

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XX XX XX~~

282

1991

DATE OF DECISION 24.12.1991

T.G.Baby Applicant (s)

Mr.R.Rajasekharan Pillai Advocate for the Applicant (s)

Versus

UOI rep. by the Secy. to Govt. Respondent (s)
Min. of Finance, New Delhi & 4 others

1.Mr.NN Sugunapalan,SCGSC Advocate for the Respondent (s)
(for R.1 to 4)

CORAM: 2. Mr.Sebastian Paul (for R.5)

The Hon'ble Mr. S.P.Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V.Haridasan - 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The short question that arises for consideration in this application is whether the family of a part-time employee dying in harness is entitled to employment assistance to a member of the family on compassionate grounds. The facts can be briefly stated thus. Smt.Mary who was working as Part-time Sweeper in the Office of the Superintendent of Central Excise, Chalakudy since 1978 met with a traffic accident while she was on duty and succumbed to the injuries on 20.9.1990. Late Smt.Mary was survived by her two daughters, two sons and sickly husband. She had also left behind her old, sickly ~~dependant~~ ^{and} *dependant*

...2/-

mother. As she was the bread-winner of the family, the demise of Mary pushed the family into extreme poverty. As two sons were younger, her daughter, the applicant approached the 4th respondent requesting that she may be engaged as a part-time Sweeper on a casual basis so that the family could survive with that income. The 4th respondent engaged the applicant as a part-time Sweeper in the place of Mrs. Mary on a casual basis. The applicant was informed that, as the 4th respondent was not the appointing authority it was necessary to approach the third respondent for appointment on compassionate grounds. Therefore the applicant made a representation to the second respondent (Annexure-B) narrating the pitiable plight to which the family was driven by the untimely death of Mary and requesting that the applicant may be given a suitable posting in any capacity in the department, so that the family could survive with that income. It was mentioned in the application that the applicant ^{had} studied upto pre-degree, ^{and that} if no other suitable post is available she was prepared to work as a part-time sweeper in the place of her mother. In reply to this representation the applicant was served with the impugned order dated 29.11.1990, Annexure-D issued by the third respondent informing her that, as per the existing rules appointment of casual workers should

be done strictly through ^{the} Employment Exchange, and that
therefore her case for compassionate appointment could
not be acceded to. On receipt of this memo the applicant
made another representation to the second respondent with
copies to the Finance Minister, Secretary, Central Board
of Excise and Customs, Collector of Central Excise,
Cochin and Smt.Savithri Lakshmanan, MP. Finding no
response, the applicant has filed this application
praying that the impugned order at Annexure-D may be
quashed, that it may be declared that the applicant
is entitled for appointment on compassionate grounds,
that the respondents may be directed to retain her in
service as a part-time sweeper in the 4th respondent's
office, restraining them from replacing her with
newly advised Employment Exchange hands. The applicant
has impleaded the 5th respondent who was selected for
appointment of Part-time Sweeper and allotted to work
in the post of Part-time Sweeper in the 4th respondent's
office.

2. In the reply statement filed on behalf of the
respondents 1 to 4 the claim of the applicant for
compassionate appointment is resisted on the ground
that the applicant being daughter of a deceased part-
time employee did not come within the scheme for
employment assistance on compassionate grounds which

is available to the families of regular Government servants only. It has also been contended that the applicant is not entitled to continue as part-time sweeper as her engagement was only a stop-gap arrangement and since she was not sponsored by the Employment Exchange. It has been further contended that a selection has been made out of the candidates sponsored by the Employment Exchange and ^{that} ~~the~~ selected hand has to be appointed.

3. The 5th respondent who has been issued with an order of appointment to report for duty as part-time Sweeper in the Office of the 4th respondent has filed a statement contending that the claim of the applicant should not be allowed to deprive her of the right to be appointed to the post to which she has been selected. It has inter-alia been contended that, in case the applicant is entitled to be appointed on compassionate ground as part-time Sweeper in the Office of the 4th respondent, the respondents 1 to 4 may be directed to accommodate her in the existing vacancy at Irinjalakuda.

4. We have heard the arguments of the counsel for the parties and have also carefully gone through the pleadings and documents produced.

