

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 612
XXXXXX

1990

DATE OF DECISION 20.2.1992

Shri K. Krishna Kumar _____ Applicant (s)

M/s C.S. Rajan & T.V. Ajayakumar _____ Advocate for the Applicant (s)

Versus

Union of India (Secretary, Ministry of Defence) and 2 others. _____ Respondent (s)

Shri George Joseph, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant, Shri Krishna Kumar, is the son of late Shri G. Krishnankutty Nair, who while serving as S.G.A. in the office of the U.A.B. S.O. (MES), Cochin, under the second respondent, died in harness on 21.7.1978. Shri Krishnankutty Nair was survived by his widow and four sons including the applicant. The applicant is the youngest of the children. He was a minor at the time of death of Shri Krishnankutty Nair. Immediately on attaining the age

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of majority on 18.2.1987, he made a representation to the second respondent requesting for employment assistance on compassionate grounds. The Controller of Defence Accounts, Bangalore, by his letter dated 24.6.87 at Annexure A3, directed the applicant to appear for a written test on 8.7.87. Being successful in the written test and interview the Controller of Defence Accounts, Bangalore, gave him an offer of appointment dated 9.7.87. On 12.7.87, he was directed to appear for a medical check up. He was later informed that his case had been sent for police verification and that the appointment order would be issued immediately on receipt of the report of police verification. As nothing was heard for a long period, the applicant by letter dated 14.1.1988 at Annexure A4 requested the third respondent to issue the order of appointment. Finding no response to this letter, he submitted a representation on 22.8.88 to the second respondent. As an employment was offered to the applicant, he discontinued his studies and was eagerly waiting for the order of appointment. It was at that time that the applicant received the Annexure A5 letter of the third respondent intimating him that the offer of appointment issued vide letter dated 9.7.87 stood cancelled. Aggrieved by the above communication, the applicant submitted a detailed representation to the Defence Secretary. He made a further representation to the Ministry of Personnel and Public Grievance on 23.10.88 which was forwarded to the Head of the

Department for necessary action. Thereafter, the applicant received a memorandum dated 25.10.88 issued by the second respondent (Annexure A7) stating that his case had been re-examined and that it had been found that he could not be appointed on compassionate grounds as he did not satisfy the eligibility criterion laid down for the same. As the applicant felt that he had satisfied all the eligibility criteria under the scheme for compassionate appointment and was not made known as to which of the criterion was not satisfied in his case, the applicant submitted another representation to the first respondent on 17.11.88. Finding no response to the above representation, he appealed to the Hon'ble Prime Minister. Subsequently, by a letter dated 7.12.88, the first respondent directed the second respondent to re-examine the matter sympathetically and to state the reason why the offer of appointment was cancelled at the last stage. Finding that even in spite of this direction no further action ensued, the applicant submitted a further representation to the second respondent on 8.3.89. To his disappointment, the applicant received the Annexure A10 reply dated 20th March, 1989 issued by the second respondent informing him that the case had already been re-examined by the competent authority and there was no change in the position as had already been intimated to him previously. Aggrieved by the above communication, the

applicant made repeated representations to the Hon'ble Prime Minister. It was in response to the above said representations that the final impugned order at Annexure A11 dated 23.4.90 was issued by the second respondent intimating him that his case for compassionate appointment had already been considered by the competent authority and that there was no change in the position which was intimated to him by the earlier communications. The applicant states that the cancellation of the offer of appointment without assigning any reason is arbitrary, illegal and unjustified. It has also been averred that as the applicant was called for an interview, subjected to written test and physical test and was informed that he would be appointed on being certified medically fit, he had discontinued his studies and, therefore, to cancel the offer of appointment after such a long time has in fact prejudiced his career. The applicant, therefore, prays that the impugned orders and communications at Annexures A5, A7, A10 and A11 may be set aside and the respondents may be directed to appoint him on compassionate grounds forthwith and to allow the application with exemplary costs.

2. The respondents in their reply statement have admitted that an offer of appointment was issued to the applicant under the CDA, Bangalore, on 9.7.87 subject to his being found fit for appointment. The cancellation of the offer of appointment is sought to be justified on the ground that though the lower competent authority had issued

the offer of appointment, the higher competent authority on a reconsideration of the issue, ~~has~~ found that the applicant did not satisfy the eligibility criteria as his brothers are employed and that the family was not in an indigent circumstance. Another justification offered in the statement is that the very fact that the family has been able to pull on for about nine years after the death of the employee shows that the family was not in an indigent circumstance warranting appointment of the applicant on compassionate grounds.

3. A copy of the offer of appointment issued to the applicant by the CDA, Bangalore, on 9.7.87 has been produced by the learned counsel for the respondents at our direction.

