

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.616/03

Tuesday this the 13th day of April 2004

C O R A M :

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

Pretty Devid,
D/o.late M.N.David George,
Primity Date, K.V.57,
Kalavihar Nagar, Kunnukuzhi P.O.,
Thiruvananthapuram.

Applicant

(By Advocate Mr.Liji J Vadakedom)

Versus

1. Union of India represented by
its Secretary, Department of Space,
Anthareeksha Bhavan, Bangalore.
2. The Controller,
Liquid Propulsion Systems Centre(L.P.S.C),
Department of Space, Government of India,
Valiamala P.O., Thiruvananthapuram-695 547.
3. The Assistant Administrative Officer,
Liquid Propulsion Systems Centre,
Department of Space, Government of India,
Valiamala, Thiruvananthapuram-695 547. Respondents


(By Advocate Mr.C.Rajendran,SCGSC)

This application having been heard on 13th April 2004 the
Tribunal on the same day delivered the following :

O R D E R

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


Late M.N.David George who had worked as Trades man D in
the Office of the 2nd respondent and having put in more than 29
years of service died in harness on 27.5.1998 at the age of 53
years leaving behind his wife and three daughters. The elder two
daughters were given in marriage even while he was alive and the
youngest daughter (unmarried) is seeking compassionate
appointment order on the death of his father. It is averred that
the applicant's mother had applied before the 2nd respondent for
employment assistance to her youngest daughter (i.e. the




applicant) vide Annexure A-1. After complying the required formalities she had made representation to the respondents which was not replied to and therefore she originally filed an O.A. seeking relief to consider her case. When the reply statement was filed by the respondents they submitted that the case has been already considered by the respondents vide Annexure A-9 order and rejected her case. Then the O.A. was amended to incorporate Annexure A-9 to be impugned. Aggrieved by the rejection of the claim of the applicant she has filed this O.A. seeking the following reliefs :

- a. to declare that the applicant is entitled to be given employment on compassionate grounds in the office of respondents
- b. to direct the respondents 2 and 3 to consider Annexure A-3 and provide employment to the applicant on compassionate grounds in any post to which she is eligible
- b(a). call for the records leading to the passing of Annexure A-9 and quash the same so far it relates to the case of the applicant
- c. any further relief or order which this Honourable Tribunal may deem fit and proper to meet the ends of justice.

2. The respondents have filed a detailed reply statement and additional reply statement contending that the claim of the applicant did not stand to the purpose and objects for which the scheme was introduced. It is made only for person who leave his family in penury and without any means of livelihood. The belated representation of the applicant was also bereft of the required essential details and therefore prescribed proforma was asked to be filled. After perusal of the applicant's case by the 3rd respondent and prima-facie found that the applicant's case does not deserve consideration for appointment on compassionate grounds. However the case was reserved for detailed




consideration by the Committee which met on 26.5.2003 and considered all the eleven pending cases including that of the applicant. The Committee did not find the case of the applicant as the one meriting favourable consideration for reasons advanced in the reply statement. As for the loan reported to have been availed by the applicant's father from Lord Krishna Bank it is averred that availing of loan and failure to make prompt repayment etc. are matters extraneous to the issue agitated in the O.A. The deceased was owning a residential house in his name where he was living with his family and was in his possession even at the time of his sad demise. The scheme is to provide immediate assistance in deserving cases by way of employment to the dependent family member of the Government Servant who dies in harness leaving the family without any means of subsistence so as to relieve the family from financial destitution and to get over the penury. The applicant's mother was granted family pension, the present rate of which is Rs.3,875/- pm and also a sum of Rs.2,66,755/- as terminal benefits. The monthly income of the family consisting of two members when the aforesaid amount of terminal benefits of Rs.2,66,775/- if deposited in a bank at 6% interest works out to Rs.1,330/- pm plus the family pension of Rs.3,875/- aggregating to Rs.5,208/- pm which is more or less equal to the income of a serving Office Clerk holding a basic pay at the minimum of the scale of pay of Rs.3050-75-3950-80-4590. The family pension alone is much more than the take home pay of the father of the applicant as born out by Annexure R2 chart. There is no statutory application for the respondents to give such an employment. The compassionate appointment in deserving cases can be made only up to a maximum of 5% of vacancies falling under direct recruitment in Group C or D post and the maximum




period a candidate's name can be kept under consideration for offering compassionate appointment will be three years as per the Annexure R3 OM. Even otherwise if the applicant is found eligible for consideration on compassionate grounds there is no vacancies in Group D posts.

3. The applicant has filed a rejoinder contending that the assessment made by the Committee is patently irregular and not in tune with the guidelines prescribed in the scheme. All the documents as required by the respondents reached their table during October 1999 and even after a lapse of four years the respondents have not taken any decision and now the respondents cannot find fault with the delayed application. No communication rejecting the claim of the applicant was received by the applicant till date. The contention that the applicant's financial crisis is artificial is absolutely incorrect. The terminal benefits and other retirement benefits cannot be taken as a criterion in denying the claim of the applicant. The issue is whether the family has sustained itself or not for which the enquiry has to be conducted. For the above reasons it is contended that it is a fit case where compassionate appointment should have been given to the applicant.

