

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 8/20002

Tuesday this the 5th day of November, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Anil Kumar
Anil Nivas
Thondiyil, Peravoor
Kannur District.

Applicant

(By advocate Mr.K.B.Dayal)

Versus

1. The Union of India represented by
The Secretary to Government
Ministry of Communication
Department of Posts
New Delhi.
2. The Director General
Department of Posts
New Delhi.
3. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
4. The Superintendent of Post Offices
Thalassery Division
Thalassery.

Respondents.

(By advocate Mr.N.M.James, ACGSC)

The application having been heard on 5th November, 2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant in this Original Application is approaching this Tribunal for the third time. His father was a postman under the respondents, who retired from service on invalidation on 24.5.97. As he was affected with ophthalmic disease and had undergone eye operation, his eye sight was diminishing day by day and as he was permanently incapacitated for further service, on the basis of said disability he was retired from the service on 24.5.97. After the retirement of the applicant's father, the applicant



made an application dated 25.6.97 for appointment on compassionate ground. His father also made an application for appointment of his son. When the said representations were rejected by the 4th respondent by order dated 10.8.98, applicant filed OA No.1146/99 before this Tribunal, which was disposed of by this Tribunal by A-1 order dated 11.8.2000. Pursuant to the directions of this Tribunal, 4th respondent passed an order dated 10.11.2000 again rejecting the claim of the applicant for appointment on compassionate ground. Applicant filed OA No.1305/2000 which was disposed of by this Tribunal by A-2 order dated 4.1.2001. Pursuant to the directions of this Tribunal, the applicant submitted a representation to the Secretary to Government - the first respondent herein - on 22.1.01. The said representation was disposed of by A-3 order dated 10.4.2001. Applicant again submitted A-7 representation dated 18.6.2001 to the first respondent when he did not get any communication to A-3. He did not get any reply. Aggrieved by not getting any reply or any offer of appointment pursuant to A-7 representation, he filed this Original Application seeking the following reliefs:

- (i) To issue appropriate direction or order to the respondents to give an appointment to the applicant on compassionate ground under the fourth respondent or under any department of the Union of India with all monetary benefits with effect from 25.6.97 the date on which the application was made on the basis of A-4 & A-5.
- (ii) To issue any other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of this case.
- (iii) To award costs of the original application especially the respondents are dragging the applicant through litigation and attempting to deny his legitimate claim circumventing the orders of this Tribunal raising flimsy and baseless grounds.



2. According to the applicant, prior to the issue of A-3, he received A-4 & A-5 communications dated 15.2.2001. His case is that by A-4 & A-5 the respondents sought his willingness to accept employment in any other department under the first respondent, to which he submitted his A-6 willingness dated 16.2.2001. Applicant waited for a long time and when no communication was received, he submitted A-7 representation dated 18.6.2001. Aggrieved by the inaction on the part of the respondents, the applicant filed this OA seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. They did not dispute the factual aspects regarding the applicant's father and the efforts made by the applicant in connection with his appointment on compassionate grounds. According to them, the applicant could not be accommodated in the Department of Posts as there was no vacancy available in the department within the stipulated ceiling contained in R-1 OM dated 9.10.98 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension. Further it was submitted that A-3 & A-4 did not give any right to the applicant to be appointed on compassionate grounds. According to them, owing to the ceiling of 5% laid down in the O.M.dated 9.10.98, the respondents could fill up only 5% of the vacancies to be filled up by direct recruitment, on compassionate grounds and in view of the above ceiling, the respondents could offer appointment on compassionate grounds in most deserving cases only and as the applicant did not come in the category of most deserving cases, he could not be offered appointment.

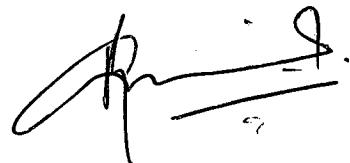
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4. Applicant filed rejoinder.

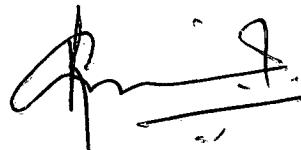
5. Heard the learned counsel for the parties. Learned counsel for the applicant took me through the factual aspects as contained in the OA. He submitted that when the respondents issued A-4 & A-5, the same would mean that the applicant had been considered eligible for appointment on compassionate ground and after that not giving the job was illegal. He submitted that the applicant approached this Tribunal since the respondents did not take any action even 10 months after the issue of A-3. He relied on the judgement of the Hon'ble Supreme Court in Balbir Kaur and another Vs. Steel Authority of India and others (2000) 6 SCC 493 in support of the reliefs sought for by the applicant. Learned counsel for the respondents reiterated the pleas made in the reply statement. He submitted that the applicant's name had been circulated to other departments and it was for the other departments to offer a job to the applicant as and when a vacancy arose in any of those departments.

