

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 581 OF 2011

Monday this the *5th* day of December, 2011

CORAM:

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

R Ramkumar
S/o.Late S Ratnakaran
Ramnivas, Cherunarakomkode
Adayamon P.O
Thattathumala
Pin – 695 614

- Applicant

(By Advocate Mr.Arunraj S)

Versus

1. Union of India represented by the Secretary
Ministry of Finance, North Block
New Delhi – 110 001

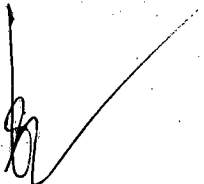
2. The Chairman
Central Board of Direct Taxes
North Block, New Delhi
New Delhi – 110 001

3. The Chief Commissioner of Income Tax
Central Revenue Building
I.S Press Road
Kochi - 16

- Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)


The application having been heard on 01.12.2011, the Tribunal
on *5.12.11* delivered the following:



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

1. A thumbnail sketch of the facts of the case is as under:-

The applicant is a son of Late S Ratnakaran who died in harness on 01.01.2005 when he was serving as Senior Tax Assistant in the Income Tax Department, Trivandrum. The family of the deceased consists of his wife, dependent mother, the applicant and his younger brother. The applicant had submitted an application for compassionate appointment vide letter dated 25.07.2005 (Annexure A-2). He appeared before the Committee with certain documents as called for. When he appeared for a test for the post of Tax Assistant, he could not get through. As such, he was considered for the post of Notice Server and he ranks 6 in the deserving list, and since there was only one post, he could not be appointed as Notice Server. He was therefore considered for the post of Group D Peon in respect of which he ranks 7. Here again, as there was only one post, he could not be offered the appointment. Therefore the applicant was not considered and since three years time period was over, he was informed through Annexure A-5 about the decision of the committee. The applicant submitted another representation in February 2009 addressed to the second respondent vide Annexure A-7. This was responded to vide Annexure A-1 communication dated 05.08.2009 giving the reasons for rejection of his case. The emphasis was that the period of three years was over in 2008. The applicant has preferred this O.A against the rejection order vide Annexure A-1.

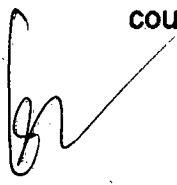
2. The respondents have contested the Original Application. They have
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reiterated the same point of 3 years. In respect of a comparable case cited by the applicant (Case of Smt. E.B Bindu), they tried to distinguish the same stating that she was not given an opportunity to appear for the computer eligibility test in the year in which she was considered by the Committee for compassionate appointment, as she was not a graduate at that time. The respondents also relied upon the decision in the case of Shri Trilok Chand Versus Union of India & Others in Writ Petition No.W.P(C) No.13857/2009 vide judgment dated 15.12.2009 by the Hon'ble High Court of Delhi.

3. As the application was filed belatedly, an application for condonation of delay of 323 days was also filed and the respondents have filed a reply stating that the reasons are not justifiable.

4. Counsel for the applicant argued that this case is covered by earlier decision in the case of OA No. 563 of 2009 where the situation was identical and with reference to the very same department. The counsel argued that the period of three years could not mean three years from the date of demise but there must be review of the case for three years which means that with reference to the vacancies available for three years, the case ought to have been reviewed. He had referred to the decision in the aforesaid OA and stated that in view of the above decision, an identical order as in that case be passed.

5. Counsel for the respondents submitted that the purpose of stipulation that the case be closed after three years is in view of the fact that if the family could survive for three years without the aid of such compassionate appointment, it could survive for subsequent period as well.



6. Arguments were heard and documents perused. It has been held in a catena of decisions of the Apex Court that the courts/tribunals may be liberal in respect of limitation. In this regard the recent decision of the Apex Court in the case of 2010 14 SCC 419 in the case of Indian Oil Corporation Limited and others versus Subrata Borah Chowlek and others wherein the Apex Court has held as under:-


" It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the courts generally follow a liberal approach particularly when no negligence inaction or malafides can be imputed to the party"

7. The reasons given are sufficient for condonation of the delay involved. In view of the above, the delay of 323 days is condoned.

