

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.311/2013

Tuesday this the 18th day of November 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Miss.Arathy Chandran,
D/o.late K.S.Chandran,
Residing at Archana House,
Kodamthuruthu, Kuthiathode P.O.,
Cherthala – 688 533.

...Applicant

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. Union of India represented by its Secretary,
Ministry of Defence, South Block, New Delhi – 110 011.
2. The Engineer-in-Chief, Military Engineer Services,
Army Head Quarters, DHQ PO, New Delhi – 110 011.
3. The Chief Engineer, Military Engineer Services,
Head Quarters, Southern Command, Pune – 411 001.
4. The Chief Engineer (Naval Works) Kochi,
Kataribagh, Naval Base, Kochi – 682 004.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 29th October 2014 the Tribunal on 18th November 2014 delivered the following :-

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant has applied for appointment on compassionate grounds consequent to the death of her father who was working as a Meter Reader of Barrack Stores Office, Military Engineering Service, Kochi. He died of

Liver Cirrhosis. After the marriage of his elder daughter he was in extreme financial difficulties which prevented the family from getting a liver transplant as advised by the Doctor. The landed property where the applicant is residing has no income and the residential house is costing just 5 lakhs. After submitting Annexure A-1 application for appointment with necessary supporting documents, applicant received Annexure A-4 communication from the respondents asking her to furnish heavy motor driving license, if any, she has. She is aggrieved by the inaction on the part of the respondents in not considering her application. Hence she prayed for the following reliefs :


1. To declare that the inaction on the part of the respondents to process the application submitted by the applicant for compassionate appointment in an expeditious manner, consider her case in accordance with the law and to give her employment assistance to tide over the financial stringency of the family, is illegal, arbitrary, unjust, unreasonable, irrational and the same violates Article 14 of the Constitution of India.
2. To direct the respondents to consider the case of the applicant for compassionate appointment in accordance with the law within a time frame to be prescribed by this Hon'ble Tribunal and to give her employment assistance without further delay.
3. Such other relief as may be prayed for and this Tribunal may deem fit to grant.
4. Grant the cost of this Original Application.

2. A reply was filed by respondents stating that the request of the applicant was considered for the year 2011-12, but as her case was very low in merit, it was recommended for a 'second look' for the year 2012-13. It was further contended by the respondents that as per the existing policy her case is to be examined for 'three looks'. Along with the reply, respondents have produced Annexure R-2 order rejecting her request due to low merits

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when the same was considered for the year 2011-12 and further stating that her case has been recommended for a 'second look' for the year 2012-13. Respondents have also produced Annexure R-2 as Annexure A-5 stating the details of the number of vacancies available for the year 2011-12, details of the cut off marks of the last selected candidate and stating that she has secured only 51 marks while consideration of her application. It was also stated in Annexure R-2 that as per her qualification her case was to be considered for the post of LDC/SK-II/Meter Reader and all Group D categories and that no vacancies had been released for the post of LDC/SK-II in the year 2011-12.

3. A rejoinder was filed by applicant stating that Annexure R-2 order is hit by Section 19(4) of the Administrative Tribunals Act, 1985 as the same was passed after the present O.A was admitted by the Tribunal in 2013 itself. It is further contended by the applicant that there were 32 vacancies of LDC available for the year 2010-11, 22 vacancies for the year 2011-12 and 25 vacancies during 2012-13. Yet the respondents state that vacancies were not released. Applicant produced Annexure A-6 to show the number of vacancies available for consideration of appointment on compassionate grounds. Respondents have not explained how they arrived at 51 marks for the applicant and they have not produced comparative assessment of the different attributes of candidates considered. Applicant has also produced Annexure A-5 order dated 19.11.2013 which was again a rejection of the applicant's case which was considered for the year 2012-13.



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4. An additional reply was filed by the respondents stating the year wise vacancies released by the competent authority for LDC category is as under :

For the year 2010-11 - 06 Nos.

