

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.101/03

Tuesday this the 23rd day of September 2003

C O R A M :

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

1. Ammini Simon,
W/o. late K.C.Seeman,
Residing at : Quarter No.C-44,
Block - XV, C.P.W.D. Quarters,
Kunnumpuram, Kakkanad,
Kochi - 30.
2. Sleeba Simon,
S/o. late K.C.Seeman,
Residing at : Quarter No.C-44,
Block - XV, C.P.W.D. Quarters,
Kunnumpuram, Kakkanad,
Kochi - 30.

Applicants

(By Advocate Mr.T.C.Govindaswamy)

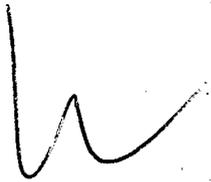
Versus

1. Union of India represented by
the Secretary to the Government
of India, Ministry of Commerce &
Industry, New Delhi.
2. The Development Commissioner,
Cochin Special Economic Zone,
Government of India,
Ministry of Commerce & Industry,
CSEZ Administrative Building,
Kakkanad, Cochin - 37.
3. The Deputy Development Commissioner,
Cochin Special Economic Zone,
Government of India,
Ministry of Commerce & Industry,
CSEZ Administrative Building,
Kakkanad, Cochin - 37.
4. Secretary,
Department of Personnel & Training,
New Delhi.

Respondents

(By Advocate Mr.P.M.M.Najeebkhan,ACGSC)

The application having been heard on 23rd September 2003
the Tribunal on the same day delivered the following :



O R D E R

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

The 1st applicant is the widow of late K.C.Seeman, who was an Ex-Serviceman with 20 years of experience in defence service, reemployed under the 2nd respondent during 1986. The 2nd applicant is the younger son of the deceased employee, who has passed ITI and Diploma in Computer Hardware Engineering. Late K.C.Seeman passed away on 27.8.2002 due to massive heart attack leaving the family in penury and without sufficient means of livelihood. The 1st applicant submitted a representation to the 2nd respondent praying for appointment on compassionate grounds to the 2nd applicant. It is submitted that the respondents institution was constituted only during 1980 and ever since its inception, only one person was granted compassionate appointment during the year 1998. According to the applicant there are number of vacancies out of which 2nd applicant can be accommodated in anyone of the posts. applicant. On 22.1.03 the 1st applicant has received a communication to her representation which reads as follows :

Sub: Compassionate appointment to the son of late Shri.K.C.Seeman, Head Security Guard, CSEZ - reg.

Please refer to your application dated 6.9.02 on the above mentioned subject. In this connection you are hereby informed that the matter was taken up with the Ministry of Commerce and the case for compassionate appointment was not considered for the following reason :-

Compassionate appointment can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' and 'D' posts. As far as CSEZ is concerned no vacancy exists within the ceiling prescribed by the Department of Personnel & Training. It is also informed by the Ministry that as sufficient vacancies under direct recruitment quota in Group 'C' and 'D' posts are not available in the Ministry and in the other Zones, the request of Shri Sreeba Simon for compassionate appointment can not be acceded to.



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Development Commissioner also explained the above position to you on your personal enquiry on 21.01.03 in this office.

2. Aggrieved by the said order the applicant has filed this

O.A. seeking following reliefs :

a. Call for the records leading to the issue of Annexure A-1 and quash the same,

b. Direct the respondents to consider the 2nd applicant for appointment on compassionate grounds in any Group 'D' or Group 'C' post under the 1st and 2nd respondents commensurate with his educational qualification and to grant him all consequential benefits emanating therefrom.

3. Learned counsel for the respondents filed a detailed reply statement contending that the compassionate appointments may be made up to a maximum of 5% of vacancies falling under direct recruitment in any Group 'C' and 'D' posts. On calculating the vacancies available for direct recruitment in Group 'C' and 'D' posts, it was found that while there is no vacancy in Group 'C', only 3 vacant posts of Security Guards in Group 'D', which is not sufficient to provide a vacancy within the 5% ceiling prescribed for compassionate appointment by the Government through OM dated 9.10.1998. The request of Smt. Ammini Simon was thus recommended to the Ministry of Commerce on 10.12.2002, with a request to consider her case against the vacancies, if any, available in other Zones and Ministry of Commerce. In response to this, the Director, Department of Commerce, vide letter dated 27.12.2002, informed that as sufficient vacancies under direct recruitment in Group 'C' and 'D' posts are not available in the Ministry and other Zones, the request of the CSEZ for compassionate appointment to Shri Sreeba Simon could not be acceded to.

4. Shri.T.C.Govindaswamy, learned counsel appeared for the applicant and Shri.P.M.M.Najeebkhan,ACGSC appeared for the respondents. The learned counsel appearing for the parties have brought to my notice various facts, pleadings and materials on record and also the decisions of the Supreme Court on the subject. Learned counsel for the applicant submitted that even if there is no vacancy in the concerned Department, as per the scheme promulgated in 1998 for compassionate appointment to the dependent family member of a Government servant dying in harness, it should not be confined only to the vacancy position of a particular Department or Ministry. He has drawn my attention to clause 7 (e) and (f) of the said scheme which reads as follows :

e. Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

f. If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Officers of the Government of India to provide at an early date appointment on compassionate ground to those in the waiting list.

5. Learned counsel for the applicant also submits that no such exercise has been done in the case of the applicant and if done, the applicant could have obtained a job by now. Learned counsel for the respondents on the other hand vehemently argued that R-1 judgement of the Hon'ble Supreme Court from the same Department has considered this aspect as well and the Supreme



Court relying on the decision reported in Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar & Anr. [(1994) 2 SCC 718] held that the Courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. R-1 judgement also observes that a mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is a scope for appointment does not obligate the Competent Authority to necessarily grant relaxation or that the Courts/Tribunals can compel the Competent Authority to grant relaxation.

6. I have given due consideration to the arguments advanced by the learned counsel for the parties and meticulously gone through the pleadings and evidence placed on record. It is true that in R-1 judgement Hon'ble Supreme Court has cautioned the Tribunal and the High Court not to invoke the judicial power in granting compassionate appointment on sympathetic ground. In the R-1 judgement it was the question where the relaxation was granted by the Hon'ble High Court in a particular case in the same department which has been upheld by the Apex Court and declared that the Court/Tribunal should be very cautious in exercising relaxation in compassionate appointment matters. Therefore I do not think that the aforesaid case is squarely applicable in the present O.A. because the relief sought by the applicant in this case is not for any relaxation. On the other hand, it would be necessary to look into whether a possible attempt has been made by the respondents to explore the



possibility of getting employment with reference to the provision of the scheme. The provision that has been quoted supra is very clear that employment under the scheme is not confined to one Ministry/Department/Office in which the deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment. In the reply statement what has been stated is that an attempt was made to find out vacancies in the "concerned Ministry and its Zones" but did not take up the matter with the other Ministries/Departments to find out whether there is any vacancy to accommodate the 2nd applicant. In this case, I find that A-1 impugned order only stipulates that the vacancy in Group 'C' and 'D' posts are not available in the Ministry and other Zones, therefore, the request of the applicant could not be acceded to.

7. The decision referred to above and the rule position being so, I am of the view that the respondents had not made an attempt to explore the possibility to find out whether the applicant could be accommodated in any other Ministries. As per the counter statement and pleadings, they themselves had admitted that the chance of getting compassionate employment is very remote i.e., within the 5% vacancy position. Therefore the respondents should have attempted to invoke the provisions of Clause 7 (e) and (f) and ought to have made an attempt thereof, which is not seen to have done in this case. In the circumstances, I am of the view that the respondents should again



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make a sincere attempt to find out the possibility of getting an employment as per the scheme in other Ministries also since such candidates are entitled to get appointment under the Government of India in any Ministry. Since this has not been done in this case, I set aside the A-1 communication and direct the 2nd and 3rd respondents to take up the matter with the competent concerned authority to find out whether there is any chance for the 2nd applicant in getting employment on compassionate grounds in other Ministries as well and if so found, he may be considered for the same. I further direct the 2nd and 3rd respondents to do the exercise as mentioned above within four months from the date of receipt of a copy of this order.

8. The O.A. is disposed of with the above observations. No costs.

(Dated the 23rd day of September 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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