

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.91/2003.

Friday this the 26th day of September 2003.

CORAM:

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

Mr.Rajesh V.V.,
S/o Late K.N.Viswanathan,
BH - 1, P&T Quarters,
Thevara, Cochin-13.

Applicant

(By Advocate Shri.CC Padmakumar)

Vs.

1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
2. The Post Master General, Central Region,
Thiruvananthapuram.
3. The Director of Postal Services,
Central Region, Kochi.
4. The Senior Superintendent,
Department of Posts,
Office of the Senior Superintendent,
R.M.S.'EK' Division,
Cochin-11.
5. Union of India represented by the
Ministry of Parliamentary Affairs and
Communication and Information Technology,
New Delhi. Respondents

(By Advocate Shri C.B.Sreekumar, ACGSC)

The application having been heard on 17th September 2003, the Tribunal on 26.9.03 day delivered the following:

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

Late K.N.Viswanathan, who was working as HSG-Sorting Assistant under the 1st respondent, died on 2.3.2001 and his eldest son has made an application for compassionate appointment which was rejected by A-5³ impugned orders dated 7.9.01 and A-7 dated 14.2.2002. Aggrieved by the said orders rejecting his request for appointment on compassionate grounds, the applicant has filed this O.A. seeking the following reliefs:



- i) To quash Annexure A5 and A7 orders issued by 4th and 5th respondents.
- ii) To direct the respondents to appoint the applicant on compassionate appointment.
- iii) To grant interim stay of Annexure A5 and A7 orders issued by 4th and 5th respondents during the pendency of above Original Petition.
- iv) To grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper.

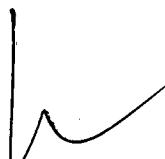
2. The contention of the applicant in the O.A. is that his father was under treatment at various hospitals in Kerala from 1992 onwards. He was also suffering from diabetics and cancer and was under treatment at Regional Cancer Centre, Trivandrum and he died on 2.3.01. He left behind the applicant, two other children and wife. During the death of his father, the applicant was studying for post Graduation and his younger brother was studying for Degree Examination. They have borrowed substantial money for the treatment of their father and was also availed a loan from P&T Society and even till now, the liabilities incurred for the treatment is not cleared. The amount reimbursed was only Rs.50,000/-. The only asset which the family having is a house built at a remote village, Edayazham in Vaikom valued less than Rs.1.25 lakhs including land. The house was constructed by availing loan from HBA & HDFC. The applicant's mother made a request to the Ist respondent for compassionate appointment to the applicant on 27.3.2001 vide A-1. The applicant's family is facing with great financial difficulty. She has produced all the required documents along with A-1 and in the application she narrated all the liabilities of the family. An enquiry was conducted which according to the applicant, was not transparent and they were also not personally heard. The Circle Relaxation Committee met on 28.5.01 and the Committee did not recommend the



applicant's case, which is reflected in A-5. The contention of the applicant was that the decision of the Committee is illegal and against law. The financial liability explained by the applicant was not taken into consideration. The applicant sent a review petition (A6) to the Hon'ble Prime Minister enclosing the A-5 impugned order and another representation to the Minister of Parliamentary Affairs and Communications and Information Technology and in response to that the applicant was informed by A-7 that, he could not be appointed. Therefore, the applicant has filed this O.A. seeking to quash the impugned orders as they are illegal, arbitrary and passed without application of mind.

3. The respondents have filed a detailed reply statement contending that the request of Smt.K.Omana, W/o late KN Viswanathan dated 27.3.2001 for appointing his eldest son Sri VV Rajesh on "compassionate grounds" was considered with due application of mind. The deceased had completed 31 years and 8 months service and in the normal course of service he has to retire by 2005. He left behind his wife and two grown up sons aged 25 and 26 years respectively. A departmental enquiry was conducted to assess whether the family was in indigent circumstances and it revealed that:

1. The family owns 15 cents of land.
2. The family is in possession of a house,
3. The terminal benefits granted amounting to Rs.3,61,111/- and
4. Family is in receipt of a pension at Rs.3250/- per month.



