

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 580 of 2003

Tuesday, this the 24th day of February, 2004

CORAM

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

1. S. Manoj Kumar,
'Karthika', Chottanikkara,
Ernakulam District.Applicant

[By Advocate Mr. K.R.B. Kaimal]

Versus

1. The Union of India,
Ministry of Communications and Information
Technology, represented by its Secretary,
New Delhi.

2. The Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi - 110 001

3. The Director (Staff),
Department of Posts, Ministry of Communications,
Dak Bhavan, Sansad Marg, New Delhi.

4. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

5. The Senior Superintendent of Post Offices,
Ernakulam Division, Ernakulam.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 24-2-2004, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant is the eldest son of late S.Ramani, who died in harness on 5-9-1997 while working as Postal Assistant in Mattancherry Post Office under the 5th respondent. On 10-10-1997, the applicant's father had made a representation seeking compassionate appointment to the applicant. The 5th respondent vide Annexure A3 order dated 23-11-2000 rejected the claim. Thereafter, the applicant approached this Tribunal in

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OA.No.105/01. This Tribunal disposed of OA.No.105/01 vide order dated 27-6-2001 permitting the applicant to submit a representation to the 1st respondent, Secretary to the Government of India, Ministry of Communications, Department of Posts, New Delhi, and directing the 1st respondent to dispose of the same by a detailed order. The 5th respondent has, vide Annexure A3 order dated 23-11-2000, informed the applicant that the Director General, Department of Posts has considered and rejected the request. Annexure A6 order dated 27-2-2003 was also issued rejecting the request stating that this has the approval of Secretary and Director General, Department of Posts, Ministry of Communications, though it was passed by the Director (Staff), i.e. the 3rd respondent. Aggrieved by the impugned orders Annexure A3 and A6, the applicant has filed this OA seeking the following reliefs:-

- "i) an order quashing/setting aside Annexure A3 and A6;
- ii) an order directing respondents 1 to 3 to reconsider Annexure A-5 and to issue orders granting compassionate appointment to the applicant; and
- iii) such other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Respondents have filed a detailed reply statement contending that the deceased person left behind her husband and 4 sons, that her husband was employed in a private firm till 31-7-2002 and was earning a salary of Rs.3,200/- p.m., that the family had received terminal benefits of Rs.1,31,674/- and is drawing a regular family pension of Rs.1,824/- plus relief, and that the family owns 3 cents of land and a house stated to be incomplete. The case was placed before the specially constituted committee to examine the eligibility for such appointment and the Circle Selection Committee after careful consideration of the case recommended the case for appointment



as Group 'D'. As there was an earning member in the family, the case was referred to the 2nd respondent for relaxation and the case was considered by the Directorate Selection Committee and observed that the husband of ex-official has own means of livelihood. The scheme is not intended to ensure that each and every member of the family is employed. The family has received the terminal benefits and also in receipt of monthly family pension. Therefore, the family was not in indigent condition. There was no vacancy in the concerned Circle to accommodate the candidate within the stipulated limit and hence the case was rejected. The rejection was based on the instructions on the subject issued by the nodal Ministry and the department took a fair decision while rejecting it. There is nothing illegal, arbitrary or discriminatory in taking such a decision. It is further contended in the reply statement that such appointments are also permissible only upto 5% of the vacancies available for direct recruitment quota. The guidelines of the scheme require assessment of the financial condition of the applicant which is adverse in the case of the applicant. Therefore, the rejection is justified.

3. I have heard Shri K.R.B.Kaimal and Shri B.Unnikrishna Kaimal for the applicant and Shri C.Rajendran, SCGSC and Shri Biju for the respondents. Learned counsel for the respondents has taken me to various pleadings, evidences and materials placed on record.

4. Learned counsel for the applicant submitted that the rejection of the claim of the applicant is not justified on the grounds that (i) husband of the deceased employee was employed in a private firm till 31-7-2002 and was earning a meagre amount of salary; (ii) that the family had received terminal benefits of Rs.1,31,674/- and is drawing a regular family

pension of Rs.1,824/- plus relief; and (iii) that the family owns 3 cents of land and a house stated to be incomplete; (iv) that such appointment is not permissible after a lapse of reasonable time; and (v) that there was no vacancy for such compassionate appointment. The applicant has challenged all these on various grounds that has been levelled in the OA. Learned counsel also submitted that all these positions are covered by the Hon'ble Supreme Court's rulings and it cannot be substantiated. He also submitted that the specific direction of the Tribunal in OA.No.105/01 was to consider the representation of the applicant by the 1st respondent, which was not done in this case and there was no proper application of mind by the subordinate authority and on that ground alone the impugned orders Annexure A3 and A6 are liable to be set aside.

5. Learned counsel for the respondents, on the other hand, specifically argued that husband of the deceased person was in employment upto 31-7-2002 in a private firm and was an earning member and that the family also received terminal benefits and pensionary benefits. He also submitted that the scheme is not intended to ensure that each and every member of the family is employed and therefore the applicant has no claim. It is further stated that the department is constrained to follow 5% of the vacancies in order to consider such cases, wherein such a vacancy is not available in the concerned Circle and that more eligible persons also to be considered within the framework of the scheme. Therefore, the impugned orders are not in any way liable to be quashed.



