

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 269
~~XXXXXX~~

1990

DATE OF DECISION 26-04-1991

A.A. Abdul Lathief Applicant (s)

M/s. M.R. Rajendran Nair & Rajeswari Advocate for the Applicant (s)

Versus

The Secretary, Ministry of Communications, New Delhi and 2 others. Respondent (s)

Mr. P. Sankaran Kutty Nair, Advocate for the Respondent (s)
ACGSC

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

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

N. Dharmadan, JM

The applicant, in this application filed under Sec.19 of the Administrative Tribunals Act, 1985, challenges Annexure-VII order dated 21-6-89 passed by the Assistant Engineer (Administration), Ernakulam rejecting Annexure VI representation dated 19-11-88 submitted by the applicant, requesting for a compassionate appointment against a Group-C post, considering his qualifications.

2. The applicant's father, Shri A.A. Nair, while working as a Sub Inspector, Telephones in the Group-C category died in harness on 19-8-87 leaving

.... /

behind his wife and four children including the applicant before us. As the family was in an indigent circumstance, he submitted an application (Annexure-I) dated 7-10-87 for getting a compassionate appointment. He passed S.S.L.C. and is a holder of certificate in typewriting. Hence he is eligible to get an appointment in Group-C category. However, he was offered only a posting in Group-D category by the Department. The applicant, submitted Annexure-II representation dated 20-3-88 requesting the respondents to give him an appointment in Group-C category. But his request was rejected by the Divisional Engineer (Admn), Cochin by Annexure-III order dated 11-5-88, which reads as follows:

"...It is regretted that your request for appointment is to the cadre of Clerk cannot be considered. Please intimate whether you are interested for Group-D post. If so your willing-ness may be intimated to this office.."

The applicant, subsequently submitted Annexure IV willingness dated 23-5-88 accepting the appointment in Group-D category as offered by the department and respondents issued Annexure-V proceedings dated 30-7-88 appointing the applicant in Group-D category as Peon in the Office of Divisional Engineer, Ernakulam on compassionate ground. Having accepted the appointment, the applicant submitted Annexure-VI representation dated 19-11-88 requesting the Chief General Manager,

Telecom to consider his case sympathetically for appointment to the post of T.O.A., a Group-C post, which was intum rejected by the respondent by the impugned order at Annexure-VII.

3. The respondents have filed reply statement contending that the applicant was given a Group-D appointment on compassionate ground to tideover the family financial difficulties on account of the sudden death of his father, after relaxing the regular rules. It ^{is} ~~admitted~~ that the applicant was working as a casual ⁱⁿ ~~mazdoor~~ but ~~the~~ normal course he would not get a Group-D post because of the ban on recruitment to that post and number of his seniors are awaiting in the queue to be absorbed in that post. The respondents have also submitted that the last recruitment to Group-C cadre was in 1983 and candidates who secured 83.33% marks and above were alone selected for appointment in the recruitment. Since the applicant secured only 42% marks in S.S.L.C. his case cannot be considered for a Group-C post at present. Hence, the departmental High Power Committee decided to recommend him for a Group-D post. Accordingly he was appointed against the post of Peon in Group-D category, by relaxing the normal recruitment rules in existence.

4. We have heard the arguments of the counsel on both sides. Having heard the matter we are of the view that the applicant has not made out a case ~~for~~

for interference and grant of relief as prayed for in this application. The applicant has been given an appointment to Group-D post after accepting his willingness to be absorbed in that post on compassionate grounds. His right for compassionate appointment has been duly considered and he cannot agitate the matter any further. When once a person is given an appointment in a particular category considering his case sympathetically and in relaxation of the normal recruitment rules, the appointee exhausts his right to get compassionate appointment particularly when such person accepts the offer without any protest. Such a person, thereafter, cannot be allowed to make his claim for further better appointment on compassionate grounds stating that he is fully qualified for a higher post. The very purpose of the compassionate appointment is to give immediate financial assistance to the family of the deceased Govt. servant due to the death or continued illness. The scheme is intended to provide assistance to the family in indigent circumstances and not for giving appointment to the persons concerned on their choice considering the qualifications. Of-course when making the offer for the appointment, the qualification of the candidate should be considered and appointments should also be given based on such qualification.

...../

5. In the instant case the Departmental High Power Committee considered all the aspects after due application of the mind and decided to recommend the applicant's case in a Group-D post. When that post was offered to the applicant, he expressed his willingness by Annexure-IV letter. This has been duly accepted by the Department and the respondents issued Annexure-V order appointing the applicant as a Peon which is a Group-D post. The applicant can aspire for the next promotion in that line without insisting for a posting in a Group-C cadre on compassionate ground. His right to claim compassionate appointment came to an end when he accepted the appointment given to him by the Divisional Engineer (Admn) under Annexure-V order.


6. The learned counsel for the applicant Shri M.R. Rajendran Nair submitted that there are similar cases in which the Department had considered the request for appointment to Group-C cadre on compassionate grounds in the light of departmental instructions and his client may be given an opportunity to represent the matter further in case this Tribunal is not inclined to grant relief to the applicant accepting the arguments advanced in the case.

5


..

The learned counsel today filed M.P. with Dy. No. 3191/91 furnishing details of some of the persons whose case was sympathetically considered by the Government of India. In the light of these details it is for the applicant to place them before the Government and seek further reliefs if the applicant is advised to do so. We make it clear that the above observations in this judgment would not stand in the way of the respondents in the disposal any fresh representation ^{which may be filed by} by the applicant in the light of identical cases stated in the M.P.

7. In the result, the application is disposed of with the above observations. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

26.4.91


(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

26/4/91

KMN