

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE 30TH NOVEMBER ONE THOUSAND NINE HUNDRED AND
EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 163/89

P. P. Koshy

Applicant

Vs.

1. Sub Divisional Inspector,
Chengannur Sub Division,
Chengannur
2. Postmaster General,
Kerala Circle, Trivandrum and
3. Union of India represented by its
Secretary, Ministry of
Communications, New Delhi

Respondents

M/s. O. V. Radhakrishnan,
K. Radhamani Amma &
Raju K. Mathews

Counsel for the
applicant

Mr. K. Karthikeya Panicker, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant approached the Tribunal under section 19 of the Administrative Tribunals Act, 1985 with the grievance of illegal refusal of a compassionate appointment in terms of Ext. A-2- letter of D.G.P & T No. 43-212/79/Pen dated 4th August, 1980.

2. His case is that his father, one Pappan, died of cancer on 11.1.1987 and the applicant was appointed as per Ext. A-1 memorandum dated 23.1.1987 as Extra Departmental

Delivery Agent (EDDA) on a provisional basis. Even before from 3.11.1986 to 30.11.1986, 1.12.1986 to 31.12.1986 and 2.1.1987 to 11.1.1987, he was allowed to work as nominee EDDA in the same post office at Ala. The applicant was informed by letter Ext. A-4 issued by the second respondent that his request cannot be considered for appointment on compassionate ground in relaxation of normal rules.

3. The applicant filed Ext. A-5 representation stating that his father died in harness leaving behind the family in indigent impecunious circumstances. The family consists of his aged and ailing mother, unemployed daughter and the applicant. According to the applicant, his deceased father was the sole earning member of the family. Ext. A-3 produced by him, ^b is the certificate which shows the income of the applicant while he was working on a temporary EDDA. He has also filed O.A. 72/89 challenging the termination of his service as temporary post of EDDA. By the interim order passed in the above case the applicant is continuing in the post of EDDA on a temporary basis. The order rejecting the applicant's request for compassionate appointment reads as follows:

"With reference to your representation dated 19.8.88 it is intimated that the case has been considered by Postmaster General and found not deserving."

This order does not give any reason for the rejection of the request of the applicant for the compassionate appointment. When the order does not give any reason, it

is liable to be struck down on the very reason that it is not a speaking order and there is no application of mind. The practice of executive authority passing orders on matters involving civil consequence of aggrieved party without giving any reason is really a negation of rule of law. It is not the duty of the court or tribunal to support the non-speaking order by supplementing the same with reasons which are stated in the counter affidavit or other statements presumably filed in support of such orders. In a more or less similar circumstances, the Supreme Court held that "when there are no express words in the impugned order itself which throw a stigma on the Government servant, the court would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research." (The State of U.P. Vs Ram Chandra Trivedi (AIR 1976 SC 2547)).

4. In this case even such an attempt would end in failure. The respondents in the counter affidavit stated that the brother of the applicant Sri Sunny P. Thomas who is employed as a Conductor in the Kerala State Road Transport Corporation is an earning member and he is bound to look after the applicant and other members of the family. The Relaxation Committee consisting of the Chief Postmaster General as Chairman and Postmaster General and Director of Postal Services as members found on enquiry that the applicant's case is not a deserving one for

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relaxation of the rule and grant of compassionate appointment. They also produced Ext. R-1 in which it is stated that, compassionate appointment is justified only when there is no earning member for giving immediate assistance for a needy family. It further stated that in cases where only one earning member is available in the family the condition of the family is to be examined to find out whether the family is really indigent and that the surviving earning member is assisting the family. Such an enquiry has not been conducted by the respondents in this case before taking a final decision against the applicant.

5. Even accepting the reason given by the respondents in the counter affidavit and the statement given in Ext. R-1, we feel that there is absolutely no material to show the real facts and the position relating to the brother of the applicant who is stated to be employed in the K.S.R.T.C. There was no investigation to find out whether the brother is residing along with the applicant and what exactly his income per month and whether it is sufficient enough for rendering assistance to the family of the applicant after the death of Sri Pappan. There was also no enquiry to find out the family income of the applicant after the death of his father. Without any of these information, it is not possible for us to come to the conclusion that the family of the applicant is not in indigent circumstances so as to deprive the benefit of

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compassionate appointment as claimed by the applicant in this case especially when the applicant claims that his family is in difficult position both financially and otherwise. The respondents are bound to conduct necessary enquiry into the aforesaid matters without any delay and grant the relief in the interest of justice.

6. The anxiety of the Supreme Court to consider and dispose of claims of compassionate appointments without delay has been clearly expressed in Smt. Sushma & others V. Union of India and others (Judgment Today 1989(3) SC 570* 1989 (4) SLR 327). The Supreme Court in that case held that ~~there shall not be any manner of delay~~ⁱⁿ in the matter of "claims for appointments on compationate grounds, there should not be any delay in appointments. The purpose of providing appointment on compassionate grounds is to mitigate the hardships due to death of the bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant."


7. We have also perused the minutes of the meeting of the Relaxation Committee held on 12.10.1987 produced by the ACGSC for our perusal. It does not contain any discussion with regard to the consideration and the finding thereof in the case of the applicant except the

respondents have included the name of the applicant also under the heading "following cases were rejected." We are satisfied on the facts and circumstances of this case that there is no proper and fair consideration of the case of the applicant after conducting necessary enquiry with regard to the indigent nature of the applicant's family after the death of his father. On a careful consideration of the facts and circumstances of this case, we are of the view that the applicant's case deserves a fresh consideration in accordance with law.

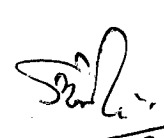
8. Accordingly, we direct the second respondent to conduct a detailed enquiry about the claim of compassionate appointment made by the applicant and take decision on the same within a period of three months from the date of receipt of the copy of this judgment. Now since the applicant is continuing, on the basis of Ext. A-7 order of this Tribunal, in service, we direct the respondents to allow the applicant to continue in the post in which he is working till a final decision as directed in the judgment is taken and communicated to the applicant.

9. In this view of the matter the Original Application is disposed of with the above directions.

10. There is no order as to costs.


(N. Dharmadan)
Judicial Member

30.11.89


(S. P. Mukerji)
Vice Chairman

30.11.89