

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.331 of 2003

Monday, this the 30th of June, 2003.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

A.P. Asha,
Wife of late C.S. Mahesan,
Ex. Carpenter (SK) at Garrison Engineer,
47/858, Choolackal House,
Vaduthala, Cochin - 23

..Applicant

[By Advocate Mr. K.A. Abraham]

v e r s u s

1. The Chief Engineer (Navy),
Naval Base P.O.,
Kochi - 682 004
2. The Garrison Engineer (P),
Fort Kochi,
Kochi - 682 001

..Respondents

[By Advocate Mr. Sunil Jose]

The application having been heard on 10.6.2003, the
Tribunal on 30.6.2003 delivered the following :

O R D E R

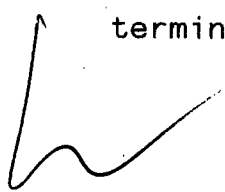
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is the widow of late Sri C.S. Mahesan, who expired on 06.09.1999 while working as Carpenter (SK) at Garrison Engineer, Fort Kochi. She claimed that she is entitled to get compassionate appointment as per the Scheme for employment to the dependents of the employees who died in harness. The applicant submitted that immediately on the death of her husband, she forwarded an application (Annexure A/1) to the first respondent for employment under the Navy on compassionate ground. The applicant and their children were solely depended on the earnings of the deceased. His family consists of his wife and two children namely, Amarnath (son), aged 13 years and Amala (daughter), aged 11 years and the applicant is find it difficult

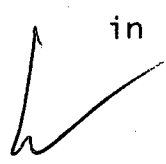
to manage the day-to-day affairs due to unexpected death of her husband. They have no other source of income except the meagre amount of family pension. Initially, the family pension is granted @ Rs. 2936/- per month, but it will be reduced to Rs. 1275/- with effect from 2006. The applicant studied upto SSLC and is unemployed. Aggrieved by the non-feasance on the part of the respondent to consider her application, the applicant again submitted a representation on 4.10.2001 (Annexure A/2) stating the necessity for an early appointment. Without considering the indigence of the applicant, the first respondent rejected the application of the applicant for compassionate appointment vide Annexures A/3 and A/3(a). The applicant submitted that no sufficient enquiry was made regarding the indigence of the applicant. Aggrieved by the impugned orders, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, praying for following reliefs:

- (i) "To call for the records leading to Annexure A3 and quash the same as arbitrary, illegal and unsustainable.
- (ii) To direct the respondents to consider the claim of the applicant for compassionate appointment in the light of the pecuniary and indigent situation faced by the applicant and her two children.
- (iii) To declare that the applicant is entitled to be appointed under the respondents on compassionate appointment.
- (iv) Such other reliefs the Hon'ble Tribunal deem fit on the facts and circumstances of the case, and
- (v) Award cost of the application."

2. The respondents have filed a detailed reply statement and additional reply statement contending that the applicant is not eligible to get employment on compassionate ground. It is given based on relative merit points such as amount of family pension, terminal benefits, property held by the defendants, unmarried

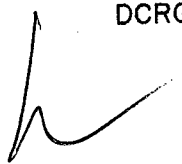


daughters, left over services, etc. as per the guidelines issued vide Government of India, Ministry of Defence, ID No. 19(4)/824-99/1998-D(Lab) dated 9.3.2001. The case of the applicant was graded on the basis of the guidelines and total of 65 marks/points were given to her. In view of non-availability of vacancies for compassionate appointment, the case of the applicant could not be considered. On the death of the applicant's husband, the terminal benefits were duly calculated and a total amount of Rs. 1,31,351/- was paid to the applicant. The applicant is also in receipt of Rs. 2055/- plus Dearness Relief as monthly family pension. The respondents denied the allegation of the applicant that without considering her indigence, her application for compassionate appointment was rejected. In fact, the respondents have considered the different aspects and taking into account all aspects of the case, 65 points were allotted to her on the basis of the guidelines of the Ministry of Defence. They submitted that the compassionate appointment cannot be claimed as a matter of right. The claim of the applicant was considered by the Board of Officers, but she could not be accommodated due to lack of vacancy. The case of two candidates, namely Smt. Sajini Ayyappan and Smt. K.N. Indravally, who were awarded 91 and 53 points respectively were recommended for appointment since they fell below the poverty line. The applicant though awarded 65 points, was not recommended for appointment since she was categorised as "not below poverty line". It is averred that the person who receive less than Rs. 1767/- as family pension are included in the category of below poverty line. Therefore, the learned counsel for the respondents submitted that only such cases who are below the poverty line, are to be considered deserving cases. She was considered thrice, i.e. in January, 2002, in September, 2002 and in December, 2002, but she could not be granted appointment due



to lack of vacancy and, therefore, speaking order Annexure A/3 was issued to the applicant on 10.03.2003. The respondents submitted that the OA is devoid of any merit and is liable to be rejected.


3. The applicant filed a rejoinder stating that the the delay in submission of the application for compassionate appointment was caused due to delay in sanctioning the terminal benefits of the deceased as the application could be submitted only after sanction^{of} terminal benefits. She contended that applicant's case was considered by the Board of Officers only in January, 2002, whereas it should have been considered in January, 2001 itself. It is stated that the "poverty line" as per Annexure R2(b) amounts to income below Rs. 1767/- per month for a family of five members. It is for the total income per month and not the only family pension received by the applicant for compassionate appointment. The second in rank, Smt. K.N. Indiravally, was selected for appointment as Mazdoor. She receives pension of Rs. 1540/- (basic) excluding the allowances and also income from property Rs. 400/- per month. Even excluding the allowances, the total income per month of Smt. Indiravally comes to Rs. 1940/-, which is above the poverty line. The applicant has no income other than the family pension and she has got two minor children. Both of them are School going. In the case of Smt. Indiravally, there is no unmarried daughter or minor children. There is only one dependant to Smt. Indiravally whereas there are three dependants to the applicant. So she does not come below the poverty line as per the norms fixed in Annexure R2(b). The case of the applicant has to be considered for selection for the second post to which Smt. indravally was recommended. The applicant submitted that she received only Rs. 64,772/- towards DCRG after deducting the liabilities paid. But the entire amount



of Rs. 1,131,351/- was taken as the terminal benefits received which was not correct. If that also had been taken into consideration, her grading would have been still higher above 65 marks.

4. I have heard Shri K.A. Abraham, learned counsel for the applicant and Shri Sunil Jose, ACGSC, for the respondents.

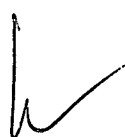
5. Learned counsel for the applicant submitted that the applicant's husband was only the earning member of her family and now nobody is there to support herself and her two children. The rejection of her application for compassionate appointment is denial of right to live as enshrined under Article 21 of the Constitution of India. The object of the Scheme relating to appointment of the deceased employee on compassionate ground is intended to overcome the financial strain on the family of the deceased employee due to sudden death. The fact which should have been considered has not been considered in granting the relief. The deceased husband was only the breadwinner of the family, which consists of the applicant and two minor children. These facts were not considered by the Board of Officers and rejected her claim. The Board of Officers rejected her claim due to lack of vacancies and the order was passed on 28.02.2003. The impugned order was issued to the applicant on 10.03.2003. The learned counsel for the applicant contended that the case of the applicant was considered only in three quarters taking into consideration the vacancies upto 31.12.2002. He argued that as per rules, they could have considered applicant's case for the fourth quarter also. The learned counsel for the respondents on the other hand, submitted that the compassionate appointment could be considered on the basis of various factors, like the income of the family, terminal benefits received, value of



moveable/immoveable property per annum, monthly income from property, number of married daughters, minor children etc. etc. and who fell below the poverty line, were given such benefit. The applicant though awarded 65 points, was not recommended for appointment since she was categorised as "not below poverty line" and Smt. K.N. Indiravally, who has come under the category of "below poverty line" was considered as second out of two vacancies. Therefore, there is no merit in the OA and it deserves to be dismissed.