4. We have heard the counsel on either side and have carefully gone through the pleadings and documents. The applicant was a minor in 1978 when his father expired. As he was a minor, he could not have applied for employment immediately. On attaining the age of 18 years, the applicant putforward his claim for employment assistance on compassionate grounds. It is a case of the applicant that his mother is sickly and that his three brothers ^{though} ~~employed~~ being married and living separately are of no source of assistance to the family. It was on consideration of all these aspects that the CDA, Bangalore, called the applicant for an interview and test and had given him the offer of appointment. At the time when the offer of appointment was issued to the applicant, the applicant was a student. The offer of appointment

dated 9.7.87 was specific and the only condition attached to it was that he should be found medically fit and subject to the verification of character and antecedents by the police authorities. It is the case of the applicant that depending on the offer of appointment, he discontinued his studies and was awaiting an order of appointment. The first time that he was informed that the CGDA, New Delhi, did not accede to his request for compassionate appointment and that the offer of appointment dated 9.7.87 was cancelled, was on 13.8.1988 by Annexure A5 order. Apart from stating that the CGDA, New Delhi, did not accede to his request for compassionate appointment and that, therefore, the offer of appointment issued on 9.7.87 stood cancelled, no reasons as to why such a decision was taken by the CGDA was stated in the impugned order at Annexure A5. In the subsequent communications at Annexure A7, A10 and A11 also no specific reason was stated as to why an employment under the compassionate appointment scheme was not granted to him apart from stating that he did not satisfy the eligibility criteria, is mentioned. There is no case for the respondents that the CDA, Bangalore, was not the competent authority to take a decision regarding grant of compassionate appointment. On the other hand, it is admitted in the reply statement that the CDA, Bangalore, was the competent authority, though it has been stated that the CGDA, New Delhi, a higher competent authority, has reconsidered the question and decided not to accede to the request. If consultation

with the CGDA, New Delhi, was required as per rules before the CDA, Bangalore, issued an offer of appointment that should have been done before the offer of appointment was issued. Relying on the offer of appointment issued by the such a high authority as CDA, Bangalore, the applicant has discontinued his studies and has been waiting for an order of appointment. On the basis of the direction given by the CDA, Bangalore, the applicant has undertaken a journey to Bangalore, undergone a test and an interview and had submitted all the required testimonials and certificates. In such circumstances, we are of the view that the respondents are barred by principles of promissory estoppel from denying the applicant an appointment on compassionate grounds. In all the communications, Annexures A5, A7, A10 and A11, turning down the request of the applicant for compassionate appointment, there was no mention that the applicant's family was not indigent because of the fact that his brothers were employed. Therefore, the respondents are not entitled to seek to justify the impugned order on that ground which was not taken as a ground in the impugned orders. If an authority is needed for that proposition, it can be had in the decision of the Hon'ble Supreme Court in Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others (AIR 1978 SC 851). The contention of the respondents that the very fact that the family has been able to survive for nine years after the death of the employee is proof of the fact that the family

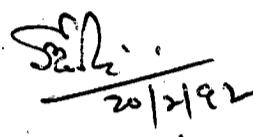
is not in an indigent circumstance warranting compassionate appointment does not stand to reason. The applicant could not have applied for compassionate appointment in 1978 when his father died because he was a minor on that date. The fact that he and his mother did not die of hunger, but just managed to live on cannot be held up as a ground for denying the benefit of compassionate appointment, if the condition of the family is still indigent. The right to life guaranteed under Article 21 of the Constitution of India does not mean simple animal existence, but a life with dignity. If the brothers of the applicant are married and are living separate, then the applicant and his mother cannot look upon them for financial assistance. There is no case for the respondents that the family is possessed of any means other than the meagre family pension. In these circumstances, we are of the view that the respondents are bound to give the applicant an appointment on compassionate grounds as was offered to him by the order dated 9.7.87 of the CDA, Bangalore. It is surprising to note that even after the Government had directed the second respondent by letter dated 7th December, 1988 at Annexure A9 to re-examine the case sympathetically and to intimate the outcome and the reasons for the cancellation of the offer of appointment at the final stage, no such sympathetic consideration was made at that end. We are, therefore, of the view that the applicant is bound to succeed in this application.

5. In the result, we allow the application and direct the respondents to appoint the applicant in a post as offered in the letter of the CDA, Bangalore, dated 9.7.87 within a period of two months from the date of communication of this order on his producing a medical certificate of fitness.

6. There is no order as to costs.


(A.V. HARIDASAN) 20/2/92

JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

20.2.92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A.No.92/92 in

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08.7.1992

DATE OF DECISION

Union of India & others

Applicant (s)

Mr George Joseph

Advocate for the Applicant (s)

Versus

Mr K Krishnakumar

Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The Review Applicants are seeking a review of the order in the Original Application challenging the wisdom of the decision on merits. That is not permissible in a review. If the respondents in the OA are dissatisfied by the decision, the remedy open for them is to file an appeal before the Hon'ble Supreme Court. As there is no ground for a review, the Review Application is dismissed by circulation.


(AV HARIDASAN)
JUDICIAL MEMBER


8.7.92
(SP MUKERJI)
VICE CHAIRMAN

08.7.1992