4. I have heard Shri.Liji J Vadakedom, learned counsel of the applicant and Mr.C.Rajendran,SCGSC for the respondents. Annexure R-1 is the scheme granting compassionate appointment which was revised on 9.10.1998. It is an admitted fact that the applicant is a dependent of the deceased family and she is within the age limit. The very purpose and object of the scheme is to enable the family to tide over the sudden crisis and to relieve the

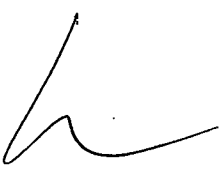


family of the deceased from financial destitution and to help it get over the emergency. The scheme is a benevolent one but certain restrictions have been imposed such as ceiling of 5% vacancies etc. in granting such compassionate appointment. The reasons stated in the rejection of the applicant in granting compassionate appointment is that the family has received terminal benefits of Rs.2,26,755 and the total liabilities are "nil" and therefore net balance in hand has been taken as the entire terminal benefits that has been received by the family. Had this amount been put in a Bank in fixed deposit the applicant's family would have received 6% interest which will come to Rs.1330/- and adding the pensionary benefits the family could have derived a total sum of Rs.5208/- which is sufficient to maintain the same. The scheme also envisages that the liabilities of the family has to be considered in assessing the income of the family. Admittedly when the assessment was made by the Committee the liabilities taken is "nil" whereas specific averment in the O.A. is that the entire amount that was received towards terminal benefits was utilised for the repayment of the debt of the deceased person which was born out by Annexure A-4 and Annexure A-5. It was also submitted by the applicant that the family is having other liabilities as well and the only source to get over the financial stringency is to get an employment to the applicant. The learned counsel for the respondents has taken me to a decision in the case of Umesh Kumar Nagpal Vs. State of Haryana and others [JT 1994 (3) S.C. 525] and contended that the scheme of compassionate appointment is not statutorily enforceable and Supreme court has held that it is legally impermissible to claim it as a matter of course. The learned counsel of the applicant, on the other hand, submitted




while canvassing the legal position a decision reported in 2003(1) KLT SN 23 Sunil Kumar Vs. Union of India and submitted that receipt of terminal benefits by itself cannot be reason to deny appointment on compassionate grounds. The Supreme Court in its judgement in the case of Auditor General of India and others Vs. G.Ananta Rajeswara Rao [(1994) 1 SCC 192] has held that appointment on grounds of descent clearly violates Article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government Servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance, in the event there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable. In an another decision the Apex Court in the case of Life Insurance Corporation of India Vs. Mrs.Asha Ramchandran Ambekar and others [JT 1994 (2) S.C. 183] held that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

5. Having due regard to the above legal position that has been laid down by the Apex Court when this Court evaluated the assessment made by the Committee in rejecting the application of the applicant one of the aspect taken by them towards liabilities is "nil" whereas the applicant is able to show atleast some evidence that to the repayment of loans to a financial institution incurred by the deceased as liability. Receipt of the terminal benefits is not the sole criteria but the liability also to be considered in deciding such claims. The Hon'ble High



Court of Kerala in its decision in Sunil Kumar K.G. Vs. Union of India reported in I.L.R. 2003 (2) Kerala, made it clear that "there cannot be a hard and fast rule in the matter of appointment on compassionate basis. Each case has to be decided on its own fact. However, the basic guiding factor is the condition of the family. It can happen that despite the death of the breadwinner, the family may be in good position to sustain itself. In another case, even after the collection of terminal benefits, the family may be under ~~A~~ debt. Thus, the mere fact that a family has received terminal benefits, cannot, by itself, be a reason to deny appointment on compassionate basis. Equally, even in a case where the family has not got sufficient amount by way of retiral benefits, the prayer for the grant of appointment on compassionate basis can be rejected if it is found that the family is in a position to sustain itself." Therefore what is important in considering in granting the relief is the actual financial position of the family. The fact that the applicant's family has received terminal benefits and which according to the applicant has been spent for repayment of the debt will show that the family is not in a good financial position. This aspect has not been considered by the competent committee while deciding the case of the applicant. The assessment that Rs.1333/- would have been accrued on interest is only hypothetical which cannot be taken for granted.

6. In the circumstances, I am of the view that a proper assessment with reference to the liabilities of the applicant has not been evaluated by the Committee and Annexure A-9 as far as the applicant is concerned is at fault. In view of the legal position discussed above, I am of the view that the applicant's



case requires reconsideration by the competent authority. Therefore I set aside Annexure A-9 to the extent that affects the applicant and direct the 2nd respondent to consider the applicant's case afresh and grant the benefits to the applicant if she is otherwise eligible. This exercise shall be done within a time frame of four months from date of receipt of a copy of this order. The applicant is directed to send a copy of the O.A. order and other documents, if any, forthwith to the 3rd respondent so that further delay can be avoided. No order as to costs.

(Dated the 13th day of April 2004)

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line extending to the right.

K.V.SACHIDANANDAN
JUDICIAL MEMBER

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