

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 326
T. A. No.

1990

DATE OF DECISION 26-4-1991

Nandagopalan.V _____ Applicant (s)

Shri. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Chief General Manager, _____ Respondent (s)
Telecommunications, Trivandrum and another

Mr. V. Ajith Narayanan, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

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

JUDGEMENT

N. Dharmadan, M(J)

This Original Application, filed under sec.19 of the Administrative Tribunals Act 1985, is directed against Annexure-V order, rejecting the plea of the applicant for appointment as Telecom Office Assistant (TOA) on compassionate grounds, considering his qualifications.

2. The material facts of the case/are as follows: The applicant's father while working as Jamedar in the Telecommunication Department expired on 27-6-1987. The applicant, a dependent of the deceased, a matriculate by qualification, applied for the post of TOA on

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compassionate grounds (Annexure-I) explaining the indigent and miserable condition of the family by his representation at Annexure-I. But the respondents by Annexure-II order intimated the applicant their inability to appoint him to the cadre of clerk, however, sought his willingness to be considered for a group-D post. Subsequently, the Divisional Manager (Admn), Ernakulam Telecom District appointed the applicant as Group-D, Peon in the pay scale of Rs.750-940 by Annexure-III order. The applicant again represented to the Chief General Manager, Telecom, Trivandrum ventilating his grievance against Annexure-II order and requested to issue necessary orders for appointing him as TOA. The Chief General Manager, Trivandrum by his letter dated 24-1-90 directed the Dy. General Manager, Trichur to inform the applicant that 'the scheme of employment on compassionate grounds in relaxation of normal rules is envisaged for the immediate rehabilitation of the bereaved family which is in distress due to the loss of the bread winner in the family and it ceases to exist once such employment is offered and the same is accepted by the applicant. Now he has to seek advancement of career in the normal course'. The above decision of was conveyed to the applicant by Chief General Manager, Trivandrum by Annexure-V order which is under challenge in this application.

3. The counsel for the applicant vehemently submitted that the applicant is fully qualified for

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being appointed against a Group-C post and the rules in vogue provides for relaxing the qualifications if necessary in deserving cases. Since the term suitable posting means a posting commensurate with the educational qualification of the applicant, the refusal to even consider the applicant for appointment against Group-C post is illegal and contrary to the rules on the subject. He further submitted that the family left behind by the deceased is in distress and there would be considerable relief for the family if the applicant is given a Group-C post.

4. The respondents, without disputing the basic material facts submitted that 'just passing the S.S.L.C. Examination does not make a candidate eligible for selection to Group-C post. Selection for appointment to Group-C post is made on the basis of the marks obtained in the SSLC Examination.' Counsel for the respondents further submitted that the applicant scored extremely low marks viz. 36.3% hence the Departmental High Power Committee decided to recommend him for a Group-D post, duly considering the case of the applicant on ~~xxxxxxxx~~ compassionate ground. The respondents along with the counter affidavit produced consolidated instructions regarding appointment of son/ daughter etc of Govt. servant on compassionate grounds. Inviting our attention to para 10 of the said instructions respondents' counsel submitted that 'when a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to his initial appointment should

be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment should strive in his career like his colleagues for future advancement and claim for appointment to higher post on consideration of compassion should invariably be rejected'. During the course of the argument the respondents also submitted that appointment on compassionate ground is provided to tideover the family financial difficulties on account of sudden death of his father after relaxing the regular rules. The respondents also submitted that the last recruitment to Group-C cadre was xxxx made during 1983 and only candidates who had secured 83.33% and above were only selected. Whereas the applicant secured only 36.3% which is extremely low and hence the Departmental High Power Committee decided to recommend him for a group-D post.

5. We have heard the counsel on either side and gone through the documents carefully. Having heard the matter in detail, we are of the view that the applicant has not made out a case deserving our interference. Going by the averments in the para 4 of the counter affidavit, the applicant was appointed to the post of Group-D cadre after seeking his willingness and hence there arises no room for any complaint subsequent to the appointment. When once a person is given an appointment in a particular category considering his case sympathetically and in relaxation of the normal

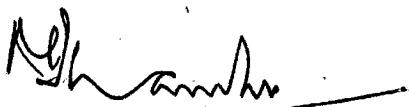
recruitment rules, the appointee exhausts his right to get compassionate appointment particularly when such person accepts the offer without any protest. Such a person, thereafter, is estopped from making his claim for further better appointment on compassionate grounds stating that he is fully qualified to hold higher post. The very purpose of the compassionate appointment is to give immediate financial assistance to members of the deceased Govt. servants' family who are in indigent condition.

6. 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 for appointment to Group-D post. The appointment was accepted by the applicant and he can aspire for further advancement in the career like his colleagues in normal course that is by appearing for departmental examination for promotion of Group-D to Group-C post. His right to get compassionate appointment got exhausted when he accepted the appointment in the Group-D category. Now he is estopped from making fresh claim for promotion on compassionate grounds.

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7. 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 the departmental instruction 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. The learned counsel today filed M.P. with Dy. No.3197/91 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 of any fresh representation ^{which may be filed by} the applicant in the light of identical cases stated in the M.P.

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


(N. DHARMADAN) 26.4.91
JUDICIAL MEMBER


(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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