

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 204 / 2008

Friday, this the 27th day of February, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

V.Vijesh,
S/o late Sri C Kelappan,
Nhannayil House, Nedumparambu.P.O.
Kozhikode-673 506.Applicant

(By Advocate Mr G Sasidharan Chempazhanthiyil)

v.

1. The Director,
Indian Institute of Spices Research,
Marikunnu.P.O.
Calicut-673 012.
2. The Secretary,
ICAR, Krishi Bhavan,
Dr Rajendra Prasad Road,
New Delhi-110 001.Respondents

(By Advocate Mr T.P.Sajan)

This application having been finally heard on 27.1.2009, the Tribunal on 27.2.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's case in this O.A is that he is entitled to be granted employment on compassionate ground on the demise of his father Shri Kelappan who died on 15.7.2003 while in service under the 1st respondent.

2. The applicant who belongs to the Adivasi Community made an application on 27.8.2003 for compassionate appointment after the death of his father.

Thereafter, his mother Smt B.Leela also made a representation to grant appointment to the applicant. Respondents vide Annexure A-2 letter 17.5.2004 informed Smt Leela that, under the rules, compassionate ground appointment would be made only against 5% direct recruitment quota vacancies reserved for the purpose and since there were no vacant posts available under the said quota, the request for compassionate appointment to his son has been circulated to all the ICAR Institutes for favourable consideration. Annexure R-2 dated 9.9.2003 is a letter from the first respondent to all Directors/Project Directors of All Research Institutes of ICAR by which the details of the applicant was circulated by the request to accommodate him if there are any vacancies within the 5% quota earmarked for compassionate ground appointment in respective offices. Annexure R-3(a) to R-3(m) are the various letters received by the 1st respondent from the various Institutes under the ICAR stating that there are no vacancies available with them and in fact they themselves are facing the same problem for accommodating the dependent of the deceased employees of their own organizations.

3. The applicant had in fact approached this Tribunal earlier in O.A.797/2006 (Annexure A-4). In the said O.A the applicant's contention was that he was not considered under the liberal evaluation formula issued by the DoPT vide their Office Memorandum dated 5.5.2003 and dated 9.10.2006, according to which the Government of India have decided that if the compassionate appointment to genuine and deserving cases as per the scheme for compassionate appointment issued vide OM dated 9.10.2006 and 3.12.1999 is not possible in the first year due to non-availability of regular vacancy, the prescribed Committee should review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, subject to availability of clear vacancy within the prescribed 5% quota. If on

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scrutiny by the Committee, a case is considered to be deserving the name of such person should be continued for consideration for one more year. The maximum time limit a person's name can be kept under consideration of offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition on the applicant at the end of the 1st and the 2nd year. After 3 years, if compassionate appointment is not possible to be offered to the applicant, his case should be finally closed and should not be considered again. By DoPT's OM dated 9.10.2006, it has been decided that the small Ministry/Departments can apply a more liberalised method of calculation of vacancies under 5% quota for compassionate appointment. In such cases, where no vacancy for compassionate appointment in the 5% quota for the last 3 years, they can add up the total of direct recruitment vacancies for Group C & D arising each year for 3 or more preceding years and calculated 5% of vacancies with reference to the grand total of vacancies of such years for locating one vacancy for compassionate appointment. This will be subject to the condition that no compassionate appointment was made by the Ministries/Department during 3 year or number of years taken over and above 3 year for locating one vacancy under 5% quota. According to the applicant, the respondents have still not considered him in terms of the the aforesaid OMs and granted him the benefit of compassionate appointment.

4. In the reply statement, the respondents have denied the aforesaid submission of the applicant. They have stated that the yearwise total direct recruitment vacancies were considered for relevant years (preceding 3 years and succeeding 3 years). There were 9 posts which have fallen vacant in the category of Administration and Supporting, out of which, 5 posts were abolished. After finalisation of Annual Direct Recruitment Plan 2005-06, the strength of

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Supporting Staff of the Institute has been reduced to 63 posts from 65 posts and no vacant posts existed during 2003. The cadre strength has been reckoned taken into account the vacancies available at Headquarters, Calicut, Peruvannamuzhi and Research Centre, Appangala. The present cadre strength of Supporting Staff as on 31.3.2008 was 63, out of which 58 are in position and 5 are vacant. However, none of the vacancies available are within the quota earmarked for compassionate appointment under the 5% quota.

5. We have heard the learned counsel on both sides. It is seen from the record that the respondents have made their earnest and sincere effort to accommodate the applicant in any one of the post by offering an appointment on compassionate ground. However, they have expressed their inability to give him any appointment because there are no vacancies available for that purpose. Though the applicant's father passed away on 10.7.2003, the respondents have kept his case alive for appointment on compassionate ground for all these years but unfortunately for want of vacancy, they could not give him appointment. I entirely agree with the respondents that unless there are vacancies earmarked for compassionate appointment against the 5% direct recruitment quota, even in deserving cases, appointments cannot be made on compassionate grounds. As the claim for appointment on compassionate ground is not a matter of right, the applicant has to come within the ambit of the scheme for compassionate appointment and the various OMs issued thereunder. Since the applicant's case is not covered by the said scheme and the various OMs thereunder, the respondents cannot appoint him on compassionate ground. I, therefore, do not find any violation of the rules, illegality or arbitrariness in the matter as alleged by the applicant. The O.A is, therefore, dismissed. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER