

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~KAXXKX~~

90 1990

DATE OF DECISION 28.1.1991

NM Jabbar Applicant (s)

M/s KS Madhusoodanan & Advocate for the Applicant (s)
AX Varghese

Versus

GOI, Secy., M/o Defence & Respondent (s)
2 others

Mr. P. Sankarankutty Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan - Administrative Member

and

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

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

(Mr AV Haridasan, Judicial Member)

The applicant, is son of Mr KS Makkar who died in harness on 22.4.1979 when he was serving the Naval Armament Depot at Cochin as a Clerk. As the family was driven to indigent circumstances by the sudden demise of the earning member, the applicant's mother made a representation for providing compassionate appointment to the applicant. As this representation was not considered favourably by the respondents and a negative reply was received, the applicant's mother filed OP No.5320/83 before the Hon'ble High Court of Kerala for a direction to the respondents to provide the applicant with appointment on compassionate grounds. The

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Hon'ble High Court by its order dated 20.8.1984 disposed of the application directing the first respondent therein i.e. the Flag Officer Commanding-in-Chief, Head Quarters, Southern Naval Command, Cochin to consider afresh the various representations made by the petitioner therein in the light of the provisions in the order of the Government referred to at Exbt.P11 and Exbt.R1(a) and other Government orders, touching the subject, as expeditiously as possible and within six months from the date of pronouncement of the judgement by the Hon'ble High Court. Pursuant to this direction of the Hon'ble High Court in the above said writ petition the applicant was given an order at Annexure-II dated 14.3.1985 informing the mother of the applicant that her son Mr NM Jabbar i.e. the applicant herein would be considered for appointment as Lower Division Clerk(L.D.C.) as and when vacancy arise(relaxing the rules. Thereafter, the applicant was given casual work as L.D.C. periodically. Eversince 1985 the applicant continues to be a casual employee in the same manner as he was engaged for the first time. The applicant submitted a representation to be forwarded to the Chief of Naval Staff, Naval Headquarters, New Delhi through proper channel. Annexure-IV dated 13.12.1989 is a copy of this representation. The third respondent instead of forwarding this representation communicated to the applicant the impugned order at Annexure-V dated 12.1.1990 stating that the representation has been withheld. In this circumstances, the applicant has filed this application for a direction to the third respondent to forward

the Annexure-A IV representation to the second respondent and a further direction to the second respondent to dispose of the same expeditiously. He has also prayed that it may be declared that the applicant is entitled to be regularised in service w.e.f. 19.3.1985 with all benefits. The applicant had prayed for an interim relief for an expeditious disposal of the Annexure A-IV representation. By our order dated 1.2.1990, we had directed that the Annexure A-IV representation submitted by the applicant should be duly forwarded to the concerned authorities immediately for disposal.

2. The respondents have filed a reply statement. In terms of our direction, the representation at Annexure A-IV has already been forwarded by the third respondent to the second respondent. But we understand that the same has not yet been disposed of. In the reply statement it has been contended that since there are about 104 casual mazdoors awaiting regularisation, among whom, 15 are dependents of persons who died in harness ~~and that therefore~~ the question of regularisation of the applicant cannot be considered out of turn. The contention in the reply statement that there are more than 100 casual labourers awaiting regularisation in service and that the applicant can aspire to have his services regularised only when his turn comes in the seniority list of casual labourers does not appear to be a sound contention. The position of the applicant is different from ^{that of} other persons ^{labourers} in the seniority list of casual ^{labourers}. The applicant has been


provided engagement not as an ordinary casual labourer but on compassionate grounds to save his family from indigent circumstances to which it was driven by the demise of his father who was serving the respondents. In Smt. Sushama Gosain and others V. Union of India & others (AIR 1989 SC, 1976) the Hon'ble Supreme Court has dealt with the expediency of providing the compassionate appointment to the wards of persons who died in harness and has laid down that the fact that no vacancy is available to post the ward of a deceased employee is not ^a reason to deny immediate appointment to such person and that if need be the Government should create a supernumerary post and provide employment for such person in order to save the family from starvation. From the dictum laid down in the above judgement, it is evident what was intended by the Hon'ble Supreme Court was that the ward of deceased person who died in harness should be given a post and not that he should be engaged on a casual basis. So the contention of the respondents that the applicant's turn has not come up in the seniority list of casual labourer and therefore the question of his regularisation for regularisation/cannot be considered at this stage has only to be rejected. But since the applicant has prayed for a direction to the second respondent to dispose of the representation at Annexure A-IV and since pursuant to our order the above representation has already been forwarded to the second respondent, we are convinced that the application can be disposed of by directing the second respondent to dispose of the application within a reasonable time.

3. In the conspectus of facts and circumstances, we dispose of the application, ^{ing} directly the respondent No.2 to consider the Annexure A-IV representation, in accordance with law, on the basis of the instructions on the subject and also in the light of the judgement of the Hon'ble Supreme Court in Smt.Sushama Gossain and others V. Union of India & others and to ^{to the applicant} communicate the decision taken therein within a period of three months from the date of communication of this order.

There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

28/1/91


(NV KRISHNAN)
ADMVE. MEMBER

28-1-1991

trs