5. In her representation dated 25.9.1990, Annexure-B addressed to the second respondent the applicant had

narrated that, on the death of her mother Mary who was a part-time Sweeper in the office of the 4th respondent, the sole bread-winner of the family had been taken away, that the family had been driven to extreme poverty since her father does not have a steady job and her brothers are all younger to her and unemployed and had requested for an appointment on compassionate ground to a suitable post in the department. It has also been mentioned that, though she had studied upto Pre-degree she was prepared to work as a part-time Sweeper. This representation was disposed of by the impugned order at Annexure-D informing her that, as per the existing rules, appointment of casual workers should be done strictly through the Employment Exchange and ^{that} ~~her case~~ for compassionate appointment could not be acceded to. No other ground is mentioned for rejecting her claim in the impugned order. But the learned counsel for the respondents 1 to 4 argued that, as T.K.Mary was not a regular Govt. servant holding a civil post, the benefit under the scheme for compassionate appointment is not available to the family of Mary. The orders issued on the subject of compassionate appointment have been simplified and consolidated in the Office Memorandum in Chapter 25 of Swamy's Complete Manual on Establishment and Administration for Central Govt. Offices under the

head "to whom applicable" the following is stated:

- "(a) To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family.
- (b) In exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Services Regulations before attaining the age of 55 years. In case of Group 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years.
- (c) To a son or daughter or near relative of a Government servant who dies during the period of extension in service but not re-employment."

If T.K.Mary, Part-time Sweeper could be considered as a Government servant, on her death her son, daughter or near relative would be eligible for appointment on compassionate grounds, if the condition of the family is indigent deserving employment assistance. So the basic question to be decided is whether a Part-time Sweeper is a Government servant. The learned counsel for the respondents submitted that as there is no bar for a part-time employee to be engaged in

other trade or business it cannot be said that a part-time employee is a Government servant. The important test to determine whether a person is a Government servant or not are :

- a) Whether the Government has the right to select and appoint;
- b) Whether he is working under the supervision and control of the Government or authorities under the Government;
- c) Whether he receives a fixed remuneration for the work;
- d) Whether there is relationship of Master and Servant between him and the State;
- e) Whether he discharges duties in connection with the affairs of the State and whether the office held by him will fall vacant on his death or removal from service.

Applying these tests the Supreme Court has in State of Assam and Others Vs. Kanak Chandra Dutta reported AIR in 1967-SC-884 held that a Mauzadar in the Assam Valley held a civil post, though the post of Mauzadar was part-time one and though there was no embargo for a Mauzadar to be engaged in other trade or business. Applying these tests to the case on hand we have no hesitation to hold that T.K.Mary, mother of the applicant though a part-time Sweeper was holder of a civil post receiving a regular monthly salary, discharging duties in connection with the affairs of

the State and on whose death the post which she held has become vacant. Smt. Mary was not a casual mazdoor but a regular part-time Sweeper. The contention of the respondents 1 to 4 that the deceased Mary was not a Government servant has therefore to be rejected. Hence, as Smt. T.K. Mary was a Government servant, on her death if the family was driven to indigent circumstances then it is unreasonable and unjust to say that the applicant, daughter of T.K. Mary is not entitled to be considered for compassionate appointment. The objection to the appointment of the applicant mentioned in Annexure-D that she was not sponsored by the Employment Exchange also is unsustainable since the applicant has registered her name with the Employment Exchange Chalakudy with Registration No. W-5737 of 1990. The scheme for compassionate appointment gives permission to the competent authority to relax the conditions such as age and educational qualifications in deserving cases. So, even if sponsorship by Employment Exchange is ~~considered as~~ ^{is} a condition precedent for appointment in Government service, considering the case as one under the scheme for compassionate appointment the competent authority is expected to and ~~empowered~~ ^{is} to relax such a requirement. As there is no contention for the respondents 1 to 4 that the family of the applicant is not indigent, we are of the view that the stand taken by the respondents that the applicant is not entitled ~~for~~ ^{to} appointment on

compassionate ground is wholly unjustified. The respondents therefore have to consider the question of appointment of the applicant in a suitable post commensurate with her age, educational and other background. If no other suitable post is available the applicant should at least to be accommodated in the post of part-time Sweeper for which she had expressed her willingness.

