

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 182/2010

Dated this the 12th day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Udayasankar S/o late M.P. Padmanabhan Nair
Thuruthi House, Kanjattukara, Edathala
Ernakulam District.

.. Applicant

By Advocate s Mr. G. Krishnakumar and P.H. Shaji

Vs

- 1 Union of India represented by its Secretary
Income Tax Department
New Delhi.
- 2 The Chief Commissioner of Income Tax
Central Revenue Building
IS Press road, Ernakulam
Kochi-682 018
- 3 Deputy Commissioner of Income Tax
Central Revenue Building
IS Press Road, Ernakulam
Kochi-682 018
- 4 The Committee on compassionate ground
represented by its Chairman
Income Tax Departments Central Revenue Building
IS Press Road, Ernakulam
Kochi-682 018 ..Respondents.

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 4.1.2011 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the denial of compassionate appointment to him.

2 The applicant is the eldest son of late M.P. Padmanabhan Nair, an Income Tax Officer who died in harness on 7.8.1998. The mother of the applicant submitted an application on 19.8.1998 for compassionate appointment of the applicant. However, her application was rejected. Aggrieved, the applicant filed O.A. 486/2000 before the Tribunal which was disposed of with a direction to the department to adhere to the procedure contemplated in the scheme. His request was again rejected. He filed O.A. 427/2001 which was also dismissed by the Tribunal (Annexure A1). The applicant approached the High Court by OP NO.29339/2001 which was disposed of with the following direction:

"Here in this case, apart from the interest for terminal benefits, there is nothing to prove that there is any substantial income to the family. Both the children were studying. One is studying in Bombay. Retired employee was an Income Tax Officer. Their status of living also shall be considered. The interest rate is also decreasing, however, his case can be considered only in 5% vacancies available depending upon the number of applications in dying in harness scheme, seniority of applications, etc. It should be given to a deserving case on a comparative evaluation if there are more applications. The applicant applied in time, immediately after the death."

The applicant approached the 2nd respondent through various representations for compliance of the judgment of the High Court. He was informed that his case will be considered as and when sufficient

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number of vacancies become available(A-3). When he found that notifications were published by the SSC inviting applications for employment in Income Tax Department, and there was no proper response from the respondents to his application, he approached the Department under RTI Act on 13.11.2006 for information to which he was informed that his case was closed even prior to judgment of the High Court (A-4). Aggrieved, he filed Contempt Case NO. 932/07. Thereafter, the respondents informed him about the proposal to conduct the eligibility test of computer knowledge for considering him to the post of Tax Assistant (A-5). The applicant though was given short notice, appeared for the test, the result was not published. However, the respondents informed him that his claim was rejected for failure in the computer test (A-7). The Contempt Application No. 932/2007 was closed (A-8). He again approached the High Court challenging A-7 rejection order but the same was dismissed maintaining that the remedy was to approach the Tribunal. Hence, he filed this O.A to quash Annexure A-7, to direct the respondents to appoint him to the post of Tax Assistant or any suitable post and to declare that the conduct of test is against the scheme of compassionate appointment. The applicant contends that the decision of the respondents is illegal and arbitrary, they have no case that the applicant is not eligible for compassionate appointment, the conduct of eligibility test for compassionate appointment is against the scheme, any suitable post should have been offered and that the conduct of the test was to avoid contempt proceedings before the High Court. The learned counsel added that he could have been considered for the post of LDC and all the candidates who appeared for the computer test along with the applicant failed to

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qualify in the test.

3 The respondents filed reply statement resisting the claim of the applicant. They submitted that the case of the applicant was reconsidered in the light of the directions given in the judgment of the High Court of Kerala, Ernakulam. They stated that as the applicant could not pass the test he could not be appointed and that no exemption /relaxation is permissible in respect of Data entry speed for Tax Assistant and exemption from the test is permitted only for LDC. They added that the test was conducted in accordance with the mandatory provisions in clause 5(b) of the scheme of compassionate appointment read with the recruitment rules of Tax Assistant notified by the CBDT. Clause 16(a) of the scheme stipulates that the appointments made on the grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance or efficiency of administration.

It is submitted that the compassionate appointment is limited to the ceiling of 5% of direct recruitment vacancies and that the course of action followed in the case was strictly in accordance with the directions of the High Court of Kerala, Ernakulam. They further stated that his case was considered by the Committee and his case was select listed at position 8 and 9 for the posts of Notice Server and Group-D respectively and that recommendation is limited to the availability of vacancy arising in the financial year as per DOPT's guidelines. In the



case of the post of LDC they submitted that there is no vacancy under compassionate appointment as there is no direct recruitment in the post of LDC.

4 The applicant filed rejoinder reiterating the contentions in the O.A.

5 The respondents were directed to make available the year-wise direct recruitment vacancies in Group-C and D cadre which occurred during the years 1998-99, 1999-2000 and 2000-2001 and the number of compassionate ground appointments made during those years. They were further directed to file an affidavit to the effect that why the case of the applicant has not been considered within this period for Group-C or Group-D posts. The respondents filed additional reply statement stating that there was only 1 post during the year 1998-99 and that the said post was filled up with a more eligible and deserving candidate and that his case was considered on subsequent years and was not found fit. They further submitted that the applicant had filed O.A. 427/2001 which was dismissed upholding the course of action followed by the department. They have also tabulated the list of vacancies arisen and earmarked for compassionate appointment for the financial years 1998-99 to 2010-2011.

6 I have heard learned counsel for the parties and perused the records produced before me

7 The applicant is aggrieved by the denial of appointment on compassionate ground consequent on the death of his father on 7.8.1998. A series of cases were filed by the applicant. In OP NO.

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29339/2009 the High Court directed the 1st respondent to consider the case of the applicant also, if suitable vacancy arises, depending upon the comparative merit of the deserving candidates who applied for that post. The respondents in the impugned order stated that they have considered the case of the applicant with reference to his application dated 21.8.1998, the judgment of the High Court in OP No. 29339/2001 dated 19.11.2002 and the direction of the High Court in CC No. 932 of 2007 dated 17.7.2007.

8 The compassionate appointment under the Central Government is subject to the following main conditions:

- (a) appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.
- (b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group-C or D post.
- (c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual /daily wage /adhoc /contract basis against regular vacancies, there is no bar to considering him for such appointment, if he is eligible as per the normal rules/orders governing such appointment.

The Apex Court in a catena of judgments had laid down certain important principles in the scheme of compassionate appointment, which are extracted below:

- (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground
- (ii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.
- (iii) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired government servant is legally impermissible.

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(iv) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not as vested right which can be exercised at any time in future;

9 It is true that the applicant was called for test to reconsider his case for appointment on compassionate ground to the post of Tax Assistant. However, he failed in the test. Therefore, he was not qualified to be appointed to the post of Tax Assistant as per the rules. His case therefore, does not stand test of the principles (ii) and (iv) supra laid down by the Apex Court.

10 In the facts and circumstances, I do not find any fault with the action of the respondents in Annexure A-7. The O.A is dismissed. No costs.

Dated 12th January, 2011


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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