

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.199/2003

Monday this the 31st day of May, 2004.

**C O R A M**

**HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER  
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER**

1. Shri A.A.Chandramathi,  
Kongapillil House,  
Udayamperoor P.O.  
Tripunithura  
Ernakulam District
  2. D.Anoop,  
Kongapillil House,  
Udayamperoor P.O.  
Tripunithura  
Ernakulam District
  3. Abhilash,  
Kongapillil House,  
Udayamperoor P.O.  
Tripunithura  
Ernakulam District/
- : Applicants

[By Advocate M.K.Succheendran ]

Vs.

1. Flag Officer Commanding-in-Chief,  
Southern Naval Command Headquarters,  
Kochi.
  2. The Chief of Naval Staff,  
Naval Head Quarters,  
New Delhi.
  - 3.. The Union of India represented by the  
Secretary,  
Ministry of Personnel Public Grievances  
and Pension, Department of Personnel & Training,  
Government of India,  
New Delhi
- : Respondents

[By Advocate Mr.C.Rajendran]  
SC 4 SC

The application having been heard on 10.03.2004, the  
Tribunal on 31.05.2004 delivered the following :

**O R D E R**

**HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER**

The second and third applicants are the children of the  
first applicant and late K.K.Divakaran, who, while working as  
'Syrang' under the first respondent, died in harness on

12.06.1998 leaving his family in extreme financial distress. It is averred in the Original Application that there is not even a single earning member in the family after the loss of the sole bread winner. The first applicant applied for compassionate appointment to her son, the second applicant. An enquiry was conducted by the District Collector regarding the applicant's income and found that the total income was Rs.100/-per month. The first respondent rejected the claim of the applicant for compassionate appointment. An appeal was filed thereafter, which was also rejected by the second respondent confirming the finding of the first respondent. An O.P. was filed before the Hon'ble High Court of Kerala which was disposed of directing the applicant to file an Original Application before this Tribunal. The applicants would cite various Supreme Court's decisions and Ministry of Personnel, P.G. & Pensions O.M dated 22.08.1995 and would contend that the second applicant, as one of the eligible dependants of the deceased Government servant, had a legitimate case for compassionate appointment. Therefore, apart from making an interim prayer for consideration of appointment of the 2nd applicant till the final decision is taken, the applicants have sought for the following main reliefs:-

- I, Call for the records connected with the case.
- II, Issue appropriate orders directing the 1st respondent to appoint the second applicant in any Group D post or any appropriate post under the 1st respondent on compassionate appointment, since the second applicant is the son of Government servant died in harness on 12.06.1998.
- II A, Direct the respondents 1 to 3 to consider the compassionate appointment of second applicant, who is the son of Government servant died while in service and is very destitute and there is no other earning member in the family to supplement the loss of income from the bread winner in the family to relieve the economic distress of the members of the family and therefore deserve to be appointed on compassionate ground under dying harness scheme.

III, Quash Annexure A-6 and A-9. Finding respondents 1 and 2 rejecting the proposal for providing compassionate appointment to D.Anoop who is the second applicant herein and the son of Government servant died in harness on 12.06.1998.

III A, Quash Annexure R-6, Since the select committee members 4,5 & 6 are not competent to sit as members on the basis of the direction contained in Annexure R - 3, Para 12 (C) Further, recruitment roster against appropriate category viz., SC/ST/OBC/General depending upon the community the applicants belong as contained in Annexure R-3. Para 7(b) has not been complied with by the respondents.

III B, Quash the ceiling of 5% in Annexure R 3,4,5 & 6 since it violate the principle laid down by the Hon'ble Supreme Court (1994 1 SCC 192) in the matters of immediate and compassionate appointment under dying harness scheme.

IV, Pass such other orders which are deemed just, proper and necessary in the circumstances of the case.

2. In their reply statement, the respondents have pointed out that on verification from the department concerned, it was revealed that the first applicant was in receipt of an amount of Rs.2,18,017/- and also the family pension of Rs.2,400/- per month with 52% D.A thereon which came to total pension Rs.3,500/- per month. She had shown Rs.67,323/- as her liability in the application form (Annexure R-1). The family was shown to be in possession of 6 cents of land and no income was derived from there. A civil verification obtained from the District Collector has revealed that the family was in possession of 12 cents of land and an annual income of Rs.1200/- was derived there from. As per report, a liability of Rs.17,323/- has been shown in Annexure R-1. DOPT has issued a revised consolidated instructions for offering compassionate appointment to the dependants of the deceased vide letter dated 09.10.1998 superseding the earlier order. (Annexure R-3). Accordingly, the case of the applicant was examined and on request the applicant filed document alongwith an affidavit stating that her family consisted of herself and three children

and the family possessed 6 cents of landed property with a house. This was contradicted by the civil verification report which shows that the family is in possession of 12 cents of land. The applicant has been allowed the family pension at a higher rate till 2005 and she was in receipt of family pension of Rs.2,400/- per month plus DA. The applicant rather than applying for herself or eldest daughter preferred her son, now aged 22 years, for compassionate appointment. Now her two sons are capable of earning their bread and the daughter is also married thereby removing major chunk of liabilities from her shoulder. She did not submit any reason for not applying for compassionate appointment for herself while submitting application for her second son. As per the existing Government policy on Employment assistance Scheme, a compassionate appointment can be made upto a maximum of 5% of the vacancies falling under direct recruitment quota in any Group 'C' and 'D' post. Her application was of 1998. The procedure followed was that all the candidates who were placed in a list in accordance with the date of death of the employee were given appointments as per seniority in that list as and when the vacancy comes. The name of the applicant was also placed in that list and asked to wait for her turn. There were many applicants senior to her in the list for consideration.

3. In the meantime, Ministry of Defence has modified their earlier order and issued time limit and revised rules and regulations on the scheme clearly bringing out that all pending as well as fresh cases are to be reviewed by a Board of officers prescribed by DOPT and the Board should recommend only the really deserving cases for compassionate appointment within the



5% ceiling. The DOPT has also given a yardstick of poverty line of Rs.1767.20 P.M. for a family of five members to determine the financial destitution/penurious condition of the family. The Ministry of Defence has also directed to dispense with the procedure of preparing waiting list of candidates. Annexure R-4 dated 12.02.2001 is the letter giving the guidelines on the scheme. Accordingly, all pending cases as well as fresh cases were referred to the Board of Officers. Though the applicant's name was in the waiting list, her name was also referred to the Board of Officers and the Board assessed each and every case giving due weightage taking into account the various assets and liabilities of all the applicants in accordance with the guidelines. The Board considered the applicant's case, its relative merits vis-a-vis other applicants and took a decision that the applicant's case was not really a deserving one and hence, not recommended for compassionate appointment (Annexure R-6). The object of granting compassionate appointment has been laid down by the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana & Ors to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution. The compassionate ground for getting employment is not a statutory right, but flows from a scheme and its implementation would be in accordance with the provisions contained in the Scheme. There were 100 cases before the Board and only three vacancies under 5% ceiling were available. The Board found 78 other cases more deserving than the applicant and accordingly could not consider the applicant's case. The appointment on compassionate ground can be made when a vacancy is available for the said purpose. Offering appointment as a matter of course irrespective of the financial condition of the

family has been declared by the Supreme Court to be legally impermissible. The applicant's family consisted of two grown up sons, one married daughter and the applicant was also in receipt of a family pension of Rs.2,400/- plus dearness relief. Therefore, they cannot be considered as a destitute family. The Board carried out a balanced and objective assessment of the case and its recommendations were placed before the competent authority for approval. For these reasons, the respondents would submit that the Original Application has no merit and is to be dismissed.

4. The applicant has filed rejoinder contending that the application was preferred before 1st respondent on 23.09.1998 which should have been placed for consideration during the period from 01.04.1998 to 31.03.1999. Due to unexplained delay on the part of the respondents in the matter, the applicants in the succeeding years were also put together in Annexure R-6 Select list and the compassionate appointment was denied without any valid reason. Therefore, Annexure R-6, select list is coloured with mala fides and is unenforceable in the eye of law. The application for compassionate appointment should be considered by a Committee of officers consisting of three officers, one Chairman and two members of the rank of Deputy Secretary/Director in the Ministry/Department and officers equivalent rank in the case of attached and subordinate offices. The Welfare Officer may also be made one of the Members/Chairman of the Committee depending upon the rank. The Committee consists of 6 members. The superfluous three members are NAD Employees Union General Secretary, Vice President, Cochin Naval Base Employees Union and Secretary Cochin Naval Base Civilian



Workers Union. They are not holding the rank of Deputy Secretary/Director in the Ministry/Department and therefore, they cannot be considered as <sup>✓</sup>qualified members in the Committee. The preparation of Annexure R-6, Select list by those disqualified members is invalid and unenforceable in the eye of law. Therefore, Annexure R-6 select list has to be declared as null and void. Due to their unlawful entry in the Selection Committee, system of selection has been vitiated as their sole intention was only to give appointments to the persons of their choice in place of the applicant who is in penury.

5. Annexure R-6 appears to be perverse as there were full of suppression of material facts. The date of the application, the age of the applicants, qualification and other necessary particulars to evaluate the standard of merit for appointment were not shown in Annexure R-6. If 5% appointment is given there must be 5 applicants in the Select list for appointment. The ground urged in this O.A itself is that Annexure R-6 is illegal and is liable to be set aside. By not making year bar appointments, it is presumed that the intention of the Committee was to make appointment of their choice, who have only political interest in which they stick on. The HBA drawn from the department is left as a liability to the family. From the report, it can be revealed that the family's income from property comes to Rs.1200/-. The respondent insisted the 1st applicant to apply herself or her eldest daughter for compassionate appointment. The second applicant is more eligible and suitable in all respects under the provisions of the relevant Recruitment Rules. The benefit given to the 1st



applicant has been fully spent for completing the house construction and for the marriage of her daughter. There is no credit balance left, but only some liability to Co-operative Society, Udayamperoor.

6. The respondents have filed an additional reply statement to the amended Original Application reiterating the earlier contentions. They further contended that cases for compassionate appointment had to be processed in accordance with the prevailing Recruitment Rules and Supreme Court orders. Representatives of the Employees' Union were also included in the Board, for better transparency. Since all the pending cases were considered against three vacancies, it was feared that this might cause resentment and unrest among the dependent families and hence, Union representatives could make the family members of the deceased understand the existing rule position far better than the administration and could take them into confidence as representatives of the employees.

7. The applicants also filed another rejoinder to the second reply filed by the respondents contending that public servants are to give effect to the intention of the government as per the Scheme which will bring honour to the Government orders, otherwise public at large will suffer and there will be chaos in the Public Administration.

8. We have heard Shri M.K. Sucheendran, learned counsel for applicants and Shri C.Rajendran, SCGSC. Learned counsel took us through various pleadings, evidence and material placed on record.

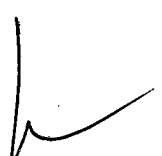


9        Learned counsel for applicants argued that the Original Application was amended in order to incorporate and challenge the Selection Committee's competency and to assail Annexure A-6. 5% ceiling is also challenged since it violates the principle laid down by the Hon'ble Supreme Court. He further argued that it is strange to incorporate trade union members also in the Selection Committee which is not contemplated as per the guidelines. Therefore, Annexure A-6 is illegal, arbitrary and without any justice.

10.      Learned counsel for the respondents, on the other hand, argued that the points made by the applicants in the Original Application had already been settled by the Hon'ble Supreme Court in various decisions and the validity of prescribing the 5% ceiling has also been settled. Though the respondents have sympathy with the family of the applicant, more deserving cases have been considered and recommended for appointments. Therefore, there is no merit in the Original Application and is liable to be dismissed.

11.      We have given due consideration to the arguments of both the learned counsel and gone through the pleadings, material and evidence placed on record.

12.      It is an admitted fact that the Scheme of compassionate appointment does not confer a statutory right for the selection. It is a beneficial scheme enunciated by the Government of India and certain yardstick has been prescribed in such selection with a ceiling of 5% of total vacancies. The Scheme as such is not under challenge in this Original Application. The Ministry of



Defence has modified their earlier order and issued a time limit and framed revised rules and regulations on the scheme clearly bringing out that all pending as well as fresh cases are to be reviewed by a Board of officers prescribed by DOPT and that the Board should recommend only the most deserving cases for compassionate appointment within 5% ceiling. Rs.1767.20 for a family of 5 members per month was also prescribed as a yardstick to be applied to determine the financial destitution and penurious condition of the family (Annexure R-4). Accordingly, all pending as well as fresh cases were referred to the Board of Officers alongwith the applicant's name though she was in the waiting list. The Board assessed each and every case giving due weightage taking into account various assets and liabilities of the applicants. The Board considered the applicant's case in its relative merit with other applicants and finally the Board came to the conclusion that the applicants case is not a fit one to be considered and hence rejected the same. Another ground of rejection was that the Board has considered 100 cases and only three vacancies under the 5% ceiling were available and the Board found that there were 78 more deserving cases than the applicant's. It is in this background, we have to determine whether there is any inconsistency in the impugned orders. One of the grounds and reliefs that has been sought by the applicant is that 5% ceiling that has been adopted in rejecting her application was not in conformity with legal principles.

13. For better elucidation, it is profitable to quote the relevant portions of the scheme OM No. 14014/6/94 dated 09.10.1998 for compassionate appointment.

"Dependant Family Member" means -

- (a) Spouse; or
- (b) Son (including adopted son); or
- (c) Daughter (including adopted daughter); or
- (d) Brother or sister in the case of unmarried Government or member of the Armed force referred to in (A) or (B) of this para.

"Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis.

**Eligibility:**

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) Applicant for compassionate appointment should be eligible and suitable for the posts in all respects under the provisions of the relevant Recruitment Rules.

**Determination/Availability of Vacancies:**

- (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 up to a maximum of 5% of vacancies falling under direct recruitment in any Group 'C' or 'D' post. The appointing authority may hold back up to 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise, so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz., SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and, if he belongs to General category he will be adjusted against the vacancy point meant for general category.
- (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/ad hoc/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 appointments.

- (d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g., sports quota vacancy.
- (e) Employment under the Scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.
- (f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/ Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

5. The Scheme has been approved by Hon'ble Supreme Court in catena of judgements, some of which are as follows:

- (a) Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Haryana and Others, JT 1994 (3) SC 525, has laid down following important principles for compassionate appointment:
  - (i) Only dependents of an employee dying in harness leaving his family in penury and without means of livelihood can be appointed on compassionate ground.
  - (ii) The posts in Groups 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground and no other post, i.e, in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.
  - (iii) 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.
  - (iv) 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.
  - (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

- (vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- (vii) Compassionate appointment cannot be offered by an individual functionary on an ad hoc basis.
- (b) In Auditor General of India and Others vs G. Anantha Rajeswara Rao, (1994) 1 SCC 192, Hon'ble Supreme Court has held that appointment on grounds of descent clearly violates Article 16(2) of the Constitution; but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the even of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable.
- (c) In the cases of Himachal Road Transport Corporation vs. Dinesh Kumar [JT 1996 (5) SC 319] and Hindustan Aeronautics Limited vs. Smt. A. Radhika Thirumalai [JT 1996 (9) SC 197], the Apex Court has made it clear that the appointment on compassionate grounds can be made only if a vacancy is available for that purpose.
- (d) In Civil Appeal No. 11881 of 1996 reported in (2000) 6 SCC 493, Balbir Kaur and Another vs. Steel Authority of India and Others, Hon'ble Supreme Court has declared that the compassionate appointment could not be denied on the ground that the Family Benefit Scheme was available and further viewed that the lump sum payment of Provident Fund is an insulating factor for the family to cope with the situation arising out of death of the employee. Such payments ought not to be withheld by making it compulsory for the family to subscribe to the Scheme though it is open to Steel Authority of India Limited (SAIL, for short) to give option to the family of deceased employee either to seek compassionate appointment or to go in for monthly payment. SAIL being an "authority" under Article 12 could also not evade its constitutional responsibility towards its employees and social and economic justice. Their Lordships further observed that denial of compassionate appointment in deserving cases, perceived as denial of social and economic justice as enshrined in the Constitution. Law Courts cannot be mute spectators where relief is denied to the horrendous sufferings of a family which has lost its breadwinner. Constitutional philosophy should be allowed to become a part of every man's life and then only the Constitution can reach every one. This was an observation made by Hon'ble Supreme Court in the context of compassionate appointment in the decision aforesaid.

