

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.232/13

Monday this the 14th day of October 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

T.M.Divya,
D/o.late T.S.Madhusudanan,
Vazhiyil Puthenpurayil House, Monappilli,
Puthancruz – Post, Ernakulam – 682 308.

...Applicant

(By Advocate Mr.S.Radhakrishnan)

V e r s u s

1. Union of India represented by the Secretary
to the Government of India, Ministry of Defense,
New Delhi – 110 001.
2. The Chief of the Naval Staff,
Integrated Head Quarters, Ministry of Defense (Navy),
Directorate of Personal, New Delhi – 110 011.
3. The Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Kochi – 682 004.
4. The Chief Staff Officer (P&A),
Head Quarters, Southern Naval Command,
Kochi – 682 004. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 1st October 2013 this Tribunal
on 14th October 2013 delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, daughter of deceased T.M. Madhusudanan, (who
died, while working as Rigger at Material Organization in 2008) was

.2.

afforded compassionate appointment vide Annexure A2 dated 15th October, 2012 read with Annexure A-3. Her case was considered for such compassionate appointment on the basis of the particulars furnished by her at the time of making the application in October, 2008 immediately after the demise of her father, in which the marital status of the applicant had been reflected as unmarried. The evaluation of applications for compassionate appointment took place on the basis of the prescribed norms by grant of points for various attributes, such as total number of family members, their marital status etc., and since initially she could not be accommodated immediately on her application, the appointment fructified in October, 2012 as stated above. By that time, her marital status changed and she has also a child.

2. Respondents have, on the basis of the above development in the marital status of the applicant issued show cause notice vide Annexure A-5 dated 22nd January, 2013 and the applicant filed her reply vide Annexure A- 8 dated 1.2.2013. It was after considering the above explanation of the applicant that the impugned notice of termination was issued vide Annexure A1 dated 4.3.2013 and the applicant has sought for the following reliefs :-

1. Call for the records connected with the case.
2. Declare that Annexure A-1 Notice of termination is illegal, arbitrary and not sustainable in the eye of law.
3. Declare that the applicant is entitled to continue with the employment under the Compassionate appointment scheme, irrespective of her marriage after her failure to get employment in the first round.

.3.

4. Set aside Annexure A-1.
5. Direct the respondents to pay the costs of these proceedings.

3. Respondents have contested the O.A. According to them, the applicant has failed to furnish the information of her marital status on her marrying. As per clarifications of the Ministry of Defence dated 9th April, 2002, a married daughter whose spouse is alive and staying together, cannot be treated as a dependent of the deceased employee and hence would not come within the meaning of dependent for the purpose of acquiring employment under the Employment Assistance Scheme. The dependency of the applicant after the marriage does not thus, rest on the paternal family and as such, she cannot be said to be a dependent of late Madhusudanan. It was taking into account the fact of her dependency upon her deceased father that the case was considered and compassionate appointment on provisional basis granted, subject to verification of attestation form submitted by the applicant. Para 3(a) of Annexure R-2 clarification dated 9.4.2002, employed sons, employed daughters and married daughters are not to be accounted in this parameter.

4. Counsel for the applicant submitted that the rules on the grant of compassionate appointment are clear, comprehensive and unambiguous. Note 1 "dependent family member", as per the scheme reflects daughter (including adopted daughter) who was wholly dependent on the Government servant at the time of his death in harness and in the

instant case the applicant was fully dependent on the deceased Madhusudanan. He has also submitted that while working out the eligibility condition or considering relaxation, it is the condition as available on the date of application has to be considered and not at the time of appointment. In this regard, he relies upon paragraph 6 B – Relaxations (Note 1) wherein it has been stated that age eligibility shall be determined with reference to the date of application and not the date of appointment. The counsel further submitted that at no point of time the respondents have inquired about the subsequent status etc. before the issue of appointment order. And that the information furnished at the time of initial application were considered and there is no provision for any subsequent development to be taken into account. In this regard he has invited the reference to paragraph 9 of the Scheme wherein it has been stated that a widow appointed on compassionate grounds will be allowed to continue in service even after re-marriage. The counsel has relied upon the decision of this Tribunal in O.A.955/11 (Kavitha K Francis Vs. the Senior Superintendent) decided on 7th June, 2012 which referred to an earlier decision of the High Court of Kerala wherein it was held that the married son/daughter of the deceased employee are also entitled for appointment if they were dependent on him and are otherwise eligible. The counsel has also referred to a latest decision of the High Court of Kerala in O.P.(CAT) No.1192/13 in the said case of Kavitha K Francis whereby the Writ Petition filed by the respondents against the order of this Tribunal was dismissed.

.5.

5. Counsel for the respondents, on the other hand, submitted that the applicant had not chosen to intimate about her marital status. He has referred to the order dated 9.4.2002 wherein it has been stated that employed daughters and married daughters are not to be accounted in this parameters.

6. Arguments were heard and documents perused. DoPT Memorandum dated 9th October 1998 has been the consolidated scheme for compassionate appointment. It has been reflected in the Ministry of Defence ID No.19(4)/824-99/1998-D (Lab) dated 9th March 2001 whereby the Ministry has stated that the DoPT has prescribed formal procedure and time limit to be adopted for compassionate appointment giving points based on 100 point scale. Various parameters had been laid down therein for which weightage has to be given. It has been stated that "the candidates are required to apply only once and the application is to be considered afresh along with fresh applications by the BOC on three occasions consecutively and ensure that the final decision is communicated to the applicant by a detailed speaking order." The above is a clear pointer to the fact that dependency or otherwise as well as the points under the 100 point scheme are to be based only on the particulars given in the respective application, which, obviously, would reflect the dependency etc. as on the date of the application. Subsequent developments would not matter. The contention of the respondents in the instant case is that there has been difference in points between the unmarried daughter and married daughter. If the applicant is to be treated

.6.

as married daughter, the point under the 100 point scheme would go down and as such, she would not be eligible for compassionate appointment. This argument may have to be marginalized as no such subsequent development would count. Instead, if there were a situation whereby a married daughter, on becoming a widow is back to her parental house being dependent on the paternal family, whether an additional point could be afforded. The answer to this question is in negative, on the same ground that this being a subsequent development, the same cannot be taken into consideration.

7. In the instant case, had the applicant been appointed much earlier and subsequently got married then also there cannot be an impediment in her continuance. Of course, there is a permanent commitment by the applicant that the applicant shall see to it that the other dependents of the family of late Madhusudanan are well taken care off. The same holds good here too.

8. In addition to the above, as rightly pointed out by the counsel for the applicant referring to the clarification issued by the DoPT as to whether a married daughter can be considered for compassionate appointment, the clarification was in affirmative but subject to condition that she was wholly dependent on the Government servant at the time of his death in harness and that she must support other dependent members of the family.

.7.

9. The decision by this Tribunal as well as the judgment of the High Court of Kerala upholding the same in the case of Kavitha K Francis equally applies to the case of the applicant.

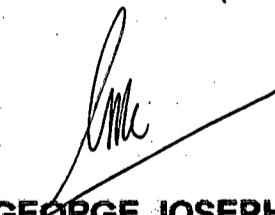
10. It is worth to press into service a common saying -

"A son is a son until he gets a wife. A daughter is a daughter, throughout her life."

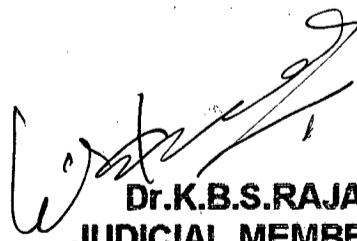
The above saying was referred to in the Apex Court judgment in "Sarita Samvedi Vs. Union of India" (1996) 2 SCC 380, which was a case relating to out of turn allotment of Railway quarters to married daughter on the retirement of her father from service.

11. In view of the above, the O.A succeeds. The impugned order dated 4th March 2013 along with attendant show cause notice etc. are all quashed and set aside. It is declared that the applicant' services shall not be terminated on account of the fact that the applicant was married at the time when compassionate appointment was granted to her. No order as to costs.

(Dated this the 14th day of October 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

asp


Dr.K.B.S.RAJAN
JUDICIAL MEMBER