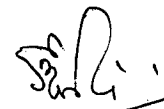
6. Now there is a conflict between the rights of the 5th respondent who has been selected for appointment as part-time Sweeper and a claim of the applicant for ~~xxxxxxxxxxxx~~ appointment under the scheme for compassionate appointment. Compassionate appointment is to be made from direct recruitment quota and it is to be given preference. The 5th respondent in the reply statement has stated that there is an existing vacancy at Irinjalakuda and that she would be satisfied if she is accommodated in that post. The respondents 1 to 4 have no case that such a post is not existing at present. Therefore, if the applicant is to be allowed to continue ^{be} and ~~regularised~~ in the post of part-time Sweeper in the office of the 4th respondent, the 5th respondent can be accommodated in the existing vacancy at Irinjalakuda, ^{there at present} or if no vacancy exists ~~in the~~ next arising vacancy.

7. In the conspectus of facts and circumstances, we allow the application and direct the respondents

1 to 4 to consider the applicant for appointment to a suitable post in Group 'C' or 'D' and to appoint her to one such post and if no such vacancy is available at present to regularly appoint her as part-time Sweeper in the office of the 4th respondent where her mother T.K.Mary was working. Till such time a regular order of appointment is issued, the applicant should be allowed to continue on a casual basis as part-time Sweeper in the office of the 4th respondent. If the applicant is to be regularly appointed as part-time Sweeper in the office of the 4th respondent, the 5th respondent should be posted either in the existing vacancy at Irinjalakuda or if no such vacancy exists now Irinjalakuda, in the next arising vacancy at Chalaky or in nearby place.

8. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

24/12/91
24.12.1991

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. 76 of 1992 in

O. A. No. 282 of 1991
T. A. No.

DATE OF DECISION 5-6-1992

Union of India, M/o Finance / Review
and 3 others Applicant (s)

Mr NN Sugunapalan, SCGSC Advocate for the Applicant (s)

Versus

Mr TG Baby & another Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Mo*
2. To be referred to the Reporter or not? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Mo*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

We have carefully gone through the review application, the order sought to be reviewed and the connected records. It is seen that there is no error on the face of records. The averment in the R.A. that the Tribunal has granted a larger relief than what has prayed for in the O.A. is not correct. The applicant had prayed for a direction to give her appointment on compassionate grounds and also for not posting anybody in the part-time post. It was considering the entire aspects of the case that the order sought to be reviewed was passed on merits. We do not find any reason in the R.A. to review the order. Therefore the R.A. is dismissed.

AV Haridasan
(AV HARIDASAN)
JUDICIAL MEMBER

trs

5-6-1992

SP Mukerji
(SP MUKERJI)
VICE CHAIRMAN

SPM & ND

- (20) Mr R Rajasekharan Pillai by proxy.
SCGSC by Poly Mathai.

The Sr.CGSC takes notice on behalf of the alleged contemner and prays time to file a statement in reply to the CCP. He may do so within 2 weeks with copy to learned counsel for the applicant. He should also clarify specifically whether vacancies have been in existence for absorption of the petitioner and if so to what extent.

List on 17.12.92.

Copy by hand.

ND

SPM

18.11.92

18-1-93
(22)

Proxy counsel for petitioner
Mr Poly Mathai for SCGSC

The learned counsel for the respondents seeks some more time to file a statement. He may do so within a week with a copy to the petitioner. He should also give clarification as directed by this Tribunal on 18.11.92 regarding the existence of vacancies for absorption of the petitioner.

List for further direction on 10.2.93

(AVH)

(SPM)

18-1-93

19/1/93
mkrp
Adjd. G. 18/1/93
Pynolia
AS

Ph

(26) Mr R Rajasekharan Pillai
SCGSC by Polly Mathai

Learned counsel for the applicant submitted that he ^{is} satisfied with the Annexure R1 order produced with the statement filed by the respondents. They have also complied with the directions contained in the judgment of this Tribunal. Accordingly, we close the CPC and discharge notice.

me
(R Rangarajan)
Administrative Member

N. Dharmadan
(N Dharmadan)
Judicial Member

10-2-1993

FO
R
12/2
MKRM