14. Admittedly, the introduction of the Scheme evolves a policy decision of the government which cannot be interfered with by judiciary unless marred by malafides. It has been held

in the case of State of Himachal Pradesh and another Vs. Jafla Devi (Smt.), 1997 5 SCC 301, that in policy decision interference of Courts are not contemplated. The Hon'ble High Court of Kerala in a decision in Sunil Kumar K.G. Vs Union of India and others, 2003 (2) ILR 46, has considered the aspect whether the family is able to sustain itself even after receipt of the terminal benefits of the deceased and held that each case has to be decided on its own fact. But the basic factor is condition of the family. In some cases, even after collection of terminal benefits, the family may be under a debt. Thus, the mere fact that the family has received terminal benefits, cannot, by itself, be a reason to deny appointment on compassionate basis.

15. Admittedly, the Scheme is a benevolent one based on a policy decision, which is left to the discretionary wisdom of the executive. Therefore, as laid down by the Hon'ble Supreme Court in a decision reported in Karampal Vs. Union of India, 1985 2 SCC 457, the Courts shall not interfere in the working of the Scheme and implementation of the scheme thereof be challenged merely on the basis of hardship. In a celebrated decision of the Hon'ble Supreme Court reported in Union of India Vs. Joginder Sharma, 2002, SCC L&S 1111, it was held that compassionate appointment is granted to enable the dependant family to tide over the sudden crisis arising out of the death of the sole bread winner without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed to be imposed in view of certain

observations emanating from the Apex Court in an earlier decision, the Tribunal or the High Court cannot compel the Department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, here people are waiting in the queue indefinitely, the Policy laid down by the Government regarding such appointment should not be departed from by the Courts/Tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. The Supreme Court as early as in the decision reported in Life Insurance Corporation of India vs. Asha Ram Chandra Ambekar (Mrs.) & Anr., (1994) 2 SCC 718, held that the Courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. Therefore, it is clear that much exercise has been done by the Hon'ble Supreme Court deliberating upon the scheme with special reference to 5 % ceiling. Therefore, only the really deserving candidate be considered for such appointment. In the circumstances, the challenge against the prescription of 5% ceiling is unsustainable.

16. <sup>✓</sup> We cannot agree with the respondents' contention that the 1st applicant, being the dependent widow, or the daughter who subsequently got married, could have been the real aspirants for appointment rather than her son, the 2nd applicant, since the scheme envisages that any of the dependant family members can be considered. However, on going through the records, we find that this was not the basis for rejection of the applicant's case as that fact has never come to the consideration of the Board.

17. On going through the entire case records and Annexure A-6 committee report, we find that all the relative merits have been considered by the Board taking various aspects such as income, age and points have been awarded on each count. Against 5 % vacancy (3 Nos.) the most deserving persons have been considered by the Board and they have been selected. 78 other persons were more deserving than the applicant. One of the grounds that the applicant urged in this application was that Annexure A-6 was counter-signed by the Union representatives whose inclusion in the Board was not in accordance with the scheme. The contention of the respondents is that this has been done in order to give transparency to the entire process of selection and to take the employees into confidence since there were only 3 vacancies for the entire 100 persons in the zone of consideration. Otherwise, it is likely that the Union will take up the matter before the Courts and challenge the same. On going through the rules, we also find that there is no infirmity in the procedure adopted by the respondents. The Scheme of compassionate appointment is not derived out of statutory right but out of a Scheme. As per the scheme and guidelines a Board is to be constituted consisting of the officers of the Department. That requirement is fulfilled. The inclusion of union members in our opinion, would ensure greater transparency and, therefore, the applicant cannot take it as a reason to challenge Annexure A-6. The applicant has no case that any of these members are prejudiced and had any personal bias against her or for the deceased.



18. Considering all the above aspects, we are of the view that there is nothing that warrants interference in the matter and that the impugned orders cannot be faulted. The Original Application being bereft<sup>of</sup> any merit, is dismissed. No order as to costs.

Dated, the 31st May, 2004.



**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**



**T.N.T.NAYAR**  
**ADMINISTRATIVE MEMBER**

vs