6. I have given due consideration to the arguments advanced by the learned counsel for the parties and also perused the records.

7. It is urged on behalf of the respondents that the Board of Officers had considered the case of the applicant and finding that more deserving cases than the applicant were there and also there was no vacancy available upto December, 2002, the applicant could not be accommodated. To find out the truth, I have directed the respondents to produce the records pertaining to the selection of various persons on compassionate ground. On perusal of the same, I find that in the proceedings of the first Board of Officers, the applicant was at serial No. 6 and No. 2 in the merit list and, therefore, not recommended. The 27 vacancies that was relied on by the applicant (at page No. 2646A), were occurred during the year 2001-2002. In the proceedings of the second Board of Officers, the applicant was at serial No. 6 and No. 8 in the merit list and hence, his name was again not recommended. The same position was in the proceedings of third Board of Officers in which also he was at serial No. 6 and No.8 in the order of merit. Hence, her name could not be recommended.



The vacancy position during the year 2002 in the category of Mazdoor was 7. She was assessed/considered only for three quarters.

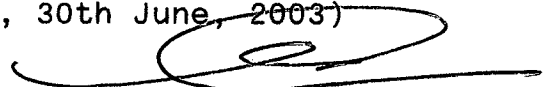
8. The another point that has been taken in the OA and stressed by the learned counsel for the applicant during the course of argument is that while considering the applicant's case, the respondents / Board of Officers did not consider the liability that the applicant was having, while receiving the terminal benefits of her husband. The learned counsel for the applicant submitted that had the liability of the family also taken into consideration, her rank would have been much above than what has been granted to her now. On perusal of the records, I find that the above contention of the applicant has certain force. Hon'ble High Court of Kerala in a recent decision reported in I.L.R. 2003 (2) Kerala, Sunil Kumar K.G. vs. Union of India and Others, has considered the aspect whether the family is able to sustain itself even after receipt of the terminal benefits of the deceased and held that each case has to be decided on its own fact. But the basic guiding factor is the condition of the family. In some cases, even after the collection of terminal benefits, the family may be under a debt. Thus, the mere fact that a family has received terminal benefits, cannot, by itself, be a reason to deny appointment on compassionate basis. Equally, even in a case where the family has not got sufficient amount by way of retiral benefits, the prayer for grant of appointment on compassionate basis can be rejected if it is found that the family is in a position to sustain itself. Therefore, while considering the appointment on compassionate grounds, the liability of the applicant/family has also to be looked into. It appears that in the present case, this fact has not been considered in a real sense.

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9. From the records produced, it is also clear that in the year 2001, there were number of vacancies available and even in 2002, the available vacancy in the category of Mazdoor was 7 and as per the Scheme, one has to be considered in four consecutive quarters, which is not done in this case. Therefore, I am of the view that the applicant's case is required to be considered on one more quarter. If any of the vacancy which falls during that quarter, the applicant is entitled to be considered for the same. The applicant has not been considered for the fourth quarter though the vacancy was available at that time. Therefore, this Court is of the view that to meet the ends of justice, a direction is necessary to be issued to the respondents to consider the case of the applicant for the fourth quarter within the vacancy that falls due during that quarter.

10. In view of the facts and circumstances of the case, I dispose of this application with a direction to the respondents to consider the case of the applicant for compassionate appointment for the fourth quarter taking into consideration the vacancies available during that quarter and the liability clause as observed by Hon'ble High Court of Kerala in the case cited supra and pass a speaking order with a copy to the applicant. This exercise shall be done within three months from the date of receipt of a copy of this order. No costs.

(Dated, 30th June, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER

CVR.