8. In so far as merit is concerned, it is not in dispute that the case of the applicant had been considered only for one year and by virtue of passage of three years, his case had been closed for the reasons stated by the counsel for the respondents. The spirit of stipulation of three years would have to be appreciated from the words stated in the relevant instructions. The stipulation reads as under:-

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

9. The term, "under consideration" would mean actual consideration for offering Compassionate appointment will be three years. The Committee has to review the certify the penurious condition at the end of the first and second year as



well. These clearly show that there shall be actual consideration for three years. Considering the case for one year and keeping the case for the rest of the years without consideration cannot meet the requirement.

10. "Consistency is a virtue", observed the Apex Court through a Constitution judgment in the case of Secretary, State of Karnataka vs Umadevi (3) (2006) 4 SCC 1. Thus, what is to be seen is whether the case of the applicant in the instant case is identical to that of the applicant in OA No. 563 of 2009 and if the answer is in affirmative, then the decision in the other OA could easily be applied to the instant case as well. In the case of OA No. 563 of 2009, the widow of the deceased employee when applied for compassionate appointment, was placed in the fourth rank on merit for such appointment, but could not be appointed since there was only one vacancy in that year. The order communicating the above reflected 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 Service 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 05-05-2003 read with F No. A-12012/16/2006-D VII dated 16-06-2005. This is brought to your notice."


11. In the case in hand, as per the respondents, vide para 7 of the reply, the applicant failed to qualify the Computer Eligibility Test for the post of Tax Assistant conducted on 03-08-2007 and as such he could not be considered for the psot of

Tax Assistant. There was only one post each of 'Notice Server' and Group 'D' peon for compassionate appointment. Under the delegated powers vested with the CCIT (CCA), the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years. 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. This being so, in the applicant's case, the maximum period for which the application could be kept alive for consideration has expired by July 2008 w.r.t. The date of his application for compassionate appointment. In view of the above, the office of the CCIT(CCA) Kochi was not in a position to grant one more opportunity to the applicant for appearing in the Computer Eligibility Test in order to consider appointment under the Scheme of Compassionate Appointment.

12. Thus, congruency in both the cases is established. In so far as the question of three years is concerned, the same was discussed succinctly in yet another decision in OA No. 655 of 2008 (referred to in OA No. 563/2009) wherein it has inter alia been held, as under:-

"11. Yet another aspect is about consideration for three year. 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."

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



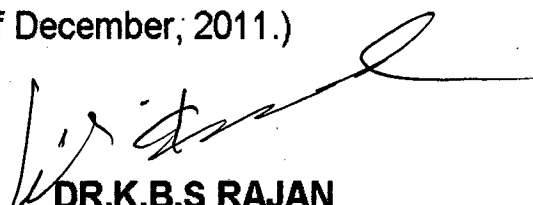
and that he is not No. 1 for the post of Notice Server, he case has been rejected and quoting the three years' stipulation, his case stands closed once for all. This is unjustified for the two reasons as aforesaid and secondly, the case of the applicant has to be considered for the second and third time. "

13. Thus, it is evident that in the case of the applicant, there having been no three times consideration, the above decisions exactly fit in with reference to the facts of this case and hence, without any hesitation, the ratio in the aforesaid orders could be adopted in this case as well.

14. In view of the above, the same direction as given in the other case in OA 563 of 2009 for consideration for the second and third year, would render justice in this case. Accordingly, the OA is disposed of with the direction to the respondents to consider the case of the applicants along with other eligible candidates in the ensuing year and if the applicant makes it through he be given the compassionate appointment. In case, the applicant could not make it up this year, the case shall be reviewed for one more year and the decision communicated to the applicant.

15. No costs.

(Dated, this the 5th day of December, 2011.)


DR.K.B.S RAJAN
JUDICIAL MEMBER

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