

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 78/2002

Friday this the 7th day of June, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.O.Sushama Chandran
C/o Appukuttan Nair
Thadathiparambil House
Thuthiyoor, Kakkanad
Kochi.

Applicant

(By advocate Mr.S.M.Prasanth)

Versus

1. Union of India rep. by
Secretary
Ministry of Defence
New Delhi.
2. The Chief of Naval Staff
Naval Headquarters
New Delhi.
3. The Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command
Kochi.

Respondents

(By advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 7th June, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant whose husband was an employee of Central Transport Workshop at Naval Base, Cochin under the southern Naval Command has filed this Original Application aggrieved by A-12 order dated 25.6.01 by which her application for employment assistance for her son under the compassionate appointment scheme had been rejected and A-14 order dated 31.10.2001 by which her A-13 appeal had been rejected. She sought the following reliefs:

- i) To quash Annexure A-12 and A-14.
- ii) To declare that the denial of employment assistance on compassionate grounds to applicant's family is violative of Articles 14, 16 and 21 of the Constitution.



- iii) To direct the 3rd respondent to offer a suitable appointment to a post to the applicant's son on employment assistance scheme on compassionate grounds.
- iv) To grant reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

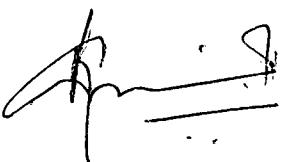
2. According to the averments of the applicant in the OA, her husband who was an employee of Central Transport Workshop at Naval Base, Cochin was found missing from 6.12.93 while working as Fitter Auto, HSI. Her husband's income was the sole means of livelihood of the family and the unfortunate event deprived the family of the sole breadwinner and pushed them into grief and penury. The family had no alternate source of income. Her family was forced to vacate the quarter after the incident and was under severe financial crisis. Even though she filed A-1 representation requesting for retaining the quarter, the same was rejected by A-2 and she had to pay the rent at market rates from August 1994 till she vacated the quarter in February 1996. By A-3 representation she requested for appointment of her son on compassionate grounds. She received A-4 reply from 3rd respondent saying that as per the Government order, the ward of a missing Government servant could not be considered for appointment on compassionate grounds before the expiry of seven years and the applicant's request could not be considered then. By A-5 she was sanctioned pension and other benefits. The gratuity received was adjusted towards discharging other liabilities. The amount of pension initially sanctioned was Rs.450/- out of which the applicant received only Rs.300/- after the deduction towards recovery. Applicant received A-6 communication dated 21.4.98 on behalf of the third respondent asking her to submit an application for employment assistance with all necessary documents. By A-8 communication dated 22.4.99

A handwritten signature in black ink, appearing to be in cursive script, is located at the bottom of the page. The signature is somewhat stylized and includes a small 'S' at the end.

she was advised that processing of her application would take considerable time and the result would be intimated later in due course. The authorities concerned made some enquiries through the District Collector, Kannur. A-9 report was filed by the Thahasildar, Kannur. Applicant also gave the clarification sought for by the respondents by A-10 dated 28.9.2000. By A-12 communication dated 25.6.01, third respondent rejected the claim of the applicant for employment assistance. She filed an appeal to the second respondent. The said appeal was rejected by A-14 communication dated 31.10.01. Aggrieved she has filed this Original Application seeking the above reliefs. She advanced a number of grounds in support of the reliefs sought for by her.

3. Respondents filed reply statement resisting the claim of the applicant. They justified the rejection of the application on the basis of the Government of India's orders contained in R-5 communication dated 12.2.01. It was also submitted that after due circumspection and consideration of the case in the light of the guidelines and judgements of the Hon'ble Supreme Court and after a balanced and objective assessment of the totality of the case the competent authority rejected the application by A-12.

4. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the facts as narrated in the OA and submitted that when the respondents had themselves delayed consideration of the applicant's request for appointment of her son on compassionate ground for considerable time and later on the lapse of time had been used by the respondents to reject her request, such a reason would not be legally

A handwritten signature in black ink, appearing to be a stylized 'A' or 'S' followed by a horizontal line.