6. I have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. I find that the main ground on which the applicant is seeking the relief in this OA is on the basis of A-1 order of this Tribunal in OA 1146/99 and A-4 & A-5 communications issued by the respondents. On going through A-1 order of this Tribunal I find that this Tribunal had set aside and quashed A-6 communication dated 11.8.98 in that OA issued by the 4th respondent rejecting the request of the applicant for appointment

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on compassionate ground. This Tribunal had directed the respondents to consider the claim of the applicant for employment assistance on compassionate grounds afresh and give him an appropriate reply within a period of three months from the date of receipt of the copy of that order. Pursuant to the said directions, according to the averments of the applicant, he has received a reply from the 4th respondent dated 10.11.2000. What I find is that even though the applicant challenged the said order dated 10.11.2000 in OA 1305/2000, he was satisfied with a direction from this Tribunal permitting him to submit a representation to the first respondent and with a direction to the first respondent to consider the said representation and give him a reply. On a perusal of A-4, A-5, and A-3, I find that A-4 & A-5 had been issued to the applicant to find out his willingness for a job under other Ministries/Departments. The applicant expressed his willingness to accept employment in any Department/Ministry of the Government of India by his letter dated 16.2.2001 (A-6). I find that it was pursuant to the said willingness expressed by him that A-3 had been issued. Under such circumstances, I am of the considered view that A-4 & A-5 as such do not give the applicant any right to get any job. But at the same time I hold that a duty is cast on the first respondent, when he has issued A-3 letter to refer the case of the applicant to other departments for consideration for appointment on compassionate grounds subject to availability of vacancies to follow up the matter and to advise the applicant of the result of such follow up action.

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8. On going through the OA and the connected papers, I find that it is because the applicant had not received any such consideration at the hands of the first respondent that he filed this OA. So I am of the view that the applicant's case in regard to employment in other Departments/Ministries is required to be followed up by the first respondent and the first respondent is duty bound to advise the applicant on the result of such consideration by other Departments/Ministries.

9. Even though the respondents had averred in the reply statement that there were no vacancies against 5% quota fixed by the Government in its scheme, no material has been placed before me to show that the actual position is so; but then the applicant has not commented anything in his pleadings in this regard. So I am not going into the said matter further. However, learned counsel for the respondents submitted that there were practical difficulties for the first respondent to find out vacancies in other departments and then advise the applicant. I hold that this has no force. When the Government of India represented by the first respondent had found the applicant eligible for appointment on compassionate grounds, and it was only because of non-availability of vacancy within the 5% quota fixed in the scheme of things in the Postal Department that he could not be appointed in the department itself it is incumbent upon the Government to locate a vacancy and appoint him in any department. Otherwise the objective with which the Scheme had been framed and A-3 letter had been issued, will get defeated. When such is the case, I hold that the first respondent has a duty to find out



after taking such follow up action as required and intimate the applicant about the result of such consideration by other other departments. In this case the applicant's representation dated 18.6.01 still remains unanswered.

10. As regards the contention of the applicant's counsel and the reliance placed by him on Balbir Kaur's case, after going through the said judgement I am of the considered view that in the facts and circumstances of the case, the ratio of the judgement in that case will have no applicability. At the same time, the Hon'ble Supreme Court observed that depending on the situation obtaining in each case, the endeavour of the law court would be to administer justice having due regard to it. The factual position obtaining in this OA is that the applicant when his claim for appointment on compassionate ground was rejected approached this Tribunal and this Tribunal found that the order issued by the concerned authority was not legal and set aside the same and directed the authorities to consider his case again. The applicant not satisfied with the fresh order passed by the department again approached this Tribunal but the said OA was disposed of with a direction to the first respondent to consider any representation to be submitted by the applicant. The first respondent had overruled the earlier order passed by the department and decided that the applicant's case is required to be referred to other Departments for appointment on compassionate grounds. When such a decision has been taken by the first respondent, the first respondent is expected to take follow up action until the matter reaches its logical conclusion.

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11. Keeping all the above in view, I am of the view that this OA can be disposed of with a direction to the first respondent to consider A-7 representation of the applicant in which he had requested for the result of his consideration by other Departments/Ministries regarding appointment on compassionate ground, take appropriate follow up action and give an appropriate reply to him within a period of three months from the date of receipt of a copy of this order. I do so accordingly.

12. OA stands disposed of as above, leaving the parties to bear their respective costs.

Dated 5th November, 2002.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the order in OA No.1146/1999 dated 11.8.2000 of this Hon'ble Tribunal.
2. A-2: True copy of the order in OA No.1305/2000 dated 4.1.2001 of this Hon'ble Tribunal.
3. A-3: True copy of the order by No.66-4/2001-APB-I dated 10.4.2001 issued by the first respondent.
4. A-4: True copy of the letter No.B2/Postman/KS dated 15.2.2001 issued by 4th respondent.
5. A-5: True copy of the telegram dated 15.2.2001 issued by the 3rd respondent.
6. A-6: True copy of the representation submitted before the 3rd respondent dated 16.2.2001.
7. A-7: True copy of the representation submitted before the 1st respondent dated 18.6.2001.

Respondents' Annexure:

1. R-1: True copy of the Office Memorandum No.14014/6/94-Estt(D) dated 9.10.98 of the Department of Personnel, Public Grievances and Pension.

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12.11.02