

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.99/05

FRIDAY this the ..28th..... day ofApril.... 2006

C O R A M :-

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

Priyadatta Narayanan,
Pathirikkatt House, Vallimunnur P.O.,
Malappuram District, Kerala.

...Applicant

(By Advocate M/s.Bindu C.V. & Sudheesh A)

Versus

1. The Commissioner of Central Excise,
Mumbai – II Commissionerate,
9th Floor, Piramal Chambers,
Jijibhoy lane, Lalbaugh, Parel, Mumbai.
2. Union of India represented by the Secretary,
Ministry of Finance, Department of Revenue,
Central Board of Excise & Customs, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 6th April 2006 the Tribunal
on28th April,..... 2006 delivered the following :

O R D E R

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This application is filed against the rejection of the request made by the applicant for compassionate appointment (Annexure A-6). Applicant's husband was working as an Operator Tele Communications under the respondents and he expired on 13.3.1999 leaving his wife, who is the applicant herein, two children and the aged mother. The deceased husband was the sole source of income for the family and due to the unexpected death of her husband the burden of looking after the entire family has fallen upon the applicant. She had, therefore, approached the respondents immediately after the death of the husband i.e. on 30.6.1999

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requesting for any kind of employment under compassionate grounds suitable to her qualification. The applicant has completed Pre-Degree and ITC Draftsman (Civil) course. She had been representing through several reminders but there was no response to the request. By communication dated 29.11.2004 she has been informed that her request for appointment cannot be considered in terms of the Government Order fixing a time limit of three years beyond which the request for compassionate appointment cannot be kept pending. The applicant has assailed the above order of the respondents on the ground that it has been passed on mere technical grounds without considering the merits and delay of five years has occurred because of the respondents and it cannot be quoted to deny the applicant of her right. It is also submitted that one of the children of the applicant is a serious cancer patient and requires highly expensive medical treatment.

2. The respondents initially filed a counsel statement contesting the application on the ground of three years time limit fixed and that the compassionate appointment cannot be claimed as a matter of right. Then the applicant contested in the rejoinder that she had approached the authorities in 1999 itself immediately after the death of her husband and that Annexure A-1 Office Memorandum prescribing three years time limit was issued in the year 2003 only and the delay had been caused due to the respondents.

3. Respondents filed a reply statement and additional reply statement explaining the factual position. It is submitted that during the year 1999 only one post of L.D.C was available for compassionate appointment. The Ministry had been intimated that there were 13 cases pending for

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compassionate appointment in the category wherein the applicant was at Serial No.13. Therefore, one deserving candidate Smt.R.H.Advani who had applied for compassionate appointment in the year 1997 was offered the said post for the year 1999-2000. Two posts were available in the year 2000-2001 for appointment on compassionate ground and as on December, 2000 there were 15 cases pending for appointment and of these 15 candidates two were appointed as U.D.C. In the year 2001 four vacancies were available for compassionate appointment in Group D and out of nine applications four candidates were appointed vide order dated 13.6.2002. The candidates appointed on compassionate grounds were placed above the applicant in the list of pending cases and therefore it was not possible to offer the applicant any post during the above period.

4. On a direction by the Court to produce the Investigation Report and other records relating to the claim of the applicant and the details relating to appointments made against the vacancies for year 1999, 2000 and 2001, the respondents filed an additional reply statement in which it has been averred that since the applicant had not mentioned anything about the treatment of her daughter for cancer, the respondents were not aware of this fact and could not take it into account. They admitted that no detailed investigation has been made, therefore, no investigation report is available in the case of the applicant. The applicant being an under graduate she was eligible for the post of L.D.C in Group C. But there were no vacant post of L.D.Cs since 1999. After the appointment of Smt.R.H.Advani, the applicant could not be considered for post of U.D.C since she was not a graduate and since the applicant had not mentioned her pathetic condition her case could not be considered against the Group D posts.

5. I have heard learned counsel on both the sides and perused the record produced. The factual position regarding the death of applicant's husband and her representation for compassionate appointment etc. are admitted and not in dispute. Applicant's husband died on 13.3.1999 and she submitted the request for compassionate appointment on 30.6.1999. It is also admitted that there was a vacancy of L.D.C in Group C category in the year 1999 and that the respondents had forwarded the proposal from the Mumbai Zone to the Commissionerate stating that 13 applications were pending as on that date. The applicant's name was at Serial No.13. It is seen from Annexure R-3(4) statement now furnished, giving the details of the pending cases along with the reasons, that against the name of the applicant no reasons have been given and it is only mentioned that the retirement dues of her husband have not yet been cleared, no details of the family conditions and source of income etc. have been furnished in the case of the applicant as has been done in other cases. The respondents have admitted in their reply that they have not conducted any investigation and no investigation report is available in the case of the applicant. In these circumstances, Smt.R.H.Advani who was at Serial No.6 was picked up for appointment by the Commissionerate stating that she was the most deserving of all the cases. Had the detailed particulars, condition of the applicant and the factual position regarding the illness of her daughter been recorded after due investigation as was required to be done the applicant would have definitely received more priority then Smt.R.H.Advani. This is a serious omission on the part of the respondents and they are trying to cover up the matter by shifting the blame on the applicant by stating that she had not reported her penurious condition in her representation. That this statement of the respondents is not correct is

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also borne out by Annexure A-5 and Annexure A-8 representations of the applicant in which these facts have been brought out clearly.

6. It is also to be noted that the applicant while making the representation had mentioned that she would be willing to accept any suitable post and therefore there was no bar for the respondents to consider her for even the four Group D vacancies which had arisen in the year 2000-2001. Hence viewed from all angles the contention of the respondents that the applicant could not be considered for any post that had arisen since 1999 and rejecting her case thereafter on the ground that the time limit of three years had already expired is unacceptable. It cannot be denied that the applicant's case was not given the proper consideration and scrutiny by the respondents and records produced by them are sufficient proof of this omission on the part of the respondents. I have, therefore, no hesitation in quashing the impugned order at Annexure A-6 and further direct the respondents to consider the applicant's case for compassionate appointment and to appoint her in the next available vacancy in the category of Group C or Group D according to the availability and that till then her case should be retained in the pending list with full particulars as furnished by her and verified after investigation by the respondents. O.A is, accordingly, allowed. No order as to costs.

(Dated the 28th day of April 2006)

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SATHI NAIR
VICE CHAIRMAN

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