

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 332/89
~~XXXXXX~~

199

DATE OF DECISION 18-9- 1990

N.S. Lathakumari Applicant (x)

M/s GP Mohanachandran, Advocate for the Applicant (x)
Lal C. Aruvickal
Versus

Supdt. of Post Offices, Tvm Respondent (s)
South Division and 3 others 1

Mr. V. Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V. Haridasan, Judicial Member.

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

JUDGEMENT

(Shri N.V. Krishnan, Administrative Member)

The applicant is the daughter of Shri G. Neelakantan Nair, Sub Postmaster, who became permanently incapacitated and had to be retired on medical grounds at the age of 49 years on 3.12.87, on a pension of Rs.610/-per mensem. She applied for a compassionate appointment in the Postal Department. She has been informed by the Supdt. of Post Offices, Trivandrum (Respondent-1) by his letter dated 26.9.88 (Annexure-A3) that the ~~third~~ respondent, viz., the Director General of Posts, has rejected her application for compassionate appointment in relaxation of the Recruitment Rules. The applicant has, therefore, prayed that the Annexure A3 order be quashed and direction be

...2...

issued to the respondents to appoint her as a Postal Assistant or in any other suitable post in the Deptt., in relaxation of the Recruitment Rules.

2. The respondents have filed a reply stating that the applicant is not entitled to any such relief. It is confirmed in the reply that her request was processed and submitted to the Director General of Posts, New Delhi, for approval but after considering various aspects of the case, it was rejected as it did not satisfy the norms laid down for such recruitment. The respondents refer to the consolidated instructions issued by the Govt. of India, Deptt. of Personnel OM No.14014/6/86-Estt.(D) dated 30.6.87 regarding compassionate appointment, according to which appointment on compassionate ground is justified only if the family is in indigent circumstances and there is no other earning member, which is not the case here. The benefit of compassionate appointment in such circumstance, i.e., when there is an earning member in the family of the govt. servant retired on medical ground, can be extended only in exceptional cases on the full satisfaction of the Department that the family is indigent and in great distress. In the present case, besides the pensioner, there is one son of his who is employed and the family also receives income from some landed property. Hence, the application was rejected.

3. When the application came ~~u~~ for final hearing, we wanted to know from the respondents whether the Director General, who rejected the application as stated in Annexure-A3 is the authority competent to take such decision because according to the Deptt. of Personnel OM dated 30.6.87 referred to above, decisions in such cases are to be taken by Government. We, therefore, directed the respondents to produce evidence to show that the application has been considered and rejected by the competent authority.

4. The respondents have produced certain records for our perusal which do not clearly establish ^{that} ~~whether~~ the application has been rejected by the competent authority. The records produced are (i) enclosures to the letter dated 24.7.90 of the PMG, Kerala, ^{counsel for} ~~to~~ the respondents and (ii) File No.24/129/88+SPB-I. We have gone through these records and we have the following observations to make:-

(i) We have gone through the first record and the enclosure~~s~~ thereto. The first enclosure is a ~~an~~ proposal No.24/189/84-SPB-I for consideration of the P&T Board to delegate more power~~s~~ to subordinate authorities. As there is no decision thereon, it is of no help to us.

(ii) The next document is a copy of the Govt. of

India, Ministry of Home Affairs OM dated 25.1.1978, which is enclosed as Annexure-A to the proposal referred to ^{in (i)} above.

Para 5 of that circular is reproduced below:-

"5. In deserving cases even where there is an earning member in the family, a son/daughter/near relative of the Government servant, who dies in harness leaving his family in indigent circumstances, may be considered for appointment to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependents left by the deceased Government servant, the assets and liabilities left by him, the income of the earning member and also his liabilities, whether the earning member is residing with the family of the deceased Govt. servant and whether he should not be a source of support to the other members of the family."

This relates to a case where there is an earning member in the family of the deceased. The power ^{is} exercisable only by the Secretary to Govt. and there is no mention that this power can be re-delegated. Perhaps, this will also apply to a case of a medically retired pensioner in whose family also there is an earning member.

Strangely enough, this circular of 1978 refers to a Deptt. of Personnel OM dated 16.3.82 relating to compassionate appointment of a dependent of a govt. servant retired prematurely on medical grounds. It also speaks of the appointment being made where the Department is satisfied that the family is indigent and in great distress.

