

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 102 of 2006

Wednesday, this the 31st day of January, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. Smt. P.S. Gowri,
W/o. Late Shri P. Ramachandran,
"Anand", P.O. Vellinazhi – 679 504,
Cherpalachery (Via),
Palakkad District.
2. G.R. Achuthanand,
S/o. Late Shri P. Ramachandran,
W/o. Late Shri P. Ramachandran,
"Anand", P.O. Vellinazhi – 679 504,
Cherpalachery (Via),
Palakkad District. ... Applicants.

(By Advocate Mr. M.V. Bose)

versus

1. Union of India, represented by
The Secretary to Government,
Ministry of Finance,
Government of India, New Delhi.
2. The Commissioner,
Customs and Central Excise,
I C E House, Plot No. 6,
E D C Complex, Patto,
Panaji, Goa. ... Respondents.

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

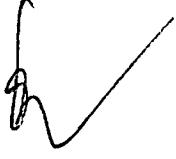
The Original Application having been heard on 3.1.2007, this
Tribunal on 31.01.2007 delivered the following :



ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question involved in this case is when a period of three years is stipulated for consideration of compassionate appointment, if there be a ban during such period in full or part, can the respondents include this period also to work out the period of three years. Yet another question is when 7 years after the demise of the Government servant, a communication goes to the widow, "I am directed to inform you that the request for compassionate appointment to your son Sri G.R. Achuthanand can be considered as and when a suitable vacancy arises after the Ministry's ban on fresh recruitment is lifted" whether the respondents could turn around and say "NO" to the case of the applicant on the ground that the period prescribed for consideration has expired.

2. Brief Facts: Father of the second applicant was earlier working as operator in the Respondents' organization and died on 01-03-1994. His spouse (first applicant) immediately applied for compassionate appointment for herself, vide application dated 16-03-1994. This was followed by various representations, but in vain. As by 2000, the second applicant became major, the first applicant had applied for compassionate appointment of her son and it was in response to the communication that the respondents had stated that the case of the applicant can be considered when a suitable



vacancy arises after the ban on direct recruitment is lifted. And, the widow, with the sanguine hope of a job for her son waited for some time and it was as late as on 29-10-2004 that the respondents in their own leisure hours communicated to the first applicant as under:-

" Please refer to your applications dated 17.4.2000, 03.07.2000, 27.05.2001 and 13.09.2003 addressed to the Commissioner of Customs & Central Excise, Goa and application dated 05.01.2004 addressed to the Hon'ble Union Minister for Finance, Government of India, New Delhi, on the above subject.

In this connection, it is informed that recently DOP&T has clarified that, if no appointment can be offered to an applicant on compassionate basis within three years of the death of the Government servant, the case will be finally closed and will not be considered again.

Since this has already crossed the time limit of three years, Shri Achuthanand G.R. Does not fulfil the eligibility criteria laid down in the Government's Scheme for compassionate appointment and it is not possible to accede to the request of Shri Achuthanand G.R. For appointment on compassionate grounds."

3. The applicant No. 1 preferred a further representation for reconsideration but by the impugned Annexure A-5 Order dated 6-04-2005, the respondents have declined to accede to the request of the applicant. Hence this O.A.

4. Respondents have resisted the OA. According to them, the OA is barred by limitation. Again, they have raised the point of territorial



jurisdiction, as the deceased government servant was serving at Goa. In so far as merit of the matter is concerned, the facts of the case have all been admitted. It has however been stated that vide Annexure R-6, there were as many as 13 cases for compassionate appointment and the Ministry of Finance was as such informed of the position. It has also been stated that as per the Ministry of Personnel guidelines at Annexure R-2, there being a stipulation of three years for consideration and since the applicant No. 2 became major as of 19-05-2000, the case of the applicant stands closed.

5. Applicants had filed Rejoinder, reiterating their stand as contained in the O.A. As regards preliminary objections, they have stated that the application is within time as the rejection was only in October, 2004 and that they being residents of Kerala, territorial jurisdiction is very much available for this Bench to decide the case.

