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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.235/10

Thursday, this the 14th day of July 2011

C O R A M :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER**

K.V.Geethu,
D/o.K.S.Venu,
Kalathil House, Ochanthuruth P.O.,
Ernakulam District – 682 508.

...Applicant

(By Advocate Mr.C.S.G.Nair)

V e r s u s

1. The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Kochi – 682 018.
2. The Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Kochi – 682 018.
3. The Chairman,
Central Board of Excise & Customs, New Delhi.
4. Union of India represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001. ...Respondents

(By Advocate Mr.S.Jamal,ACGSC)

This application having been heard on 6th July 2011 this Tribunal
on ..(4.07.2011) delivered the following :-

ORDER

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

The applicant seeks compassionate appointment. She is the
daughter of one K.S.Venu who died on 13.9.1993 leaving behind his wife
and the applicant. The applicant was at that time aged only 5 years and
the mother submitted a representation registering the name of the

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applicant for compassionate appointment as and when she attains majority. Vide Annexure A-2 letter dated 2.12.1993 the applicant's mother was informed that her application shall be considered on merits at the appropriate time. The applicant attained majority in 2004 and accordingly she applied for compassionate appointment. Vide Annexure A-3 order dated 15.7.2004, a provision was made that consideration for compassionate appointment applications could be made for three years. In the instant case the respondents have stated that the Committee has decided to close the case for compassionate appointment vide Annexure A-6. It is against the said order that the applicant has filed this Original Application.

2. The respondents have contested the Original Application. According to them, the applicant's name was considered continuously for three years from 2006 onwards in the meeting of the Committee of Officers constituted for considering appointment on compassionate grounds and as such the case will have to be finally closed and cannot be considered again.

3. Counsel for the applicant argued that though the compassionate appointment is not a right, within the limited provisions, they should be strictly adhered to. In the instant case, the respondents have considered the case of the applicant only once whereas the case has to be considered for three years. If for any reasons there is no vacancy for three years the case should be considered for subsequent years when vacancy arises. As such, non consideration of the claim of the applicant for the second and third year when vacancy was available is illegal.

A handwritten signature in black ink, appearing to read 'B.R.' followed by a stylized surname.

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4. Counsel for the respondents, however, submitted that the applicant's father having died in 1993 and the applicant having applied in 2004, all that the respondents could do is to consider the case once and as she could not be found successful she was not selected.

5. Arguments were heard and documents perused. The scope of compassionate appointment is limited. The Apex Court has in the case of Bhawani Prasad Sonkar vs Union of India (2011) 4 SCC 209 has stated as under:-

“....the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.”

6. The above goes to show that while the conditions attached to the grant of compassionate appointment are to be adhered to, which is binding on the employee, the concessions available to the aspirants for the post should also be equally respected, which is binding upon the employer. There are certain concessions available for consideration, one of them being that there must be three times consideration. This is the admitted position. And admittedly, the case of the applicant was considered only once and not three times. If there be no vacancy in a particular year, the matter has to be considered in the year in which vacancy exists. Otherwise, if in three successive years there be no vacancy and if the case is held to have been considered during these three years, it would amount to denying the individual their right to be considered for compassionate

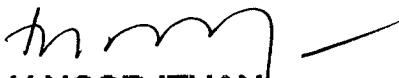


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appointment. Thus, as the respondents have not considered the case of the applicant for more than once when vacancies are available, justice demands that there must be consideration of the case which in fact is one of the rights available to the applicant. May be the individual may or may not come within the parameters for grant of appointment. That is a subsequent event. As such, this OA is disposed of with a direction to the respondents to consider the case of the applicant for two more times and if found deserving qua other applicants, necessary orders for compassionate appointment be passed. If however, the applicant does not come within the merits the decision be communicated to the applicant through a speaking order. We make it clear that we do not express any opinion over the merit of the matter.

7. Under the circumstances, there is no order as to cost.

(Dated this the 14th day of July 2011)



K. NOORJEHAN
ADMINISTRATIVE MEMBER



Dr. K.B.S.RAJAN
JUDICIAL MEMBER

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