4.. The family had the liabilities totaling Rs.2,59,669/- The above facts were placed before a three member Committee called Circle Relaxation Committee for consideration and recommendation. The Committee after careful examination of the case, found that the family, after the death of late KN Viswanathan was not really in indigent circumstances and hence appointment was not recommended. The department after due consideration, accepted the recommendation and the fact was communicated to the applicant vide impugned order(A5) dated 7.9.01. It is further submitted that the medical claims submitted by the father of the applicant were reimbursed. The financial status of the deceased was considered by the Circle Relaxation Committee with reference to the liabilities. Annexure A-2 was not a notice but it was only a direction given by the 4th respondent to the Field Officers to make enquiries into the A-1 representation and to collect all required details and documents. A copy of the said letter was endorsed to the applicant's mother so as to enable her to keep the records ready. The financial condition and indigent circumstances of the family was assessed based on the documents collected from the family members as well as official records and it was considered by the Circle Relaxation Committee with reference to the guidelines and as per rulings, the compassionate appointment can be provided only to the extent of 5% of vacancies that arises for direct recruitment. As the number of vacancies is very less, most deserving cases based on the indigent circumstances of the family can only be recommended for appointment. Since the vacancies under Direct Recruitment are negligible and number of claimants are comparatively high, only most deserving cases could be



recommended and the Committee considering all such cases for employment on compassionate ground with due application of mind, came to the conclusion that the applicant's case was not the most deserving one within the ambit of guidelines on the subject. They, therefore, prayed that the applicant has no case and the O.A. is to be dismissed.

5. The applicant has filed a rejoinder contending that the family liabilities calculated by the respondents to the tune of Rs.2,59,669/- was not correct but actually it was Rs.2,89,669/and the financial condition and indigent circumstances of the family were also not properly considered by the Circle Relaxation Committee. The applicant's brother is suffering from heart complaint and undergoing treatment and he was advised for complete bed rest for a long period after the discharge from the hospital.

6. On earlier occasion, this Court has directed the respondents to produce the minutes of the Circle Relaxation Committee and to file an affidavit showing the vacancy position from 1.4.2001 to 31.3.2002 as to whether the applicant's case could be considered. In compliance of the directions of the Court a Counsel statement was submitted by ACGSC on 30.6.03 to which the applicant filed an objection on 2.7.2003. Thereafter, the 4th respondent also filed an affidavit explaining the vacancy position during the concerned period and explained the Minutes of the Circle Relaxation Committee Meetings conducted on various dates viz., 19.4.2001, 28.5.2001, 13.9.2001 and 27.11.2001.



7. Shri C.C.Padmakumar, learned counsel appeared for the applicant and Shri C.B.Sreekumar, learned ACGSC appeared for the respondents.

8. The learned counsel for the applicant submitted that the entire liability of the family has not been considered by the Circle Relaxation Committee and had they taken the same into consideration the applicant would have a chance of getting appointment. Learned counsel for the respondents, on the other hand, submitted that the Circle Relaxation Committee has considered the entire lots of claimants into four splits and considered all aspects in its minutes with due application of mind and the applicant would not come under the purview of the Scheme since he was not under the indigent circumstances as enuntiated under the Scheme and that of the ruling of the Apex Court on the subject. Appointment on compassionate ground per the Scheme is intended to render immediate assistance to the family of the Government servant who died in harness or retired on medical invalidation leaving his family into financial crisis and, such appointments can be made only from 5% of the vacancies that arise for direct recruitment in an year. Such being the position, extreme care is required to be taken in screening the cases for compassionate appointment to offer employment to the most deserving claimants. The terminal benefits received by the family, amount of pension, assets and liabilities of the family are to be considered in each case and only in most deserving cases, employment can be offered. The Apex court has held that the Scheme of compassionate appointment is meant to help the needy and not the greedy. The needy is to be chosen by assessing the indigent condition of the family and for that purpose certain



guidelines had been set up by the Circle Relaxation Committee. The scheme for compassionate appointment was evolved with the laudable objective of making the families of employees dying in harness to survive the extreme poverty and indigence to which they are unexpectedly thrown into. In other words it does not intend to give employment to every son or daughter of a deceased employee. In order to find out whether this exercise was done by the respondents, this Court has directed the respondents to produce the proceedings of the Circle Relaxation Committee and to file an affidavit as to the vacancy position from 1.4.01 to 31.3.2002. In the affidavit filed by the 4th respondent on 15.9.2003 the following averments were made.

