

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.588/08

Friday this the 12th day of June 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

Syam Krishna,
"Krishna", Mukkoikkal,
Nedumangad P.O., Trivandrum.

...Applicant

(By Advocate Ms.S.Karthika)

Versus

1. Union of India,
Secretary to Government,
Ministry of Postal & Telecommunication, New Delhi.

2. The Director General,
Department of Posts,
Dak Bhavan, New Delhi – 110 001.

3. The Chief Postmaster General,
Department of Posts, Kerala Circle,
Thiruvananthapuram – 695 033.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 12th June 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the rejection of his request for compassionate ground appointment.

2. The brief facts of the case are that the applicant's father, late Shri.G.Krishnan Nair, while working as a Postman under the 3rd respondent expired on 12.10.2003. He was the sole earning member of

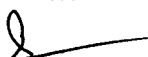


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the family. The applicant applied for appointment on compassionate ground vide Annexure A-3 application dated 30.1.2004. According to the said application, he was 18 years old and was completing his studies in Diploma (Polytechnic), his sister was married recently and the family has got only 5 cents of land and a house constructed on it after availing HBA and other loans. Later, he submitted the Annexure A-1 Legal Heir Certificate dated 12.4.2004 issued by the Tahsildar, Nedumangad showing the legal heirs of the deceased employee as (1) K.Ushakumari, wife, Simi Krishna, daughter, and Syam Krishna, son who is the applicant herein and the Annexure A-2 Income Certificate dated 14.10.2004 issued by the Village Officer, Tholicode stating that the only source of income of the family was the family pension which amounts to Rs.40476/- per annum. Thereafter, the applicant's mother has again made the Annexure A-4 representation dated 15.2.2005. Finally, the Circle Relaxation Committee (CRC for short) considered his case at its meeting held on 4.4.2007 but did not recommend it after taking into consideration of the assets and liabilities of the family and that the widow of the late official was drawing family pension.

3. The respondents vide Annexure A-5 letter dated 5.7.2007 conveyed the aforesaid observations of the CRC and rejected the request of the applicant for compassionate appointment. It reads as under:-

"Appointment on compassionate grounds is intended to render immediate assistance to the family of the Govt. servant who dies in harness leaving his family in financial crisis. Further, it is not intended to ensure employment for each and every member of the family. Consequently, it becomes essential to ensure that only more deserving cases are approved as per the



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purpose stipulated for the scheme of such compassionate appointments. The Supreme Court has also observed that the only grounds which can justify the compassionate employment are the penurious condition of the deceased family and it should be offered only as a relief against destitution. In this case the family is not in indigent circumstances."

4. Against the aforesaid decision of the respondents the applicant's mother made the Annexure A-6 appeal dated 24.8.2007 to the 2nd respondent, namely, the Director General, Department of Posts, New Delhi. In the said appeal, she has stated that she and her children were waiting for a positive decision for about four years, as her only source of income was the monthly family pension of Rs.2025/- up to 2010 and thereafter Rs.1275/-. She has also stated that she was finding it difficult to repay the huge amount of loan she had taken in connection with the treatment of her late husband and the marriage of her daughter and that she and her son are now living in penurious condition. Further, she has stated that she was living in the house constructed with the House Building Advance taken from the Department and after the death of her husband, the department deducted the balance of loan outstanding against him with interest from the DCRG. The remaining amount was hardly enough to settle the Co-operative Society loan outstanding against her late husband. She was also forced to dispose of the house and 6 cents of land to meet the marriage expenses of her daughter. She has also pointed out that even though the compassionate ground appointment is intended to render immediate assistance to the family of the Govt. servant who dies in harness leaving his family in financial crisis, the respondents took more than three years even to consider her case. She further pointed out that the CRC has recommended many other persons who were much less



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deserving for compassionate appointment than her son during the period from 30.1.2004 to 4.4.2007 and its assessment regarding her assets and liabilities was not at all fair and just. However, vide Annexure A-7 letter dated 4.12.2007, the Assistant Director (Recruitment) in the office of the Chief Postmaster General, Kerala Circle, Thiruvananthapuram rejected her appeal stating that her case has already been considered by the CRC which met on 4.4.2007 but did not recommend her case as no indigent circumstances was noticed.

5. The applicant has challenged the aforesaid rejection orders of the respondents stating that the CRC has considered his request on 4.4.2007 very belatedly after three years of filing of his application and such a delay on the part of the Respondent was against the spirit of the scheme itself. The applicant has also produced Annexure A-8 list of 44 persons appointed on compassionate ground during the period from 1.1.2004 to 24.3.2008 and stated that most of them are financially better placed than him.

6. Respondents in their reply statement denied the allegations of the applicant regarding the late consideration of his case. They have submitted that the applicant has passed Board of Higher Secondary Examination only on 22.5.2006 and his mother made a fresh request for compassionate ground appointment to the applicant along with copy of mark sheet on 29.6.2006. Again, the Income and Part II synopsis were duly signed by the applicant only on 15.1.2007 and they were submitted on 24.1.2007. Therefore, there was no delay on their part to place the case



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before the CRC. They have also submitted that the applicant's father died as early as 12.10.2003 and the family has survived all this while without a job to the applicant. They have also quoted Supreme Court's judgment dated 17.7.2006 in Civil Appeal No.6642 of 2004 (State of J&K and others Vs. Sajad Ahmed Mir) wherein it has been held that employment on compassionate ground cannot be claimed as a matter of right and providing employment on compassionate grounds is not mandatory, if the family survives for long after the death of the breadwinner. Further, they have submitted that the CRC considered each of the cases against the following parameters to arrive at the conclusion relating to relative indigency of the families :

1. Number of dependents.
2. Number of unmarried daughters.
3. Number of minor children.
4. Annual income from other sources.
5. Whether family owns a house or not.
6. Details of landed property.
7. Details of the liability of the family.

According to them, after considering the applicant's case in comparison to all the candidates, they found that his case lacked relative financial indigency, as more deserving candidates were in the fray.

7. During the course of the arguments, on the direction of this Tribunal, the respondents have produced the minutes of the CRC Meeting held on 4.4.2007 (Annexure R-2). According to the said minutes, the CRC considered 21 requests against 4 posts of PA/SA and 17 posts of GDS. As regards PA/SA posts were concerned, out of the 8 posts earmarked for compassionate appointment against the 2005 DR vacancies, only 2 posts



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were available. Against the said 2 posts, 4 candidates including the applicant was considered and only one case of Smt.S.Dhanya was recommended for appointment subject to clearance from Directorate for relaxation of five year time limit. In the case of the applicant, the CRC has noted that his father expired on 12.10.2003 and keeping in view of the assets and liabilities of the family and that the widow of the late official is drawing family pension the request is not recommended by the CRC. The CRC has not considered the case of the applicant against any posts of GDS available.

8. The applicant filed a rejoinder refuting the contention of the respondents that compassionate ground appointments were made on the basis of the relative financial conditions of the respective candidates and their families. He has also produced Annexure A-9 document received by him under the RTI Act which shows the details of 44 persons considered and recommended for appointment during the period from 1.1.2004 to 23.4.2008. From the said list, counsel for the applicant has pointed out that persons who have received terminal benefits to the tune of Rs.4,33,044/-, Rs.4,57,982/-, Rs.3,25,572/-, Rs.3,70,950/-, Rs.4,26,337/-, Rs.7,02,900/-, Rs.3,36,191/-, Rs.4,26,291/-, Rs.4,72,632/- and Rs.3,99,842/- etc have been granted compassionate ground appointment whereas in her case she has received only Rs.1,21,237/- as terminal benefits. She has also pointed out that where the number of dependents are two and who have got landed property to the tune of 20 cents and above are also recommended for compassionate ground appointment.



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9. The applicant has also relied upon the judgment of the Apex Court in **Govind Prakash Verma Vs. Life Insurance Corporation of India and others** [2005 (10) SCC 289] where it has been held as under :-

6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.

7. In the result, the appeal is allowed and the orders passed by the High Court are set aside. The respondents on consideration of the request of the appellant for compassionate appointment, shall pass appropriate order in the light of the observations made above, within a period of three months from today."



10. The same position has been reiterated by the Hon'ble High Court of Kerala in Suma Mohan Vs. Union Bank of India [2002 (2) KLT 672] wherein it has been held as under :-

8. As stated earlier, it is not in dispute that the only source of income for the family is the family pension and the interest, if any, that may accrue in case Rs.75,000/- is deposited. The deceased employee being a Senior Clerk/Cashier of a nationalised Bank must have been drawing a fairly handsome salary. The pleadings of the petitioners regarding the liabilities created for the treatment of the employee, are not disputed by the respondents. The income from family pension is very low when compared to the monthly salary that was received by the deceased employee. Further, during these days of inflation, the said income is insufficient to bring up and educate two girls decently and to marry them off in future. Apart from that, in another one year, the family pension is going to be reduced also. Therefore, the finding of the competent authority that family pension is a substitute for appointment under the dying-in-harness scheme is plainly unreasonable. The Apex Court in *Balbir Kaur v. Steel Authority of India* (2000 (6) SCC 493) has held that the grant of benefits from the family benefit scheme cannot be a substitute for appointment under the dying-in-harness scheme. In the said decision, it was held:

"But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero in the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

Again, in the concluding portion of the judgment, the Apex Court held: .

"We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the



greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

11. The Hon'ble High Court of Kerala has also held the same view in the case of **Canara Bank Vs. Priya Jayarajan** [2001 (1) KLT 71] wherein it has been held as under :-

We may in this connection also refer to some of the provisions in the scheme which would indicate that the granting of terminal benefits to the dependant of a deceased employee is of not much consequence in considering the application for compassionate appointment. Clause 3.2 of the scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if the terminal benefit is given, if the applicant is a minor, the Bank would keep the appointment open till the minor attains the age of majority. So also in the case of a member of the family sponsored for appointment desires to wait till he/she attains certain educational qualifications, his/her candidature would be considered provided the date so stipulated is within four years from the date of death of the employee. This would also indicate that the granting of terminal-benefits is of no consequence. Further we may also notice clause 10 which deals with special provisions. It is stated that if the applicant is employed elsewhere, and if the job in the Bank is going to help him/her financially, such requests may also be entertained as per norms. Further, if any member of the family is already employed with the Bank, the Bank may consider giving employment to another member of the family depending on the merits of individual. Conjoint reading of all those clauses would show that granting of terminal benefit is of no consequence in the matter of considering the claim for compassionate appointment. In view of the above mentioned circumstance we have no hesitation to hold that the petitioner is legally entitled to have his application considered for compassionate appointment in the service of the Canara Bank.



12. I have heard counsel for the applicant as well as respondents. It is seen that the applicant's father died on 12.10.2003 and the applicant made the application for compassionate ground appointment way back on 30.1.2004. Admittedly, the respondents placed his case before the CRC only after 3 years. The justification for such delay given by the respondents is that the applicant has not furnished the documents in time. In this regard, it is very relevant to note the object of the scheme for compassionate ground appointment formulated by the Government. It is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. Because of the very nature of the scheme, the Government ordered that a welfare officer in each Ministry/Department should meet the members of the family of the deceased Government servant immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him. Further, periodic review of cases of compassionate appointments has to be made with a view to reduce delay and to get feedback on the problems faced by Ministries/Departments in the implementation of the scheme of compassionate appointments. It was also ordered that wherever the cases are screened by a Board/Committee of officers, the frequency of the meeting of such Board/Committee should be increased to once a month so that the applications do not remain



unattended for long. In this case, the applicant's father was a Postman holding a very low paid position in the department. Applicant's mother is an illiterate lady. The respondents have not even deputed a clerk to assist the family of the deceased Government official for making a proper application for compassionate ground appointment. When the applicant has made the representation on 30.1.2004 for compassionate ground appointment the respondents department was engaging the applicant in continual correspondence rather than meeting the applicant personally and advising him to fulfill the necessary formalities. In the process the applicant has lost the valuable time of three years for consideration of his case. If there were vacancies in the years 2004, 2005 and 2006 the applicant could have very well been accommodated against a suitable post on compassionate ground. When the case of the applicant was finally considered by the CRC on 4.4.2007 it was rejected in view of the assets and liabilities of the family and that the widow of the late official was drawing family pension. On perusal of the record, it is seen that the applicant's assets was only 5 cents of land and a small house built on that. The house was built after taking HBA and at the time of the death of the applicant's father, the HBA was still outstanding and the respondents have deducted the whole outstanding amount from his DCRG and the applicant's family got only the balance amount of Rs.1,21,237. The deceased Government servant has left behind his widow, an unmarried daughter and the applicant who was a student. The family has somehow managed to arrange the marriage of the daughter. Therefore, the reasons given by the CRC for not recommending the case of the applicant that the applicant had sufficient assets and liabilities and the widow was drawing



the family pension are absolutely unjustified and, therefore, not tenable. Those reasons are also contrary to the judgment of the Apex Court in the case of Govind Prakash Verma (supra), Suma Mohan (supra) and the Kerala High Court's judgment in the case of Canara Bank (supra). From the perusal of the minutes of the Circle Relaxation Committee, it is also seen that they have not applied their mind and assessed the assets and liabilities of the applicant at all. The CRC has not, in fact, made any actual assessment of the assets and liabilities of the applicant. The Annexure A-2 income certificate from the Village Officer, showing that applicant's mother has no income other than the family pension that she was getting produced by the applicant was not even considered. The CRC has dealt with the case of the applicant in a most arbitrary and unfair manner. They have only made a bald statement that they have considered the assets and liabilities of the family. On the other hand, the income certificate produced by the applicant from the competent authority shows that the only income of the family is the meager family pension of Rs. 2,025/- being received by the applicant's mother. Moreover, the widow of every deceased Government servant is entitled for family pension and grant of family pension is not a valid reason for rejecting the compassionate ground appointment. Again, the very same CRC has recommended many other person having greater financial assets than the applicant for compassionate ground appointment. Moreover, when the applicant's mother made the appeal to the 2nd respondent, it was disposed at the level of Assistant Director (Recruitment) in the office of the Chief Postmaster General, Kerala Circle, Thiruvananthapuram and informed her that her son's case was already considered by the CRC on 4.4.2007 and did not



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recommend it as no indigent circumstances noticed. When an appeal is made to a competent authority, the officials concerned in Department has the duty to place it before the appropriate authority and not to scuttle it at the lower level. I, therefore, partially allow this OA and quash and set aside the Annexure A-5 letter dated 5.7.2007 and Annexure A-7 letter dated 4.12.2007. I also direct the Director General, Department of Posts, New Delhi to take an independent view of the matter untrammelled by the recommendations of the CRC and take an appropriate decision and communicate the same to the applicant within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 12th day of June 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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