

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 577/2006

Friday, this the 27th day of July, 2007.

CORAM:

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

T.K.Sangeetha, D/o N.Karunakaran Nair,
residing at Sangeetha Nivas, Thenguvilakom,
Keezharur, Perumkadavila,
Thiruvananthapuram-695 130.

... Applicant.

(By Advocate Shri.M.R.Hariraj)

Vs.

1. Union of India represented by Secretary,
Government of India, Department of Posts,
Ministry of Communication,
New Delhi.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. The Superintendent of Post Offices,
Thiruvananthapuram South Division-695014.
4. The Director General, Posts,
Dak Bhavan, New Delhi. ... Respondents

(By Advocate Shri. Varghese P. Thomas)

The application having been heard on 27.6.2007,
the Tribunal on 27.7.07 delivered the following.

ORDER

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

Compassionate appointment is the issue involved in this case.

2. The brief facts of the case as per the O.A. are as under:
 - (a) The applicant's father Sri. N. Karunakaran Nair retired from service on medical invalidation with effect from 13.11.1998. Huge amount was spent on prolonged treatment of Sri.N.Karunakaran Nair and his dependent



mother. Applicant applied for an appointment on compassionate grounds on 12.5.1999 to the 3rd respondent. By Annexure A1 letter dated 28.4.2000, the 3rd respondent informed that the Circle Relaxation Committee examined her case in detail but did not recommend it, as the family of Sri. N. Karunakaran Nair, retired official, was not found to be in indigent circumstances. The applicant made a detailed representation before the 2nd respondent vide Annexure A-2. By letter dated 29.6.2000, the 3rd respondent informed that the 2nd respondent has reconsidered the compassionate appointment of the applicant and rejected it on the ground that there was no special ground to reconsider the case again. Applicant further submitted an appeal dated 5.7.2000 before the 4th respondent. She has explained in the appeal the indigent condition of her family and requested to consider her case sympathetically vide Annexure A-4. Pursuant to Annexure A-4, the applicant was directed by Annexure A-5 letter dated 24.1.2001 of the 3rd respondent to intimate whether she is willing to be considered for compassionate appointment under other Ministries/departments of the Government of India. The applicant expressed her willingness by letter dated 25.1.2001 vide Annexure A-6. This was followed by another representation dated 15.10.2001 vide Annexure A-7. Annexure A-8 representation dated 17.3.2003 followed it. Again the applicant approached the 4th respondent by submitting Annexure A-9 Appeal dated 8.5.2004, followed by letter dated 31.3.2006. Individuals placed much better than the applicant financially were considered and appointed on compassionate grounds by the respondents. Hence, this O.A.

3. The respondents have contested the O.A. and their objections to the case are as under:



(a) The family of the official consists of his wife, one daughter and mother. An amount of Rs.1889 + relief was granted to the retired official towards pension and an amount of Rs.2,27,895/- was paid to him as terminal benefits. The family possesses a house of their own, land of 5 cents and an annual income of Rs.750/- from the landed property. The representation submitted by the applicant to the second respondent viz., the Chief Postmaster General, Kerala Circle, Thiruvananthapuram -33 on 13.6.2000 was disposed of and a reply to the applicant was given on 27.6.2000. The application was examined by the Circle Relaxation Committee which met on 15.1.2000, but did not recommend it, as the family was not found to be in indigent circumstance to warrant consideration for appointment under relaxation of rules. The prospect of selection becomes all the more difficult due to the restriction of compassionate appointment of 5% of the Direct Recruitment vacancies, which by itself, has now been limited by the Government to 1/3rd of the total direct recruitment vacancies physically available. For e.g. In a year in a given cadre, if there are 10 vacancies as per Recruitment Rules, the quota of vacancies physically available for direct Recruitment is 50% ie. 5. As per Department of Posts letter No. 60-29/98-SPB-1(Pt) dated 4.7.2001 from the year 2001 onwards Direct Recruitment is limited to 1/3rd of the Direct Recruitment vacancies. The argument that the liability of the family was not considered, is not true. Liability of the family is not the only criteria for consideration for compassionate appointment. The Hon'ble Supreme Court of India in its recent judgement dated 17.7.2006 in Civil Appeal No.6642 of 2004 (State of J&K and others Vs. Sajad Ahmed Mir) has held that providing employment on compassionate grounds is not mandatory if the family survives for long after the death of

the bread winner. Such employment cannot be claimed as a matter of right.

