

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 257 1992

DATE OF DECISION 23.2.93

Zam M. Kottayil

Applicant (s)

Mr. K.P. Dandapani

Advocate for the Applicant (s)

Versus

The Chief Commissioner of Respondent (s)
Income tax, Office of Commissioner of Income tax,
Kochi and others

Mr. George C.P. Tharakan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? no
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. To be circulated to all Benches of the Tribunal? no

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

In the second round of litigation, the applicant claims compassionate appointment on the sole ground of discrimination.

2. Earlier when the applicant filed O.A. 228/90 for the same relief, this Tribunal disposed of the case as per Annexure-VIII judgment dated 15.1.91 with the following observations:

"In the circumstances, we permit the applicant to withdraw this application and allow him to file a representation to the respondents stating the new grounds mentioned in para 7 of the rejoinder within fifteen days from the date of receipt of this order. In case such a representation is received from the applicant, the respondents may consider that representation and dispose of in accordance with law. If still aggrieved, the applicant will be free to agitate the matter in accordance with law, if so advised."

3. Thereafter, the applicant filed Annexure-IX representation dated 31.1.91 pointing out three specific cases of M/s P.A. Thomas, P.K. Chacko and V.G. Narayanan Nair and stated that there is discrimination and violation of Article 14 of the Constitution of India. The said representation was disposed of as per Annexure-XI order dated 22.1.92. Para 2 of the order reads as follows:

"Your representation in question has been examined by the Central Board of Direct Taxes, New Delhi in the light of facts obtained through inquiries. The Board vide its letter F.No.A-12012/19/91-Ad.VII dated 30.12.91 has intimated that the matter has been re-examined carefully in the light of the instructions contained in the DOP&T's OM dated 30.6.87 but found no adequate justification for any compassionate appointment and that the applicant may be informed accordingly. In these circumstances, you may kindly note that your representation for compassionate appointment stands rejected."

4. Applicant's earlier representation were considered and rejected by the other two impugned orders at Annexure-III and V. All the three orders are challenged in this application filed under section 19 of the Administrative Tribunals' Act.

5. Learned counsel for applicant vehemently contended that there is no consideration by the competent authority in spite of direction of the Tribunal in Annexure-VIII judgment. Three specific instances ~~xxxx~~ pointed out by the applicant were not dealt with in the impugned orders. Even though the applicant's mother was employed at the time of death of applicant's father on 10.4.73, the family of the applicant cannot survive with the meagre pension of Rs. 375/- which the mother of the applicant is getting ⁴ monthly. According to the counsel this is eminently ~~fit~~ case for grant of compassionate appointment. It is further claimed that at least the ² case may be remanded after setting aside Annexure-XI impugned order for a fresh consideration by the respondents so as to enable respondents to consider and pass a ~~speaking~~ order giving reasons for rejecting the same.

5. In a case where compassionate appointment is sought, the relevant consideration to be examined is whether the

family requires any financial assistance immediately after the death of the govt. servant for their continued ^{existence} ~~xxxx~~ and maintenance ^{of} the family. In the instant case, the death of the govt. servant namely the father of the applicant occurred on 10.4.73, the applicant was only a boy of two years old, at that time. The mother was employed in the State Govt. and she was earning. So it was not necessary for the Govt. to grant compassionate appointment to any member of the family at that time. When the applicant obtained majority in the year 1989, he submitted representation for getting compassionate appointment. It was rejected. Again a request was made which was also turned down as per Annexure-V order. Since the applicant was not satisfied with the rejection, he approached this Tribunal by filing O.A. 228/90 ¹ pointing out that in similar circumstances the Govt. has considered the claim of compassionate appointment to others. Hence, the case of the applicant requires re-examination. We accepted the case of the applicant and gave an opportunity ^{his case} to the applicant to place/before the appropriate authority by passing Annexure-VIII judgment. Accordingly, the applicant submitted representation pointing out the three cases.