(iii) The third document relates to the disposal of applications for compassionate appointment by the

Selection Committee of the Directorate consisting of Member (Personnel), Director Staff, Dy. Director General (P) and Dy. Director General, M.O. They are shown to have considered 49 cases including that of the applicant, which is at Sl.No.31, on 12.8.88. There is only one remark 'Rejected' or 'Approved' against these cases. No reasons are given. The applicant's case was rejected. A slip attached to the file (i.e. the second record), however, states that the matter was considered by the competent committee in August, 1988 but a copy of the minutes was not available.

(iv) Lastly, there is a memo dated 15.4.88 constituting a separate Selection Committee on compassionate appointment in the Postal Department after the bifurcation of the composite department into Deptt. of Telecommunications and the Deptt. of Posts. Apart from stating the composition of the Committee, it is stated that the reconstituted Selection Committee shall exercise the delegated powers which were till then exercised by the composite committee constituted for the composite department. There is no document to show as to what those powers were.

Before proceeding further, it is only necessary to state that if the Ministry of Home Affairs, Deptt. of Personnel & Administrative Reforms memo dated

25.11.78 vests powers only in the Deptt. of Govt. to consider cases of compassionate appointment, where the government servant is prematurely retired on medical ground and/or there is already a member of the family who is employed, these powers can be exercised by the Govt. only, unless they are properly delegated. Such delegation requires the concurrence of the Deptt. of Personnel & Administrative Reforms, as is evident from para 6 of the proposal referred to at (i) above where, an earlier decision of that Department against further delegation of powers to subordinate authorities has been cited. As pointed out above, our attention has not been drawn to any order authorising further delegation of such powers.

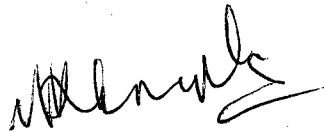
5. A perusal of the second record (i.e., File No. 24/129/88-SPB-R) shows that the Post Master General of Kerala had made a reference on 20th May, 1988, stating that the invalidated government servant's family consisted of his wife, two sons and a daughter. The elder son Shri Anil Kumar is a Sepoy in the Army but it was reported that the retired govt. servant was not getting any financial help from him. The second son was studying. No doubt, the family had 56 cents of dry land and a small house. The income from the

property was reported to be practically nil. It is further stated that the application was considered by the Circle Relaxation Committee which recommended the case. Despite all this, the application, as stated above, was rejected by the Committee headed by Member (P) without giving any reasons whatsoever. However, it is also seen from the file that a reply was sent on 8.8.89 to the Chief Postmaster General, Kerala Circle, from the Office of the Director General of Posts stating that the main reason for rejecting the application was that this was not a case where the family was left without any source of living. Apart from the pension of the government servant, one son was employed and in addition, he was getting some income from the agricultural land. Apparently, in stating these grounds for rejecting the claim ^{the} contents of the letter of the Postmaster General of Kerala dated 20.5.88 which have a bearing on these grounds had not been considered. Needless to say, the findings and opinion of the authority at the spot cannot be brushed aside by the Head Office without any basis.

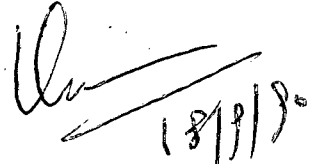
6. Apart from reiterating that on behalf of the Secretary to the Department of Posts, the Selection Committee headed by Member (P) had taken the decision to reject the application, nothing has been brought to our notice as stated above to indicate that the powers vested with the Department as mentioned in the

Deptt. of Personnel's circular dated 30.6.87 to consider this as an exceptional case have been properly delegated to this Committee. In the circumstances, we are clearly of the view that the impugned order has not been issued by a competent authority competent to consider the application of the applicant for compassionate appointment afresh. We, therefore, allow this application and direct the fourth respondent to consider that application afresh either directly or by a committee properly authorised both by the Deptt. of Posts and the Deptt. of Personnel, keeping in view our observations and ensure that a reply is sent to the applicant within a period of three months from the date of receipt of a copy of this order.

7. The application is disposed of with the above directions. In the circumstances, there will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(N.V. Krishnan)
Administrative Member

18-9-90