

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
U. A. No.

167

1991

DATE OF DECISION 20.11.91

G.Sivasankara Pillai & Another Applicant (s)

Mr. MR Rajendran Nair Advocate for the Applicant (s)

Versus

The Supdt. of Post Offices, Respondent (s)
Trivandrum South Divn., Tvm. & 3 others

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and
The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The applicants, the father and a son are aggrieved by the rejection of their request for a compassionate appointment for the second applicant on the retirement of the first applicant under Rule 38 of the CCS (Pension) Rules on medical invalidation. The facts necessary for the disposal of the application can be briefly stated as follows.

2. The first applicant was working as a Postman. As he was a chronic diabetic patient he applied for permission to retire on invalid pension. As a duly

...2/-

constituted medical board after examining the first applicant found him completely and permanently incapacitated for his official duties, the first applicant was permitted to retire from service with immediate effect by memo dated 25.8.1989 of the first respondent at Annexure-II.. Immediately after his retirement, on 7.12.1989 the first applicant submitted a representation before the second respondent praying for giving employment on compassionate ground to his son, the second applicant. In the above representation it was pointed out that, as the first applicant was a chronic diabetic patient since 1982 he had to retire at the age of 54 years, that he had to spend a sum of Rs.150 per month for his medicines, that his wife and one son who are sick also required expensive medical treatment, that his children are all unemployed, and that as he was finding it very difficult to meet the family needs, a suitable employment may be given to his son, the second applicant to save the family from suffering. The second applicant also submitted a representation stating that he has passed SSLC Examination and completed pre-degree course, and that, if he was given an employment he would look after the family. To the disappointment of the applicants the first respondent by his memo dated 6.6.1990, Annexure-V that informed the first applicant, the Chief Postmaster General, Kerala vide his letter dated 1.6.1990 had

intimated that his request for appointment of the second applicant was considered and rejected. Aggrieved by the rejection of his request the first applicant on 18.6.1990 submitted another representation to the second respondent stating that he had to incur a recurring expense of Rs.300/- per month for the treatment of himself, his wife and his son, that as he was on leave for a long time prior to retirement without pay he was heavily indebted, so, that a major portion of Rs.13,516/- received as retirement benefits had to be set apart for paying ^{the} of ~~debts~~, that the income from 47 cents of wet land and 30 cents of dry land was very meagre, and that with a pension of Rs.518/- per month he was finding it absolutely impossible to pull on. He, therefore requested that the case may be reconsidered and the family be helped by providing employment to the second applicant.

In reply
to ~~this~~ representation the first applicant received a memo dated 21.8.1990, Annexure-VII of the first respondent informing him that the Chief Post Master General has intimated that the Circle Relaxation Committee which met on 6.8.1990 has rejected the request of the applicant as the family was not considered in indigent circumstances. The first applicant again submitted a representation on 30.8.90 before the Director General, Posts detailing all his grievances. In reply to this representation the first applicant received the memo of the second respondent dt.21.11.1990

informing him that he was directed to inform the first applicant that his request could not be acceded to as the same had already been considered and rejected by the Committee. Aggrieved by the above referred orders at Annexure-I, V and VII the applicants have filed this application jointly praying that the impugned orders may be set aside and the respondents may be directed to reconsider the request of the applicants in the light of the OM dated 30.6.1987 and to give an appointment to the second applicant on compassionate ground in a post appropriate to his qualification and suitability. It has been averred in the application that the requests of the applicant have been turned down without proper application of mind to the facts mentioned in the applications in an arbitrary manner while persons similarly placed or better placed than the applicant have been given the benefit of compassionate appointment while the case of the applicants have been rejected, without caring to look into the actual facts. It has been averred in the application that in the case of one Mr. Gopalan who retired from a higher selection grade post with much higher pension than the applicant, employment was given to his son on compassionate ground by the same Post Master General, and that the rejection of the applicants' claim amounted to discrimination.

3. In the reply statement filed on behalf of the respondents the rejection of the request for employment assistance on compassionate ground to the second applicant by the impugned orders at Annexure-I, V and VII has been sought to be justified on the ground that the Circle Relaxation Committee which considered the case of the applicants did not consider the family to be an indigent circumstances on the basis of a verification report by the local SDI and also because the first applicant does not have the social obligation of giving dowry in marriage as he has no daughter. It has also been contended that there was no vacancy in the Trivandrum division to appoint the second applicant.

4. We have heard the arguments of the counsel on either side and have also carefully gone through the documents produced.