"2. It is humbly submitted that the vacancies for compassionate appointments are earmarked upto a maximum of 5% of vacancies falling under direct recruitment quota. The vacancies are calculated for every calendar year commencing from January to December.

3. The vacancies for 2001 under direct recruitment quota, vacancies earmarked for compassionate appointment and appointment made on compassionate grounds are furnished below:

Cadre	Total vacancies in Kerala Circle	5% of vacancy earmarked for compassionate appointment	Compassionate appointment made
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Postal Asstt./ Sorting Asstt.	252	13	13
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246 vacancies in Postal Assistant/Sorting Assistant Cadre were arisen in Kerala Circle during the period from 1.4.2001 to 31.3.2002. It is respectfully submitted that vacancies for compassionate appointments were calculated and appointments made based on vacancies arising in each calendar year. Therefore, no vacancies were earmarked, appointments made on the basis of vacancies arising in financial year basis.

4. It is humbly submitted that the Circle Relaxation Committee meeting were held 4 times, 19.4.2001, 28.5.2001, 13.9.2001 and 27.11.2001. True copies of Circle Relaxation Committee proceedings are produced herewith and respectively marked as Annexure R2, Annexure R3, Annexure R4 and Annexure R5."



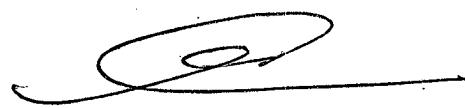
9. Annexure R2 to Annexure R5 are the Minutes of the Meetings of the Circle Relaxation Committee wherein the applicant's claim was considered in the proceedings dated 28.5.01 and the Relaxation Committee found that the applicant's "family not in indigent circumstances. Rejected." It may be noted that the Relaxation Committee consists of three responsible officials who had no prejudice against the applicant nor any such plea was taken by the applicant. The assessment of the said Committee was based on the material received from the reviewing authority and also the material collected by the departmental officers from the applicant's family. Therefore, the contention of the respondents that there were more deserving candidates than that of the applicant and since such appointment has to be restricted to 5% as per the orders of the Hon'ble Supreme Court and the Scheme, the proceedings of the Circle Relaxation Committee cannot be found fault with. More over, one of the grounds that has been taken by the applicant in challenging the orders is that his impugning the 5% vacancies that has been allowed to such appointment. At the very outset, this Court wants to make it clear that appointment on compassionate ground can be made only if a vacancy is available as per the view taken by the Hon'ble Apex Court in Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319), which has got the sanction of Article 141 of the Constitution. The Apex Court also cautioned the Courts and the Tribunals not to give directions for appointment of persons on compassionate ground ~~and~~ in the decision reported in Life Insurance Corporation of India Vs. Asha Ramachandran Ambekar & Others (JT 1994 (2) SC 183) which is also supported by the decision in Union of India Vs. Joginder Sharma (2002 7 JT SC 425).



10. On going through the pleadings, evidence and documents on record produced by the respondents, it is very clear that the liabilities of the applicant has also taken into account while considering his case for compassionate appointment. Taking the entire aspects into consideration, I am of the view that the purpose of the Scheme is not intended to take care of the welfare of the family for ever but is only meant for taking care of the legal heirs of the deceased who are really in indigent circumstances. In this case, this Court is of the view that the entire aspects have been taken into consideration by the Circle Relaxation Committee and proper assessment has been made while considering the claim of the applicant. Therefore, I do not find any reason to interfere with the decision of the respondents in rejecting the claim of the applicant since it is within the ambit of the Scheme and that of the reservation of 5% enunciated in it.

11. In the conspectus of the facts and circumstances, I do not find any merit and substance in this O.A. and it is accordingly dismissed with no order as to costs.

Dated the 26th September, 2003.



K.V. SACHIDANANDAN

JUDICIAL MEMBER

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