

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.229/2003.
Dated....the.....24th..March, 2005.

CORAM:

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

K. Anil Kumar, Anil Nivas, Post Thondiyil,
Peravoor, Kannur-670.673. Applicant

(By Advocate Shri K.B.Dayal)

vs.

1. The Union Government of India, represented by the Secretary to Government, Ministry of Communications, Department of Posts, Central Secretariat, New Delhi.
2. The Director (Staff), Ministry of Communications, Department of Posts, Government of India, Dak Bhavan, Sansad Marg, New Delhi-110 001.
3. The Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
4. The Superintendent of Post Offices, Thalassery Division, Thalassery-2. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

ORDER

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

The applicant's father was a Postman, who after serving the Department for 16 years, was permitted to retire from service on invalidation with effect from 24.5.1997. After an operation, his eye sight was diminished and permanently incapacitated in further service and retired on the said date. The family was residing in a rented house. After retirement, the retiree made an application on 25.6.97 for appointment on compassionate grounds for his elder son. The applicant has also filed separate application. Both the applications were rejected by the 4th respondent by order dated

10.8.1998 (A1) on the ground that the family of the retired official was not in indigent circumstance warranting the Department to provide a job on compassionate grounds. The applicant has filed O.A. No.1146/1999 (A1). This Tribunal while allowing the application vide A4 order dated 11.8.2000 directed the Circle Relaxation Committee to consider the case of the applicant afresh. The grievance of the applicant is that the Circle Relaxation Committee has not properly dealt with the matter and rejected his claim vide A-5 order. The applicant filed another O.A.1305/2000 and this Tribunal vide order dated 4.1.2001 (A6) had directed the applicant to submit a fresh representation to the Ist respondent and the Ist respondent was directed to dispose of the same within three months. On receipt of the representation, the 4th respondent intimated the applicant to show his willingness. He also expressed his willingness to accept the job. Thereafter, no communication has been received. Again the applicant has filed O.A.8/2002 before this Tribunal. Vide A-10 order this Tribunal directed the respondents to consider the representation and to give an appropriate reply within a period of three months. Now the 2nd respondent issued an order (A-11) rejecting the claim of the applicant on the ground that since fresh cases are to be given preference over past cases, there is no scope for consideration of this case. Aggrieved by the said action on the part of the respondents, the applicant has filed this O.A. seeking the following main reliefs:

- i. Call for the records leading to Annexure A11 and quash the same.
- ii. Prohibit the fourth respondent from filling up of the 2 open vacancies of GDSMD which arose due to the appointment of the Postman/Mail Guard as per Annexure A-14;
- iii. Issue appropriate direction or order to the respondents to give an appointment to the applicant on compassionate ground under the fourth respondent or under any department of the Union of India with all monetary benefits with effect from 25.6.1997 – the date on which the application was made; on the basis of Annexures A7 and A8;
- iv. direct the respondents to give adequate compensation and costs of the four

O.As. by them jointly and severally to the applicant for the unwanted, continuous and consecutive litigations which he is compelled to file before this Hon'ble Tribunal for appointment on compassionate ground, due to the illegal and arbitrary denial made by the respondents without any basis, stating one or other reasons for the denial;

2. The respondents have filed a detailed reply statement admitting that the applicant's father was retired from service on medical grounds with effect from 24.5.97. The Circle Relaxation Committee which met on 8.5.1998 examined his case in detail and arrived at a conclusion that the family of the retired official was not in indigent circumstance warranting compassionate appointment. The applicant has filed O.A.1146/99 which was disposed of by the Tribunal vide A4 order with a direction to the respondents to consider the case of the applicant by the Circle Relaxation Committee afresh and to pass appropriate orders. The Circle Relaxation Committee considered the case of the applicant afresh and passed A-5 orders. Again the applicant has filed O.A.1305/2000 which was also disposed of directing the respondents to consider his fresh representation. The same was considered in detail and A-3 order was issued stating that there is no vacancy. Again the applicant filed O.A.8/02 and this time also, the Tribunal directed the respondents to consider the representation. Accordingly, the DG, Posts considered his case and gave Annexure A-11 reply. It is further averred in the reply statement that the appointment on compassionate grounds can be provided only to fill upto 5% of the vacancies that arise for direct recruitment. Consequently it became essential to ensure that only most deserving cases are approved as per the purpose stipulated in the scheme of such compassionate appointments. In the present case the family of the retired official was not in indigent circumstances warranting the department to provide job to the applicant. Eight posts of Postman/Mail guard under Tellicherry Postal Division are not the vacancies ear-marked for compassionate appointment. All the posts mentioned in the O.A. were filled up by appropriate persons and the applicant could be considered only for group 'C' or 'D'. As a rule, applications for compassionate



appointment in respect of the dependents of GDS employees are only considered for the post of GDS. Applicant's father was not a GDS employee. The department had received several applications for employment in relaxation of normal Recruitment Rules in the year 1997. It was not possible to give appointments to all and hence most deserving cases were accommodated. Compassionate appointment is not a vested right and it cannot be granted after a lapse of reasonable period and it can be made only if a vacancy is available for that purpose. The respondents had also filed an additional reply statement contending that the applicant's request for compassionate appointment was either as Postman or as Postal Assistant in the department. His qualification was SSLC and he was eligible to be considered against Postman vacancies. Applicant's case was taken up with other Central Government departments under various Ministries in Kerala and all of them expressed their inability to accommodate the applicant in any of the offices in the respective departments for want of vacancies and on various other reasons.

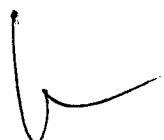
3. The applicant has filed a rejoinder and also filed additional rejoinder contending that the reasons stated for denying the claim of the applicant are flimsy, baseless and childish. The contention that, the applicant could not be considered in GDS vacancies is not in the true spirit of the rules. During the last three years 96 posts were filled up on compassionate grounds and the applicant could have been considered for any of the posts and since the applicant's father was an EDA he could have been considered for the appointment of EDA in the year 1999.

4. Shri K.B.Dayal, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents. Learned counsel for the applicant submitted that the applicant's father was only a GDS and the claim of the applicant in not considering towards vacancy of GDS on compassionate grounds, is a mistake identified and he could have been considered for such vacancies. Learned counsel for the respondents on the other hand submitted that the applicant's case was considered in

three or four occasions as directed by the Tribunal and since the applicant did not fulfill the eligibility criteria, he has not been considered for such appointment.

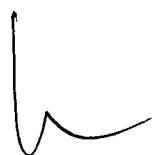
5. I have given due consideration to the arguments advanced by the learned counsel on either side and perused the materials placed on record.

6. It is a fact that the applicant's case was initially rejected by the respondents vide A1 order dated 10.8.1998 on the ground that the family of the retired official is not in indigent circumstance warranting the department to provide a job on compassionate ground. In O.A.1146/99 filed by the applicant, the respondents have taken a plea that the applicant's father had 1/4th share in 1 Acre 54 cents of land in Vallarvelly Village apart from the pension. It has also been stated that the Annexure A7 certificate issued by the Village Officer, Manathana cannot be accepted as the applicant is residing in Vallarvelly village. In the rejoinder, the applicant contended that the property is a barren land which could not be used for cultivation and the applicant and his family are residing in a rented house. Therefore, this Tribunal vide A-4 order in O.A.1146/99 directed the respondents to have the case of the applicant considered afresh by the Circle Relaxation Committee and a decision taken by the competent authority regarding the claim of the applicant for employment assistance on compassionate grounds. The Circle Relaxation Committee vide A-5 order dated 10.11.2000 rejected the claim of the applicant stating that "In this case the Wards are both sons and no liability for the family and therefore the request of the applicant for employment assistance on compassionate grounds has no merit and therefore rejected." Again the applicant filed O.A.1305/2000 which was also disposed of by order dated 4.1.2001 permitting the applicant to file a fresh representation and directing the 1st respondent to consider and pass appropriate orders within three months. While so, he has impugned A-3 and A-5 orders. The respondents were issued A-7 and A-8 (Telegrams) asking the applicant to submit his willingness for appointment in any of the departments as offered by the authority. He waited for reply