5. According to the applicants, as a major portion of Rs.13,516/- received as terminal benefits had to be spent for repayment of debts incurred during the period when the first applicant was on leave without pay and as a sum of Rs.300/- per month is required for the treatment of the first applicant, his wife and one of the sons who is ailing, the family is struggling hard to make both ends meet with the meagre pension of Rs.518/- and with a

nominal income received from 47 cents of wet land and therefore and 30 cents of dry land, ~~the~~ rejection of the request for employment assistance for the second applicant was without proper application of mind. The learned counsel for the applicant argued that in the case of one Mr. Gopalan, who had retired in similar circumstances with higher rate of pension having been helped by compassionate appointment for his son the rejection of the request of the applicant amounted to discrimination. The counsel further argued that the contention of the respondents that there was no vacancy to appoint the second applicant cannot be accepted since the Supreme Court has in Smt. Sushma and others Gosain ~~/Vs~~ Union of India and others, AIR 1989 SC 1976 observed that, if there is no suitable post for appointment, supernumerary post should be created. That the monthly pension of the applicant is Rs. 518, by the first applicant and that the terminal benefits received ~~/~~ was only Rs. 13,516/- are facts beyond dispute. The fact that the first applicant, his wife and one of the son are ailing and a sum of Rs. 300/- per month is required to meet the medical expense of these three persons also has not been controverted. The specific averment in the application that the applicants' family got only 47 cents of wet land and 30 cents of dry land yielding a meagre income is also not very much in dispute.


In the impugned order at Annexure-VII the first applicant was told that the request for compassionate appointment of the second applicant was rejected as the family was not considered to be in indigent circumstances. In the first order dated 6.6.1990 it was only stated that the Circle Relaxation Committee has rejected the request after considering the case, but it was not stated there on what ground the request was rejected. It is only in the reply statement that it has been stated that the Circle Relaxation Committee found that the family is not in the indigent circumstances on the basis of a report submitted by the SDI after verification of the facts mentioned in the representation submitted by the first applicant. It has also been stated in the reply statement that for the reason that there was no social liability of marrying the daughters as the first applicant has only three sons, the family could not be considered as indigent. To our mind, this decision of the Circle Relaxation Committee on the basis of a report of the SDI submitted behind the back of the applicants does not appear to be a sound decision. The fact that there is no daughter for the first applicant to be married cannot in our view to be considered as a circumstance going against the applicants in their claim for compassionate appointment as an ailing son and wife who require constant medical care are undoubtedly a drain on the

family income. This aspect appears to have been lost sight of by the Committee. Further, it is admitted by the respondents that in the case of one Gopalan, who retired on invalid pension in the year 1983, his son had been provided with compassionate appointment and that Gopalan was getting a higher pension than the applicant. The contention of the respondents that it is impossible to verify the circumstances under which compassionate appointment was given to the son of Gopalan, as it took place a few years ago does not appear to be convincing. Even without the applicants furnishing the details of the year in which compassionate appointment was given to the son of Gopalan, the respondents could find out the year in which the event took place and therefore, we are of the view that it would be possible for the respondents to trace out the records which would reveal the circumstances under which the compassionate appointment was given to Shri Gopalan's son. In the impugned order at Annexure-I dated 21.11.90, the second respondent has informed the applicant that with reference to his letter dated 13.8.1990 to the Director General of Posts, he was directed to inform him that his request could not be acceded to as the same has been already considered and rejected by the Committee. But the statement of the respondents in the reply statement would show that the Director General, Posts had only

directed the Post Master General to give a suitable reply to him and not to inform him that his request could not be acceded to as the same had already been considered and rejected by the Committee. It was aggrieved by the rejection of his request on the basis of the decision of the Committee that the applicant had submitted the representation to the Director General, Posts. Therefore, the rejection of the request solely because the Committee had once considered and rejected the case without any further consideration is bad for non-application of mind. On an anxious consideration of the facts and circumstances of the case, we are of the view that the request of the applicant for compassionate appointment to the second applicant has not received proper and adequate application of mind by the Circle Relaxation Committee as also by the authorities of the department. We are, therefore of the view that the respondents should be directed to reconsider the question.

6. In the conspectus of facts and circumstances, we set aside the impugned orders Annexure-I, V and VII and direct the respondents to reconsider the claim of the applicants for compassionate appointment to the second applicant, if necessary, ^{by} again referring the matter to the Circle Relaxation Committee and to give

compassionate appointment to the second applicant in a post with due regard to his educational and other qualifications if the family is found to be entitled to such assistance, in the light of the discussion contained in the foregoing paragraphs, having regard to the Rules and instructions on the subject after giving the applicants an opportunity to be heard in person. The action on the above lines should be taken forthwith and the final decision communicated to the applicants within a period of three months from the date of communication of this order. There is no order as to costs.

 20/11/91

(AV HARIDASAN)
JUDICIAL MEMBER



20/11/91
(SP MUKERJI)
VICE CHAIRMAN