For the year 2011-12 - Nil

For the year 2012-13 - Nil

5. As no LDC vacancy was available, applicant's case was considered for other categories like Peon, Chowkidar, Safaiwala etc., but due to low merits her case could not be considered. Respondents have produced Annexure R-3 showing the comparative merit of the candidates considered for appointment on compassionate grounds. They have also produced Annexure R-4 and Annexure R-5 indicating the relative merit points required on the different attributes for appointment on compassionate grounds.

6. Shri.R.Sreeraj, learned counsel for the applicant and Shri.Rajesh representing Shri.Sunil Jacob Jose,SCGSC were heard.

7. The records in this case do show that the request made by the applicant for appointment on compassionate grounds was treated by the respondents in a serious manner. It appears that from the very beginning respondents have been conscious of the requirement that a request for



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compassionate appointment has to be considered repeatedly for three years if the same was not granted at the first year itself. Respondents have also produced records to show that the request of the applicant was evaluated using the merit point system followed as indicated in Annexure R-4 and Annexure R-5 documents. Annexure R-3 shows that the case of the applicant was evaluated for the year 2010-11 and that a comparative assessment of the merit points was made in respect of all aspirants for appointment on compassionate grounds.

8. It appears that the respondents are under the misconception that compassionate appointment has to be granted only in the cadre of LDCs. The scheme of appointment on compassionate grounds envisages such appointments to either Group C and D posts. Group D posts also can be taken into consideration in the event of Group C posts being not available. Similarly, there is no meaning in the contention of the respondents that only vacancies 'released' by the competent authority for appointment on compassionate grounds was taken up for such appointments. Annexure A-2 scheme envisaged by the Government of India for appointment on compassionate grounds envisages that 5% of the vacancies available for direct recruitment in a particular year has to be kept aside for filling up through appointment on compassionate grounds. Therefore, there is no question of 'releasing' the vacancies. What the departmental authorities are expected to do is to keep aside 5% of the vacancies arising every year from out of the vacancies for direct recruitment and allocate the same to the most

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eligible amongst the applicants for appointment on compassionate grounds. As per the merit point system envisaged in Annexure R-4 and Annexure R-5 documents eligibility of an applicant is determined on the basis of comparative assessment of the marks awarded to them. This system is put in place to eliminate arbitrariness on the part of the officials responsible for selecting the candidates. It has to be remembered always that the ultimate object of the compassionate appointment is not to make the government job inheritable from the deceased. On the other hand the real objective is to give succour to the family of the deceased employee who would otherwise face vagrancy due to financial difficulties. Therefore, even while the relative merit points system is followed, it is incumbent upon the authorities to ensure that the candidate who is exposed to the most penurious condition only shall be selected. For that purpose apart from the mere awarding of arithmetical merit points, the penurious condition of the family of each applicant also has to be reckoned.

9. In the circumstances, respondents are directed to consider the request of the applicant once again for appointment on compassionate grounds for the financial year 2013-14 also, in the light of the above observations made by this Tribunal and in accordance with the extant administrative instructions. The respondents authorities shall keep aside 5% of the total number of vacancies available for direct recruitment, both from Group C and Group D categories and shall consider the applicant for any of the available vacancies occurring in either of the categories- depending on her

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qualifications- provided her case is meritorious on the basis of the relative merit points vis-a-vis the other candidates. Respondents are further directed not to insist on irrelevant considerations like the need for a heavy motor vehicle license etc. as called for from the applicant vide Annexure A-4. Respondents shall prepare a list indicating the comparative merit points awarded to each candidate based on the different attributes mentioned in Annexure R-4 and Annexure R-5 and shall communicate copies of the same to all candidates who were considered for appointment on compassionate grounds. Ordered accordingly. Parties shall suffer their own costs.

(Dated this the 18th day of November 2014)


U.SARATHCHANDRAN
JUDICIAL MEMBER

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