6. Even though there is no specific mention in the orders at Annexure-XI about the consideration of these three cases, in the reply filed by the respondents they have stated that these cases cannot be compared with the case of the applicant. In the case of Shri P.A. Thomas who died on 8.3.86, he was survived by his wife, two sons and one daughter. the deceased had a liability of Rs. 9,000/- towards house building advance. The circumstances in that case ~~was~~ ⁴ such that immediate financial assistance was found to be necessary and thereby a compassionate appointment was granted. Regarding the case of Smt. Elizebath Chacko,

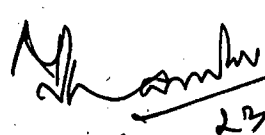
they have stated that it being more than 20 years old case, the records relating to her compassionate appointment are not available. The next case, in regard to G. Narayanan Nair, it is stated that the case is distinguishable because on his death on 28.8.87 he was survived by his wife, two sons and one unmarried daughter. He had a liability of Rs. 15,000/- towards house building advance.

7. Three cases pointed out by the applicant appear to have (duly been) considered by the competent authority before passing the impugned order at Annexure-XI. According to me, the cases of M/s P.A. Thomas, Elizebath Chacko and G. Narayanan Nair need not be given such importance at all for it is to be noted that in the case of compassionate appointments, no comparison can be made with families of other Govt. servants who die in harness. Each case will have to be dealt with and decided separately having regard to the facts and circumstances of that case. As indicated above, the only question to be examined while considering the claims of compassionate appointment to one of the members of a govt. servant who dies in harness is as to whether it is necessary to give any financial assistance to the family by sanctioning a compassionate appointment as claimed by the family. In deciding that issue, a strict comparison of the financial position of the family with that of other families is not possible. In the instant case, when the father of the applicant died in 1973, there was no necessity for grant of compassionate appointment because applicant's mother was an earning member. She was employed in the State Govt. service

and getting monthly salary. She retired from service only on 31.3.89 after receiving a sum of Rs. 1,13,465/- towards retirement benefits. The family has no burden or financial liability. There is only one son. According to the respondents the mother of the applicant is getting a sum of Rs. 1590/- per month from 10.7.91. The applicant can get appointment in Govt. service through the normal channel along with others if he is desirous of getting a job.

8. Having regard to the facts and circumstances of the case, I am of the view that this is not a fit case for compassionate appointment and the impugned orders are not liable to be quashed. Accordingly, I dismiss the original application.

9. There shall be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER
23.2.93

kmm

RA 7/193 W.

GA 257/92

ND

3

Mr K.M.V. Pandala
serve by PM.

learned Counsel for respondents
submitted that he opposes the M.P. for
condonation of delay. Post for hearing on
2.8.93.

(ND)
177

ND

Mr K.M.V. Pandala
serve by representative.

learned Counsel for respondents
prays for some time for filing objection to
the M.P. for condonation of delay. Post on
10.8.93.

(ND)
8/8/93

ND

None for review applicant
SCGSC by representative

M.P.1039/93 has been filed for condoning the delay in

filing the R.A. The applicant has no ^{prima} satisfactory ~~and~~ reason

and convincing reason explaining all the ^{days 2 1/2} delay in
filing the R.A. The only reason stated is that a
copy of the order has been sent to "one of the family
members at Trichur seeking his advice for further
course of action." This reason cannot be accepted as
a satisfactory reason for condoning the delay of
61 days particularly when the applicant has himself
filed the original application without any advice
or direction from the family members. The M.P. for
condoning the delay has been dismissed.

Accordingly, the R.A. is also dismissed.

N. Dharmadan

(N. DHARMADAN)
JUDICIAL MEMBER.
10.8.93

20 issued
11/28/93

A 11/16

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Mr. Zam M Kallayal

(Applicant/Respondents in

OA /TA No. 257/92) seeking a review of the order dated 23.2.93 passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party.

3. A Review petition is, therefore, submitted for orders of the Bench consisting of Hon'ble Shri N. Dharmadani (M-J)

which pronounced the Order sought to be reviewed.

PS to Hon'ble Member - J

DR(J)

(Proctor)
6.7.93
S.O(JI)

May be posted.
on 12.7.93.

*Since there is an order in per
application for further to per
delay in getting to per
would be better to per
before 4/7/93.*

DR(J)
7/7
S.O(JI)
DR(J)
Yes, Issued Notice
7/7/93
So (JI)
So (JI)
7/7
7/7