R2-A), the Department of personnel and Training issued a corrigendum dated 5.5.2003 (R2-B) to Annexure R2 (A) order fixing a maximum period of three years for considering genuine and deserving cases of compassionate appointment. After three years, all such cases will be finally closed and will not be considered again. Though the applicant's case has been considered by the Board while reviewing the genuine and deserving cases, but she will not come within the zone of consideration for employment assistance. Therefore, the respondents are not in a position to grant the relief to the applicant.

7. I have given due consideration to the pleadings, arguments and material placed on record. It is an admitted fact that the applicant's husband died on 26.11.2001 and the applicant applied for compassionate appointment on 8.1.2002. Vide A/3 order dated 31.3.2003, the Naval Headquarters passed the following order:

"Naval Headquarters,
New Delhi - 1110 011

CP(NG)/6671/KRM

31 Mar 03

The Flag Officer Commanding-in-Chief,
Southern Naval Command
KOCHI



EMPLOYMENT ASSISTANCE TO THE DEPENDENTS OF
THE DECASED GOVERNMENT SERVANTS WHO DIE
IN HARNESS

1. In exercise of the powers under part V of the Schedule of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, read with Ministry of Defense Office memorandum No. 1(10)65/11333/D(Appts)n dated 27 Mar 1967, sanction is hereby accorded as a special case to the relaxation of normal recruitment procedure of coming through employment exchange in favour of the following for employment in the Navy as LD Clerk:-

Smt. KR Mani
W/o. Late Shri KC Purushan
Ex-Lascar I Class
NSRY (K)

2. It may be ensured that the following clause is inserted in the terms and conditions of appointment order issued to the individual in accordance with DOP&T OM No. 14014/16/99-Estt (D) dated 20.12.99:

"He/She will maintain properly the other family members who were dependent on the Government servant in question and in case it is proved subsequently (at any time) that the family members are being neglected or not being maintained properly by him/her, his/her appointment may be terminated forthwith".

3. This has reference to your letter No. CS/2809/153 dated 13.12.2002. It is requested that a copy of appointment order when issued may be forwarded to Naval Headquarters for record.

(BS Bajwa)
Commodore
Director of Civilian Personnel"

8. From the above, it is seen that the sanction was accorded as a special case in relaxation of normal recruitment procedure of coming through employment exchange, the applicant was offered appointment as



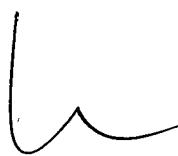
LDC with an instruction to insert in the terms and conditions of the offer the clauses contained in DOPT OM dated 20.12.99 referred to above. Subsequently, vide letter dated 28.4.2003 (A/4) she was directed to report for medical examination and according to the applicant she also underwent the medical examination and found fit. But, thereafter nothing was heard from the respondents. It is borne out from records that taking into account the A1 employment certificate dated 28.9.2002 as also the claim petition (A/2) dated 8.1.2002 submitted by the applicant and the documents produced alongwith the same, the Flag Officer Commanding-in-Chief has considered her case sympathetically and found her fit for employment and A/3 sanction was issued. What remains to be completed in her case is the issuance of appointment order. In para 10 of the reply statement, the respondents have categorically admitted that "*the applicant submitted an application for compassionate appointment as her husband expired on 26th November, 2001. During the year 2002, the Board of Officers considered the applicant's case alongwith all pending cases and awarded 71 weightage points and recommended her case for appointment as she was the highest scorer at the relevant point of time. Accordingly, her case had been taken up with Government for approval for relaxation of method prescribed in the Recruitment Rules against a Group 'C' post.*" Therefore, it is very clear that the applicant has secured highest weightage points at the relevant point of time and recommended her case for appointment.



9. According to the respondents, two subsequent events which came in the way of the applicant in not granting the benefits. Firstly, in O.A. No. 569/2002 filed by one Beena John, this Court vide R2(E) order directed the respondents to consider her case for appointment on a Group 'D' post. To have a correct assessment, it would be profitable to quote the operative portion of the said order R2(E) as under:

"6. In the light of what is stated above, I set aside the impugned order Annexure A1 and direct the respondents to consider the appointment of the applicant on a Group-D post which would arise next in the 5% quota to be filled by granting employment assistance on compassionate grounds. Orders in that regard shall be issued by the respondents without any delay as soon as the next vacancy in the quota would arise. No. costs."

10. On going through OA No. 569/2002, I find that the grievance of the applicant therein was that her case was not considered at the appropriate time in accordance with the Scheme and taking into consideration of all relevant facts, this Court passed the order mentioned above. From the order, it would be clear that the Tribunal never directed the respondents to make an overall assessment of all such claims which have been rejected. The respondents have themselves adopted a method of reassessment of all rejected claims and reviewed the entire cases, which, in my view, is not in accordance with the spirit of the Scheme. Secondly, Annexure R2-B order was issued on 5th May, 2003, whereas



the sanction for appointment of the applicant was issued on 31.3.2003. Therefore, even if fixing the time limit for making compassionate appointment was taken into consideration, it will not come in the way of the applicant at all as she has already been selected for appointment. Coming to this case, as already stated above, one could find that the only procedure to be completed was issuance of the appointment order. All other formalities have been completed. The case of the applicant is that her case has already been considered and found fit for appointment and a sanction was also issued by the Government approving her case as a deserving one. Therefore, clubbing her case alongwith rejected claims and fresh cases and reshuffling the entire cases again is wholly arbitrary and illegal.

11. At the very outset, I want to make it clear that the OM dated 5th May, 2003 (Annexure R2-B) fixing the time limit for making compassionate appointment has been passed in the true spirit of procedures, based on the decision of Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, wherein it was held that consideration for compassionate appointment is not a vested right which can be exercised at any time in future. It is also in fortification of the dictum laid down by the Hon'ble Supreme Court on compassionate appointment prescribing that it can be made only if vacancies exist which was settled by the judgement of the Apex Court in Himachal Road Transport Corporation vs.

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Dinesh Kumar, (1996) 4 SCC 560. By following the dictum laid down by the Hon'ble Supreme Court, this Court declares that Annexure R2-B Office Memorandum dated 5th May, 2003 has been issued in good spirit of the procedures as indefinite waiting of the candidates in the queue will hold to diminish the spirit of other employees unnecessary giving them hope or expectations, which the department may not be able to fulfill.

12. In this case, the position canvassed by the applicant is on a different footing. The applicant was already found fit to be appointed on a clear vacancy. If right thing had happened at the right time, the applicant could have been appointed at the appropriate time. On going through R2(D) Minutes of the meeting of the Board for employment assistance, I find that the dependents of an employee who died very long back had been considered against the vacancies of 2003. The applicant claims that she has been considered fit and selected for appointment in 2002 when there was a clear vacancy. The decision of the respondents that three years period has to be invoked in the case of the applicant is only an after thought since R2(B) has come into effect with effect from 5th May, 2003. The rule/memorandum has got only prospective operation. The respondents have no case that in 2003 there was no vacancy. It is also not their case that the applicant is not fit to be considered. Fixing of three years for consideration of genuine and deserving cases will not

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stand in the way of the applicant. Having found that this reason is not well founded and considering the facts in the light of the objectives of the Scheme, I am of the considered view that the reasoning given in the reply statement in not granting the appointment to the applicant as per the A/3 sanction order, is not justified.

13. In the result, I declare that the applicant is entitled to appointment on compassionate ground as per A/3 sanction order and direct the respondents to issue appointment order to the applicant without any further delay. Orders in that regard shall be issued within a period of three months from the date of receipt of a copy of this order.

14. The O.A. is allowed as indicated above. In the circumstances, no order as to costs.

(Dated, the 29th July, 2005)



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

cvr.