for a very long time and when no communication was received from the authorities, the applicant submitted a representation before the first respondent on 18.6.2001. Aggrieved by the non-action on the part of the respondents the applicant has filed O.A.No.8/2002 and the same was disposed of by the Tribunal(A-10) with a direction to the first respondent to consider A-7 representation and to give an appropriate reply. The same was rejected by A-11 order dated January, 2003 issued by the 2nd respondent on the ground that "Since fresh cases are to be given preference over past cases, there is no scope for consideration of this case." This is the fourth round of litigation challenging the said order. While considering the case of the applicant as per A-3 dated 10.4.2001 it was observed that " the ex-official took retirement on invalidation on 24.5.97 and his family consists of wife of the ex-official, two sons and himself. The family is in receipt of invalid pension and has also received due terminal benefits. The family was living in a rented house. There was no scope to appoint the applicant within one year as there was no vacancy available within the ceiling stipulated. After careful consideration of the facts in the light of the objectives of the Scheme for compassionate appointment, the Directorate Selection committee has recommended that name of the applicant may be circulated amongst Ministries/Departments/Offices of Government of India as there is no vacancy available in the Dept. of Posts within the stipulated ceiling. Accordingly, the case of the applicant is being circulated amongst all Ministries/Departments/Offices of Government of India to consider sympathetically the request of his appointment in a suitable Group C post on compassionate grounds in accordance with O.M. No.14014/6/94/Estt.(D) dated 9.10.1998 of Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pension as amended from time to time. The request will be considered by the competent authority in other Ministries/Departments/Offices of Government of India where there is any vacancy available to accommodate the applicant.

7. The case of the applicant is that if the applicant cannot be considered for



Group'D' post since the applicant was only a EDA who was renamed as GDS and the GDS rules came into effect in the year 2001, the applicant could have been considered for appointment of ED vacancy during 1999-2000 before commencement of GDS and subsequently in the GDS vacancies. Therefore, two things to be ascertained in this case is whether the applicant's father was a GDS employee or a regular employee. The case of the applicant is that he never demanded for the appointment either as Postman or as Postal Assistant in the department. His request was for appointment in any capacity in the department. The specific case of the applicant is that a compassionate appointment can be given to the dependents of the departmental employees in the GDS posts. Learned counsel also took my attention to a Full Bench decision of this Bench of the Tribunal in K.Jayaraghavan Vs. Union of India and others(2002 1 ATJ 205) to support his case.

8. In the additional reply statement filed by the respondents it is specifically stated that during 1998 to 2003 the following GDS posts were filled on compassionate grounds.

1998	38 posts
1999	33 posts
2000	25 posts
2001	18 posts
2002	26 posts
2003	05 posts

9. The number of vacancies that arose in the Postman cadre from 1998 to 2002 and the number of posts against which compassionate appointments were given in the Postman cadre during these years are as follows:

Year	No. of vacancies	No.of posts filled on compassionate ground
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1998	113	6
1999	25	1

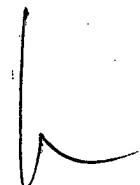


2000	70	4
2001	109	6
2002	88	4

10. From the above details as to the vacancy position, it is clear that there were vacancies from 1999 onwards and had the applicant's case considered at the appropriate time he would have surely had a chance of appointment. This was not done in this case and therefore, there is no logic to say that the circular considering and giving importance on fresh cases in preference to the old one, especially when the said circular has no retrospective effect.

11. By the impugned order A-11 since the respondents had already circulated the name of the applicant for employment assistance on compassionate grounds in other department is an indication that the Relaxation Committee had already approved the name of the applicant and since he cannot be accommodated in the same department towards Group 'D' and 'C' posts, his name was circulated among other departments. This shows that the eligibility of the applicant has been confirmed. The question to be considered is whether there is any vacancy. In the decision cited supra, the Full Bench has held that "Extra Departmental Agents (EDAs for short) are entitled to the benefit under the Compassionate Appointment Scheme even on medical invalidation." It is well settled law that even assuming the applicant's father was not a GDS, the applicant could be considered for the GDS posts on compassionate grounds. I am of the view that, none of the reasons given in Annexure A-11 impugned order stand to reason and it is to be set aside.

12. In the conspectus of facts and circumstances, I set aside and quash Annexure A-11 and direct the respondents to consider the case of the applicant for appointment in the



GDS post on compassionate grounds as expeditiously as possible in any case, within three months from the date of receipt of a copy of this order. In the interest of justice, he may be permitted to continue in the GDS post, if he is already holding the post till the decision is taken.

13. O.A. is disposed of. In the circumstance no order as to costs.

Dated the 24th March 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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