6. Arguments were heard. Counsel for the applicant has also furnished written arguments. It has been contended that the respondents have mechanically rejected the case of the applicant. He has referred to the case of T. Meer Ismail Ali vs Tamil Nadu Electricity Board, (2005) 1 ATJHC (Mad) 340, to hammer home the point that the OA has been filed within the limitation period. He has also referred to the G.O.I. Department of Personnel and Training OM dated 30th June, 1987 in respect of minor applying for compassionate appointment when he becomes major. The



decision of the Apex Court in the case of Umesh Kumar Nagpal vs State of Haryana, (1994) SCC 148 has also been cited in support of his case.

7. Respondents have reiterated their stand as contained in the counter reply.

8. The case has been considered. Admittedly, application for compassionate appointment was filed within a fortnight of the demise of the Govt. Servant. There was absolutely no response. Subsequent reminders were sent. There was again no response. By that time, the son of the deceased became major and on his behalf, the first applicant applied for compassionate appointment in 2000 and 2001. It was by order dated 18.09.2001 that the respondents have communicated that the matter would be considered on availability of vacancies and after ban is lifted. It is presumed that this order, which was issued as, "*I am directed*", is presumed to have been issued after the competent authority has considered the case of the applicant, found the same as deserving but grant of appointment could not be considered in the absence of vacancies and when ban on fresh recruitment was clamped. The ban continued and it is not known as to how many vacancies arose during this period. Citing the letter dated 5th May, 2003 (Annexure R-2) of the Ministry of Personnel, which stipulates that cases of compassionate appointment should be considered only within a period of three years, and stating that the applicant having become major in 2000,

A handwritten signature in black ink, appearing to be 'S. J. B.' followed by a stylized flourish.

the period within which the case could be considered had lapsed the Respondents have rejected the case. Again, when the applicant files this OA , technical objections of Limitation and jurisdiction have been raised.

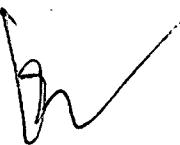
9. Now, first on limitation. It has been contended that merely because the applicants may have continued to make representations, is no ground to extend period of limitation nor can the withdrawal of a belated Writ Petition, admittedly varied by laches, extend period of limitation. The case of the applicants attracts clause (b) of Sub Section (2) of section 20 read with clause (b) of Sub Section (1) of Section 21 of the Administrative Act, 1985. For working out limitation, it has to be seen as to when did cause of action arise. Vide Annexure A-4 order dated 18-09-2001, the applicant was informed that the case of the applicant would be considered when a vacancy arises and after the lifting of the ban. Thus, the applicant was hoping to get some positive response from the respondents. Had he filed this OA at that time, the respondents would have stated that the application is premature as the respondents were only awaiting the vacancy and lifting of the ban and the applicant has approached despite the said communication. Again, it is only in later half of 2004 that the respondents had made further communication and the applicant once again requested for consideration and on their rejection has now approached the Tribunal. Hence, the applicant cannot be non-suited on account of limitation.



10. Next feeble objection was about the fact that the deceased was functioning at Goa and hence, jurisdiction lies elsewhere. This objection has to be summarily rejected in view of Rule 6 of the CAT (Procedure) Rules. When one is not in service, the jurisdiction is the place where one is ordinarily residing.

11. Now on merit. The respondents have not considered the application of the applicant ever since it had been filed. Reason? Non availability of vacancies coupled with ban on direct recruitment. Hence, the case of the applicant which has been pending with the department on account of their own decision to defer consideration warrants consideration at least once in accordance with the prescribed norms relating to compassionate appointment. Had there been no ban on recruitment at the relevant point of time the application would have certainly been considered and the applicant would have been offered appointment subject to the case being found to be 'deserving' for compassionate appointment. Since the case of the applicant had not at all been considered, the applicant cannot be penalized for the inaction on the part of the applicant.

12. Hence, the OA is allowed. Impugned order dated 06-04-2005 is hereby quashed and set aside. The case of the applicant be considered along with other pending applications and if the applicant is found deserving, necessary action be taken for issue of offer of appointment to Group C or D



post, whichever is suitable to his qualification and which ever is available. If the applicant is not found deserving, then the respondents shall by a detailed and speaking order inform the applicant accordingly, specifying clearly as to the rank he has secured as per the prescribed norms. The case of the applicant should be considered in the next meeting that may be convened for considering the pending compassionate appointment applications.

13. No costs.

(Dated, the 31st day of January, 2007)



K B S RAJAN
JUDICIAL MEMBER

cvr.