6. I have heard the learned counsel for the parties and given due consideration to the arguments advanced by them. On the very outset, it may be pointed out that when the applicant came earlier in OA.No.105/01, this Court has given a specific direction vide order dated 27-6-2001, which reads as follows:-

"... In view of the above submission, this OA is disposed of granting liberty to the applicant to submit a representation to the first respondent - Secretary, Ministry of Communications, Department of Posts, New Delhi detailing therein his grievance in the matter of appointment on compassionate grounds within a period of two weeks from today. If such a representation is received, the first respondent shall dispose of the same by a detailed order within a period of three months from the date of receipt of the said representation. . ."

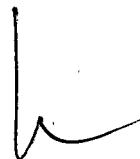
[emphasis supplied]

7. On going through the impugned orders A3 and A6, this Court finds that the concerned authority to whom the direction was given to consider the representation of the applicant by the earlier OA has not considered the same, but delegated the power to some lower authority who say that the impugned orders have the approval of the Ministry of Communication. This obviously mean that the authority to whom the direction was given by the Tribunal has not applied his mind in disposing of the representation and mere approval is not what is sought by the direction of this Tribunal. Therefore, I am of the view that the impugned orders A3 and A6 are not disposed of by the appropriate authority as directed by this Tribunal and therefore, there was no proper application of mind. When the Tribunal makes a direction to a particular authority to dispose of the representation or give such orders, it is with certain purposes. Here is a case where an unemployed youth is seeking employment on compassionate grounds on the death of his mother. Having rejected by the lower authorities, this Court found that the 1st respondent should dispose of the representation and such a direction was given, which is not complied with. On the



mere fact, I am of the opinion that the orders of this Tribunal in OA.No.105/01 has not been properly complied with by the authorities and therefore the impugned orders are liable to be set aside.

8. Coming to the merit of the case, it is the case of the respondents that there was lapse of reasonable period in making the application. On going through the facts of the case and pendency of the OA and earlier representations, I do not think that there was any wilful lapse or delay on the part of the applicant in making the claim. Therefore, no substance for that ground. The two decisions that has been referred to by the respondents in the impugned order Annexure A6, i.e. Himachal Road Transport Corporation vs. Dinesh Kumar [JT 1996 (5) SC 319] and Hindustan Aeronautics Limited vs. Smt. Radhika Thirumalai [JT 1996 (9) SC 197], canvassing for a position that compassionate appointment can be granted only if vacancy is available for that purpose. I am in respectful agreement with the said judgements of the Apex Court and the applicant's counsel also has no quarrel on the said proposition canvassed by the respondents. On going through the pleadings of the respondents in the reply statement, I find that the applicant's case was considered by the Circle Relaxation Committee and after careful consideration of the case the claim for appointment as Group 'D' was recommended, but since there was an earning member in the family, the case was referred to the 2nd respondent for relaxation. It is clear that it is not a case where vacancy was not available. There was an assessment of fitness of the applicant by the Circle Relaxation Committee and was recommended the applicant for appointment as Group 'D'. But, since there was a doubt as to whether another family member is employed, the applicant could be granted the benefit and therefore referred the matter to the 2nd respondent for



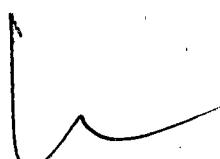
relaxation. It is quite clear in such circumstances that plea of non-vacancy of 5% cannot be accepted. Then the question comes if another person of the family is employed, whether a second person can claim for the compassionate appointment or not. The means of livelihood is the main criteria as far as granting the relief is concerned. Learned counsel for the applicant has taken my attention to Clause 10 of the scheme, which reads as follows:-

"10. Where there is an earning member:-

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

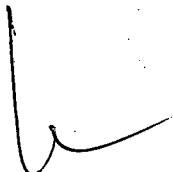
(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant, so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family."

9. In Clause 10 of the Scheme (Annexure A1), it is quite obvious that even if there is already an earning member in the family, the dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned. Therefore, there is no embargo in this case for non-granting of the relief to the applicant merely on the fact that his father was employed in a private firm upto 2002 on a meagre salary. This is a matter which could be looked into by the Secretary of the Department/Ministry concerned. Probably that may be the



reason, this Tribunal had directed the 1st respondent to dispose of the earlier representation. The question as to whether the terminal benefits and pensionary benefits that has been received by the family can be a ground for rejection. The said question came to be settled by various decisions of the Hon'ble Supreme Court and the Central Administrative Tribunal. In Balbir Kaur & Another vs. Steel Authority of India Ltd. & Others [(2000) 6 SCC 493], the Apex Court has held that family benefit scheme cannot in any way be equated with compassionate appointment. In Sabita Majumdar & Another vs. The Union of India & Others [2001 (1) ATJ 386], the CAT, Calcutta Bench has held that pension is not a substitute for appointment on compassionate grounds. In Smt. Anar Kali & Another vs. Union of India & Others [2001 (2) ATJ 387 (PB)] and Nirmala Devi vs. Union of India & Others [2002 (1) ATJ 261 (Jaipur Bench)], it has been held that while considering the case on compassionate grounds, the authorities cannot take into consideration the retirement/terminal benefits given to the family members of the deceased. In the above facts and circumstances, I am of the view that the impugned orders Annexure A3 and A6 do not stand on its legs and are only to be set aside.

10. Therefore, I set aside the impugned orders Annexure A3 and A6 and direct the 1st respondent to consider the representation of the applicant again giving due respect to the observations made by this Court as above and pass a speaking order with due application of mind and communicate the same to the applicant within three months from the date of receipt of a copy of this order.



11. The Original Application is disposed of as above. In the circumstances, no order as to costs.

Tuesday, this the 24th day of February, 2004



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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