4. The applicant has filed a rejoinder in which she has reiterated her stand as in the O.A. and also submitted that, as per order dated 20.11.06 in O.A.869/04, this Tribunal has directed the respondents to have a fresh look into the matter of the applicant. The case of the applicant is also identical to that of the applicant in the aforesaid O.A. Hence, the case of the applicant also deserves a re-look.

5. At the outset, it is to be stated that, there has been a delay of 1674 days in filing this O.A. The applicant has filed an application for condonation of delay whereby, she has stated that, since certain new points have come to light in yet another O.A.869/04 and, those facts being very relevant to the facts of this case, the applicant could file this case only now.

6. The respondents, however, filed their objections to the condonation of delay. According to them, the grounds do not justify condonation.

7. As regards condonation of delay, it is the at the discretion of the court/tribunal and that normally the courts are lenient, as held by the Apex court in the case of *Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123 wherein the Apex Court has held as under:-

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

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11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of



providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. **There is no presumption that delay in approaching the court is always deliberate.** This Court has held that the words **sufficient cause** under Section 5 of the Limitation Act **should receive a liberal construction so as to advance substantial justice** vide *Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality*.

13. It must be remembered that **in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him.** If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss. (Emphasis supplied)


8. For the reasons given and utilizing the discretionary powers judiciously, the delay in filing this O.A. is condoned.

9. Counsel for the applicant argued that, the respondents while considering the case of the applicant has brought out the various aspects, which, if considered, it would have certainly resulted in the applicant's being considered for compassionate appointment. He has also submitted that, the Committee seems to

have considered the case only once, while as per the existing rules, cases of compassionate appointments should be considered three times, especially if the non-accommodation of such case is due to non-availability of vacancies. The counsel for the applicant further submitted that, in so far as 5% of the Direct Recruit vacancy is concerned the **constriction** imposed by the Government as stated in paragraph 6 of the counter (already extracted above), has been relaxed and now vide order dated 14014/3/2005-Estt(D) dated 9.10.06, for compassionate appointments, 5 % of the total direct recruitment vacancy shall be taken into consideration. Thus, if the case of the applicant is reconsidered on the lines as given in the decision dated 20.11.06 in O.A.869/04, keeping in view the number of vacancies as per the latest orders, in all probability, the applicant's case can be easily accommodated.

10. Counsel for the respondents submitted that, the case of the applicant was considered by the Circle Relaxation Committee and already rejected. Further at this distance of time, the case of the applicant cannot be considered, as the very purpose of compassionate appointment is to tide over the immediate financial crisis that might have clouded upon the family in the absence of the bread-winner.

11. Arguments were heard and documents perused. The case of the applicant is one for compassionate appointment in the wake of retirement on the grounds of medical invalidation unlike in the case of a death. Here, the fact that should be kept in view is, as to the expenses incurred by the medically invalidated pensioner. Records reflect that, the case of the applicant was considered only once and without taking into account the liability of the family of the applicant, the case has been rejected. Again, the number of vacancies has now been enhanced in so far as the Direct Recruitment is concerned, and as such, the case of



the applicant deserves to be reconsidered.

12. In view of the above, the O.A. is allowed to the extent that the respondents shall consider the case of the applicant taking into account the financial status, after taking into account the medical expenses incurred in the applicant's father's treatment and other liabilities, if any. Consideration shall be for two more times keeping in view the increased number of vacancies as specified in the order dated 9.10.86. The applicant may be informed of the judicious decision arrived at by the Circle Relaxation Committee as and when it meets. No costs.

(Dated, the 27th July 2007.)



K.B.S. RAJAN
JUDICIAL MEMBER