

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.115/2007

Friday this the 4 th day of January, 2008.

CORAM:

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

Seena T.D.,
D/o T.K.Divakaran,
Thannickapadathil, Karinilam P.O.,
Pulikkunnu, Mundakayam,
Kotayam District.

Applicant

(By Advocate Shri Joy George)

Vs.

1. The Union of India represented by
the Secretary to Government,
Ministry of Finance,
Department of Revenue, New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
New Delhi.
3. The Chief Commissioner of Income Tax,
C.R.Building, I.S.Press Road,
Ernakulam.

Respondents

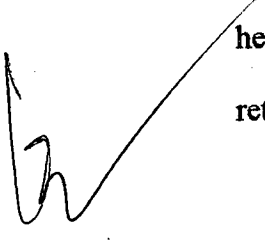
(By Advocate Mr.S.Abhilash, ACGSC)

The application having been heard on 4.1.2008
the Tribunal on the same day delivered the following:

ORDER

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

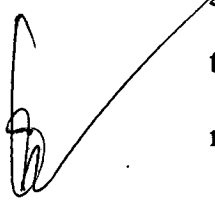
The applicant is the daughter of one Shri T.K.Divakaran, who was employed as Notice Server in the Income Tax department. The said Shri Divakaran sought voluntary retirement on medical grounds in May 1998. When he had more than five years of service to superannuate. On his voluntary retirement he was afforded pension which was Rs.1300/-.



2. Provision exists for grant of compassionate appointment in respect of the wards of those who are permitted to retire voluntarily on medical grounds. The applicant applied for compassionate appointment but, since she was under-aged her case was not considered vide Annexure A-1. Later, on becoming major, the applicant preferred another application on 25.5.2000 which was however rejected vide A-2 order dated 12.1.2001. The reason given was, "The Committee has reported that the present case cannot be compared to such unfortunate cases intended to be covered under the Welfare Scheme set up by the Government in this regard."

3. The applicant thereafter filed O.A.222/03 challenging the said order dated 12.1.2001. This Tribunal vide A-3 order dated 21.3.2003 disposed of the same directing the 2nd respondent (Chairman CBDT, New Delhi) to consider the applicant's representation and give a speaking order within three months. This order was passed when the respondents were represented by their advocate, the then ACGSC. The applicant did not get any information after the above order was passed and therefore, she penned another representation dated 23.9.2004 seeking compassionate appointment. This was renewed again in July 2006, but, these have not been responded to at all. Hence, the applicant has filed the present O.A.

4. Respondents have contested th O.A. According to them neither a copy of the order dated 21.3.2003 in O.A. 222/03 was received by them nor for that matter any other appeal by the applicant. They have stated that the competent authority had once rejected the applicant's claim and thereafter the applicant had not filed any representation or appeal. They do admit that the provision exists for grant of compassionate appointment on medical grounds. They have also stated that the Committee constituted under the Scheme, after taking into account all material facts placed before it and after providing an opportunity to the




petitioner, submitted its report. It has also been stated that, as per the Committee, the case was rejected on account of the fact that, the retired employee had his own house, has no other financial liability at present, and he is getting monthly fund for sustenance. The respondents have also annexed a copy of letter dated 28.4.2003 addressed by the then Minister of State for Finance to Shri P.C.Thomas, Member of Parliament (Annexure R-3).

5. Counsel for the applicant submitted that the case has not been dealt with in accordance with the rules. It is the case of the applicant that the contention of the respondents that they are unaware of the order dated 21.3.2003 of this Tribunal, is also incorrect, since their counsel was representing the case.

6. Counsel for the respondents submitted that the Committee has once rejected the case.

7. Arguments were heard and documents perused. Compassionate Appointment is no doubt, not the direct procedure for appointment. It does not have any vested right. Nevertheless when certain provisions exists, as for example, such cases should be considered three times and comparison should take place amongst such cases to arrive the most deserving cases, in the instant case, no such attempt seems to have been done. Committee is expected to allot marks for each item such as : extent of terminal benefits made available, No. of family members, No. of unmarried dependants, possession of any other properties, so on and so forth. Admittedly, this has not been done. Again the respondents have stated that they have not received the appeal etc. and also the copy of the order dated 21.2.2003. Now that the order is available as also at least two applications from the applicant, the respondents can easily consider the case in accordance with the laid down procedure and contrast the case of the applicant with those of others to arrive at whether the applicant comes within the



deserving category. For this purpose, 5% of the total number of direct recruitment vacancies (ignoring the optimization procedure as hitherto-fore existence) should be considered.

8. In view of the above discussion this O.A. is disposed of with clear directions to the respondents :

- a) to consider the case of the applicant for the second time and in case of necessity, for the 3rd time in future;
- b) to allot necessary marks prescribed for each item as per the existing orders on the subject,
- c) to compare the case of the applicant with those of others to find out whether the applicant's case falls under the most deserving category;
- d) to communicate the decision of the committee that may be taken by following the aforesaid procedure; and,
- e) in the event of the applicant's case falling within the deserving category, to offer necessary appointment suiting her qualification and if, by any chance the case is not coming under deserving category, to inform the applicant by a speaking order giving details of those cases wherein appointments have been recommended.

9. The above directions shall be complied with by considering the case in the next meeting of the Selection Committee. No costs.

Dated the 4th January, 2008.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Review Application 9/08 in O.A.No.115/07

Tuesday this the 25 th day of March, 2008.

CORAM:

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

1. Union of India rep.by the
Secretary to Govt.,
Dept. of Revenue,
Ministry of Finance, New Delhi.
2. The Chairman
Central Board of Direct Taxes,
New Delhi.
3. The Chief Commissioner of Income Tax,
C.R.Buildings, I.S.Press Road,
Ernakulam. Review Applicants

(By Advocate Shri S.Abhilash, ACGSC)

Vs.

Seena T.D., D/o T.K.Divakaran,
Thannickapadathil, Karinilam P.O.,
Pulikkunnu, Mundakkayam,
Kottayam. Respondent

(By Advocate Shri Joy George)

ORDER

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

This Review Application has been filed by the respondents in the O.A. 115/07 seeking a review of the order dated 4.1.2008 whereby a direction was given to the respondents to consider the case of the applicant for the second and subsequent time for compassionate appointment. The Review Applicants have come up with a plea that at the time of hearing of the above O.A. the Scheme and certain Government instructions were not brought to the notice of the Tribunal. The Scheme is dated 1998. Further communication was in 2003.

2. The Review Application has been considered. The scheme relied upon by the Review Applicants was of 1989 and there is no reason for the inability not to produce the same at the time of hearing. In any event the decision given in the order dated 4.1.2008 is not conflicting with the scheme. Every compassionate appointment case deserves consideration for three times. That is what has been ordered here also. As regards time limit prescribed in 2003 instructions, it can be safely said that the original applicant's case being one of 2001, that particular order need not be pressed into service.

3. If the order under review is analyzed, the operative portion is only to the extent of consideration being given to the case of the applicant and it is subject to the applicant's becoming meritorious as per the norms/standards, when alone she shall be considered for compassionate appointment. However, her case was rejected without being reconsidered; again comparison with other cases had not taken place.

4. Apart from the above, there is no error apparent on the face of records that has been brought to the notice of the Tribunal.

5. In view of the above, the R.A. deserves dismissal and is therefore, dismissed in circulation itself.

Dated the 25 th March, 2008.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER