

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.221/2002.

Friday this the 5th day of April 2002.
CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. M.S.Gauri, W/o late K.A.Surendran,
Kalathi Parambil House,
Elamakkara P.O.,
Kochi-26.
2. K.S.Ajesh, S/o Late KA Surendran,
Kalathi Parambil House,
Elamakkara P.O., Kochi-26. Applicants

(By Advocate S/Shri TC Govindaswamy, KM Anthru,
Martin G.Thottan. Mannatil Kumar and Ms.Heera D.)

Vs.

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Defence, New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Cochin-682 004.
4. The Secretary to the Government of India,
Department of Personnel & Training,
New Delhi.
5. Joint Secretary (Administration),
Ministry of Defence,
1New Delhi. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 5th April 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The first applicant is the widow and the 2nd applicant the
son of late KA Surendran who while working as Lascar in the Naval
Ship Repair Yard (NSRY for short) expired on 19.3.99. Late
Surendran was survived by his widow the first applicant, "two
daughters and the applicant. One daughter got married. The

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unmarried daughter is 26 years old. The second applicant is 24 years old. The request for compassionate appointment to the second applicant was turned down by the impugned order dated 31.1.2002 (A1) on the ground that, in view of the few number of vacancies to be filled under the compassionate appointment scheme, the Committee recommended only three names and as the 2nd applicant's name was placed at serial No.38 in the order of merit the competent authority having regard to all the relevant facts and circumstances decided to reject the claim of the applicant. Aggrieved by that the applicant has filed this application seeking to set aside A-1. The applicant has also challenged the A-2 guidelines issued by the Ministry of Defence on the ground that it is totally against the scheme for grant of compassionate appointment. The applicant was also sought to quash A-3 to the extent of limiting compassionate appointment against 3% of the vacancies for direct recruitment. It is alleged in the application that there is no reasonable basis for limiting appointments on compassionate grounds to 3% of the vacancies.

2. We have perused the application and all the annexures appended thereto and have heard at length Shri TC Govindaswamy, learned counsel for applicant and Shri C.Rajendran, Senior Central Government Standing Counsel appearing for the respondents. Shri TC Govindaswamy, learned counsel of the applicant states that, the 3rd respondent who has issued the impugned order is not competent as he is not the Head of the Department, and only the Chief of Naval Staff (2nd respondent) is competent. We do not find any force in this argument. The Flag Officer Commanding-in-Chief, Southern Naval Command is the Head

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of the Department as the Southern Naval Command is concerned and therefore, the contention of the applicant is absolutely untenable and baseless. Regarding the merits of the case, the contention of the applicant that the guidelines contained in A-2 is repugnant to the scheme (A3) has no basis because we do not find anything wrong in A-2 which is repugnant to the scheme A-3.

3. A mere reading of A2 and A3 would show that A-2 instructions issued by the Ministry would reveal that those ~~instructions were issued~~ prescribing time limit and ways and means of effective implementation of A-3 Scheme. The limiting of appointments on compassionate grounds to 3% cannot be challenged for that is the policy of the Government. Further as employment opportunity is a common wealth of the unemployed citizens, reserving any larger part of it for compassionate appointment would amount to violation of Articles 14 and 16 of the Constitution. Employment assistance on compassionate grounds not being a statutory right, but flows from a scheme, its implementation also would be in accordance with the provisions contained in the scheme. As even *prima facie* the limiting to 3% does not appear to be arbitrary, but is based on a sound policy, we find no reason for entertainng a challenge against it.

4. The 2nd applicant is 24 years old and does not state that he is unhealthy and incapable of earning his bread. The mother of the 2nd applicant is in receipt of family pension. The family ^{56/ak} has got a home ~~estate~~ and there is something left behind even after clearing the liabilities. One daughter has already got married. The 2nd daughter is 26 years old. Apart from stating

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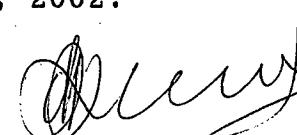
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that the applicant was a dependent of his father for his livelihood when he was alive, it is not stated that the remaining members of the family were also dependents and left to destitution on the death of the Government servant. Under these circumstances, considering all the facts and circumstances, the stand of the competent authority to reject the claim of the applicant for employment assistance on compassionate grounds cannot be faulted.

5. In the light of what is stated above, the application is dismissed in limine.

Dated the 5th April, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicants' Annexures:

1. A-1 : Letter No.CS.2809/95 dated 31.1.2002 issued by the third respondent addressed to the 1st applicant.
2. A-2 : Ministry of Defence letter No.1D19(4)824-99/1998-D(Lab) dated 9.3.2001.
3. A-3 : O.M. bearing No.14016/6/94-Estt.(D) dated 9.10.1998 issued by the 4th respondent.
4. A-4 : A true copy of the O.M.No.F 14014/23/99-Estt(D) dated 3.12.1999 issued by the 4th respondent.

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