sustainable. He submitted that the respondents could not be allowed to raise the reason that considerable time had elapsed and the help needed to tide over the immediate crisis was lacking in the case. now as the delay and lapse of time had occurred due to the respondents' own mistake. He drew our attention to A-4 in this context. He submitted that the respondents themselves had stated in A-4 that the applicant's request for appointment of compassionate grounds could be considered only after expiry of 7 years. Again by A-8 she had been advised that the processing of her application would take considerable time. He submitted that the respondents could not turn around and base the order of rejection on the ground of passage of time. As regards the other reasons, he submitted that the disbursal of terminal benefits by itself could not be a reason for denial of appointment on compassionate grounds. He cited the ratio of the judgement of the Hon'ble Supreme Court in Balbir Kaur and another Vs. Steel Authority of India Ltd. & others [(2000) 6 SCC 493] and the ratio of the judgement of the Hon'ble High Court of Kerala in Priya Jayarajan Vs. Canara Bank [Case No.49 in 2000 KLT 46]. Learned counsel for the respondents took us through the details in the reply statement. He specifically referred to R-5 dated 12.2.2001 issued by the Ministry of Defence and submitted that as per the said communication the financial destitution/penurious condition of the family was to be decided on the basis of the Planning Commission's income criteria stated therein and the family had apart from the terminal benefits and the family pension 6 cents of land and a house. He also submitted another reason was that that the employment assistance had been sought after considerable lapse of time.

A handwritten signature in black ink, appearing to be in cursive script, is located at the bottom of the page. The signature is somewhat stylized and includes a few horizontal lines and a small circle.

5. We 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.

6. We find from A-12 order that the said order had been issued by the third respondent and DoPT's instructions and Supreme Court rulings regarding the scheme for compassionate appointment had been sent as an enclosure to the same. In A-12 communication the following have been stated:

"x x x x x x x

And whereas the proposal for employment assistance to your son Shri KO Sujith Kumar was examined carefully by the competent authority who have observed the following:

(a) You have received Rs.33,222/- as terminal benefits of your missing husband Shri R.Chandran, Ex.Fitter (Auto) and at present you are in receipt of family pension of Rs. 1938/- p.m. The size of your family is small, there is no school going children and the essential needs of the family could be met with the family pension.

(b) You have preferred compassionate appointment for your youngest son rather than applying for yourself or your elder daughter.

(c) The family owns 6 cents of land worth Rs.36,000 and a house worth Rs.1,00,000/-.

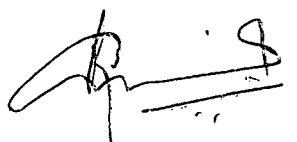
(d) The need for immediate assistance by way of compassionate appointment to tide over the emergency crisis is lacking in this case as the missing of the government servant occurred on 06 Dec 93 i.e. seven years ago.

Now therefore after due circumspection and consideration of the circumstances of the case in the light of the enclosed guidelines of DOPT and various judgements of the Hon'ble Supreme Court and after a balanced and objective assessment of the totality of the circumstances of the case, the competent authority have rejected the proposal for providing compassionate appointment to your son KO Sujith Kumar."

7. The above would indicate that it is on the basis of the DoPT guidelines and the judgements of the Hon'ble Supreme Court



that the applicant's request for appointment on compassionate grounds had been rejected. According to the applicant, the rejection had been without taking into account the fact of she and her family having had to pay market rent for staying in the quarter, that they could get the terminal benefits only after vacating the quarter and discharge of liabilities of paying the market rate of rent, repayment of loan for construction of house taken by her husband and other relevant factors had not been considered. One of the main reasons for rejecting the application was the passage of time. Learned counsel for the applicant also submitted that the recommendations of the third respondent had been sent to the second respondent by R-3 communication dated 9.6.2000 and the applicant was even at that time refunding the loan taken by her husband from her pension and which ended only in January 2001. Had the consideration of her request for appointment on compassionate ground been done within the time, the applicant would have come within the monetary limit laid down by the Planning Commission and that she would have been adjudged as a deserving case for appointment on compassionate grounds. According to him, the case was delayed at the respondents' hand and this should not stand in the way of the applicant getting the case of appointment on compassionate grounds being rejected on that count. We have examined the rival contentions and the reasons given by the respondents in A-12 in the face of the guidelines given by DoPT which is annexed to A-12. The first observation is the receipt of Rs.33,222/- as terminal benefits and the monthly pension of Rs.1938/-. The DoPT guidelines gives the following criteria for considering requests for appointment on compassionate grounds:



"While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc."

Taking all these factors into account the third respondent had forwarded the case by R3 communication dated 9.6.2000 recommending the case to the second respondent. The guidelines available to the second and third respondent are the same guidelines. How could it be that the third respondent recommends a case and the second respondent rejects the same, with no change in the circumstances. In this context, the submission made by the learned counsel for the applicant was that had the consideration been done prior to January 2001, perhaps the third respondent could have approved the case as at that time the repayment of the loan taken by her husband was still in progress and the pension she was getting would have been within the criteria adopted by the respondents. But we note that in A-12 there is no reference to R-5 Ministry of Defence communication relied on by the respondents. It is now well accepted that an impugned order can neither be strengthened nor defeated by averments in an affidavit. So R-5 cannot come to the support of the respondents in justifying their action of rejecting the applicant's request on the ground of being above poverty line fixed by the Planning Commission.

8. The second ground advanced for the rejection is that the applicant has preferred compassionate appointment of her youngest son rather than applying for the applicant herself or for her elder daughter. We are unable to understand as to how this could

A handwritten signature in black ink, appearing to read "A. S." or a similar initials.

be a reason for rejecting the request of the applicant for appointment on compassionate grounds. Nowhere in the guidelines it is stated that appointment on compassionate ground only should be sought for any particular member. In fact what we observe is that in her first communication A-3 wherein for the first time on 29.12.95 she had requested for appointment on compassionate grounds, she had sought for appointment for any one of her children and in Indian social conditions if a mother prefers a son rather than a daughter for employment, we do not find any reason to find fault with the same. In any case in the absence of any instructions to the contrary in the DoPT guidelines, this could not be advanced as a reason for rejecting the request of the applicant.

9. The next observation made in A-12 is regarding owning of 6 cents of land worth Rs.36,000 and a house worth Rs.1,00,000/-. Owning 6 cents of land or owning a house worth Rs. 1,00,000 by itself cannot be a reason for rejecting the request for appointment on compassionate ground as per the guidelines. What is relevant is to find out what is the monthly income or financial condition for sustenance. In the absence of any such details it would appear that what is mentioned of this is not relevant to decide the issue.

10. The next ground is that the missing of the government servant had occurred on 6.12.93, i.e. more than 7 years ago. By A4 communication, the department itself had advised the applicant that her request could not be considered before the expiry of 7 years. When the Government of India modified the rules and

A handwritten signature consisting of stylized initials and a surname, written in black ink.

decided to consider the case for appointment on compassionate grounds, by R-2 OM dated 31.10.97, the respondents on their own advised her to submit an application for employment on compassionate ground vide A-6 communication dated 2.4.98. A-12 is the culmination of the correspondence started from A-6. When such is the case, we are unable to accept this as a ground for rejection of the applicant's request for appointment on compassionate ground.

11. Applicant had explained all the above reasons in her A-13 representation dated 11.7.01. It is seen that this representation is addressed to the Chief of Naval Staff the second respondent. But from R-3 and the submissions of the respondents in the reply statement, we find that the third respondent had referred the matter to the second respondent on 9.2.2000 and perhaps when the decision from the second respondent had been received the same had been communicated by A-12 by the third respondent. In such situation the question arises as to who had reviewed the decision A-12 by A-14 communication. In the reply statement, this has not been made clear. In any case as per the facts presented before us, this a case where a government employee is suddenly found missing in 1993, the family seeks employment assistance in 1995, at that time the said request is turned down and she is advised that she has to wait for 7 years from 1993. In 1998 she is advised that she may submit an application with all the details for appointment on compassionate ground and after 3 years in 2001 in spite of the local office recommending it, the same being rejected allegedly on the basis of the guidelines of the DoPT. We find force in the grounds

A handwritten signature in black ink, appearing to be a stylized 'A' and 'S'.

advanced by the learned counsel for the applicant that the rejection is without proper application of mind as analyzed by us in the foregoing paragraphs. Hon'ble High Court of Kerala in the case of Priya Jayarajan Vs. Canara Bank (Case No.49 2000 KLT 46) held as under:

"Service-Dying-in-harness-Object of the scheme is to overcome the immediate financial difficulties on account of the sudden stoppage of the main source of income-Since the scheme of the Canara Bank do not contain any income or financial limits, dependent is entitled to get employment.

It is true that an amount of Rs.8,17,657.04 had been given to the petitioner and two children, as terminal benefits due to the deceased. Out of that they got an amount of Rs. 4 lakhs after deducting the liability, according to the petitioner. Even admittedly by the respondents there was a liability of more than 3 lakhs. Therefore the amount now available to the petitioner and two children cannot be said to be sufficient to make the petitioner financially found. Apart from two children, the deceased had aged parents and a mentally retarded brother as well. The scheme also as contained in Exts.R1(a) and (b) did not contain any provision regarding any income limit or financial limit. At any rate Ext.R1(a) provides that even an applicant having an employment can be given employment in the bank under the scheme, if it still improve the financial situation and that if one among the members of the family of the deceased is having an employment, another can be considered for employment assistance. It is true that the object of Ext.R1 (b) scheme is to overcome the immediate financial difficulties on account of the sudden stoppage of the main source of income. the main source of income was the salary drawn by the deceased. That has been stopped."

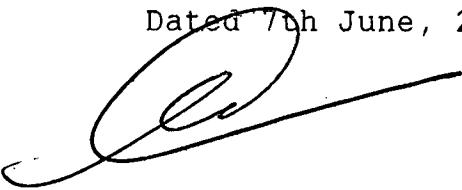
12. The guidelines of DoPT attached to A-12 is similar to the Bank rules referred in the above ruling. In this case the applicant has received, according to the respondents' own admission Rs.33,222 as terminal benefits and Rs.1938 as family pension per month. On this score also this case needs a fresh look.

A handwritten signature in black ink, appearing to read 'J. S.' or 'J. S. S.' with a stylized flourish.

13. In the light of the above and in the particular facts and circumstances of the case we are of the view that in the interest of justice, the case of the applicant in this case requires to be reconsidered by the respondents. Accordingly, we set aside and quash A-12 and A-14. We direct the first respondent - Secretary, Ministry of Defence, to consider the request of the applicant for appointment on compassionate ground afresh taking into account the factual position as obtaining in this case in accordance with the rules and guidelines laid down for the purpose by the Department of Personnel & Training. The above exercise shall be completed and the result communicated to the applicant by a detailed order within four months from the date of receipt of a copy of this order.

14. The OA stands disposed of as above with no order as to costs.

Dated 7th June, 2002.


K.V. SACHIDANANDAN
JUDICIAL MEMBER

aa.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

- 12 -
A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of letter submitted by the applicant to the Executive Engineer-cum-Estate Manager, Central Public Works Department dtd. 10.11.95.
2. A-2: True copy of the order rejecting the request to reconsider the fixation of rent on higher rate of the 3rd respondent dated 5.2.97.
3. A-3: True copy of letter requesting the appointment on compassionate grounds submitted by the applicant to the 3rd respondent dated 29.12.95.
4. A-4: True copy of communication received by the applicant from the 3rd respondent's office.
5. A-5: True copy of order No.CPT/0302/SC/1113/96/D (Civ.II) dtd.20.6.96 of the 1st respondent.
6. A-6: True copy of communication dated 2.4.98 of the 3rd respondent to the applicant.
7. A-7: True copy of reminder sent by the applicant to the 3rd respondent dated 12.3.99.
8. A-8: True copy of letter dated 22.4.99 of the 3rd respondent to the applicant.
9. A-9: True copy of report filed by the Tahsildar, Kannur recommending employment assistance to the District Collector, Kannur dt. 30.5.2000.
10. A-10: True copy of explanation by the letter dated 28.9.2000 submitted by the applicant before the 3rd respondent.
11. A-11: True copy of the recovery certificate issued by the State Bank of Travancore.
12. A-12: True copy of order No.CS 2809/61 dated 25.6.2001 of the 3rd respondent.
13. A-13: True copy of appeal preferred by the applicant before the 2nd respondent dated 11.7.2001.
14. A-14: True copy of letter No.CP(SC)/6671/KOS of the 2nd respondent to the applicant.

Respondents' Annexures:

1. R-1: True copy of Govt. of India, DOPT letter D.O.No.188/94/Estt(D) dated 18th January, 1994.
2. R-2: True copy of Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) OM No.14014/8/97-Estt(D) dated 31st October, 1997.
3. R-3: True copy of Headquarters, Southern Naval Command, Kochi letter CS 2809/61 dated 9th June, 2000.
4. R-4: True copy of pages of Pass Book issued by SBT, Vytila Branch.
5. R-5: True copy of Ministry of Defence ID No.19(1)/2000(Lab) dated 12th February, 2001.
6. R-6: True copy of Minsitry of Personnel, Public Grievances & Pensions (Department of Personnel L& Training) OM No.14014/22/94-Estt(D) dated 28th November, 1994.
7. R-7: True copy of an extract of Govt. of India DOP&T instructions & Hon'ble Supreme Court Ruling regarding the Scheme of Compassionate Appointment.
8. R-8: True copy of an extract of Govt. of India DOP&T OM No.14014/6/94-Estt(D) dated 9th October, 1998.
9. R-9: True copy of an extract of Govt. of India DOP&T OM No.14014/6/94-Estt(D) dated 9th October, 1998.
