

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 338/91
~~XXXXXXXX~~

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DATE OF DECISION 3-4-1992

Shri P.K. Satheesh

Applicant (x)

**S/Shri K Ramakumar & V.R.
Ramachandran Nair**

Advocate for the Applicant (x)

Versus

**Secretary, Deptt of Revenue,
Ministry of Finance & 2 others**

Respondent (s)

Shri P Sankaran Kutty Nair,

Advocate for the Respondent (s)

CORAM :

ACGSC

The Hon'ble Mr.

P.S. Habeeb Mohamed - Administrative Member

&

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? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

In this application filed on 24.2.1991, the applicant has prayed for a direction to the respondents to appoint him as Inspector of Central Excise on the basis of the selection made in the year 1989 and to grant him all attendant benefits in seniority, pay etc., from 7.11.1989. The applicant's father Shri K.V. Prabhakaran Nair died while he was in service on 4th June, 1983 when the applicant was a minor. On 22nd June, 1984, the applicant's mother submitted a petition to the 3rd respondent requesting that the applicant may be given appointment on compassionate grounds. He was not appointed immediately

for want of a vacancy. When the applicant became^a major, he renewed his request and on the basis of that, the 3rd respondent intimated the applicant by letter dated 31.8.1987 that as the vacancy position had not improved, his request ~~would~~ be considered along with other similar cases when vacancies become available in the cadre of LDC in the Directorate. Thereafter, on 16.8.89 after passing the B.Com examination, the applicant made another representation for appointment as Inspector of Central Excise for which post he was qualified. As there were a number of vacancies in the cadre of Inspector of Central Excise, the 3rd respondent directed the applicant to appear for a physical test and interview on 7.11.89 by ~~order dated~~ 2.11.89 at Annexure B. As the applicant was successful in the physical test and interview, the 3rd respondent addressed the Central Board of Excise & Customs seeking permission to appoint the applicant as Inspector of Central Excise in one of the vacancies. Thereafter, the applicant was offered an offer of appointment on 15.1.1991 (Annexure C) as Upper Division Clerk. As the applicant had no other alternative, he joined service as a UDC on 23.1.1991. ~~The~~ applicant's grievance is that as he was qualified to be appointed as an Inspector of Central Excise, and having successful in the physical endurance test and interview, the action of the respondents in appointing him in a lower post of UDC while several persons similarly situated have been appointed as Inspector of Central Excise is discriminatory and violative of the equality clause guaranteed in Articles 14 & 16 of the Constitution.

2. The respondents in their reply statement have admitted that the applicant was found fit and suitable for appointment as Inspector of Central Excise. But it has been contended that since the representation of the applicant for appointment as Inspector of Central Excise was made only on 16.8.89, more than 5 years after the death of his father, as per the existing instructions, it was necessary to obtain the approval of the Ministry for making the appointment and that when the question was referred to the Central Board of Excise & Customs, the Board vide their letter dated 31.12.1990 agreed to the appointment of the applicant as UDC on compassionate grounds in relaxation of para 7 of the Department of Personnel & Training O.M.No.14014/6/86-Estt (D) dated 30.6.87 and that was why the applicant was appointed as a UDC. They have further contended that as the applicant had already accepted the job his claim for a higher post subsequent to the acceptance of the job is unsustainable.

3. The applicant has filed a rejoinder in which he has contended that the reference to the Ministry for approval was not actually required as per the existing instructions contained in order F.No.14014/6/86-Estt (D) dated 30.6.1987, as his representation was not a new one made after a lapse of five years from the date of death of his father, but it was pending in the Department. He has also stated that as he had accepted the job since there was no other alternative, the contention of the respondents that having accepted the job, he cannot seek a better post is not just and reasonable.

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4. We have heard the arguments of the learned counsel on either side and have also seen the pleadings and documents on record. Annexure D is a copy of O.M.No.14014/6/86-Eastt (D) dated 30th June, 1987 of the Government of India, Ministry of Personnel, Public Grievance & Pensions. This O.M. contains the consolidated instructions in regard to appointment on compassionate grounds to the son/daughter/near relative of deceased Government servants. Clause 10 of Annexure D reads as follows:-

"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 in a particular post should strive in his career like his colleagues for future advancement and claims for appointment to higher post on consideration of compassion should invariably be rejected."

Basing on this clause in Annexure D, the learned counsel for the respondents argued that the claim of the applicant in this application has ought to be rejected. Sub-clause (b) of clause 9 of Annexure D reads as follows:-

"It is not the intention to restrict employment of son/daughter/near relative of deceased Group D employee to a Group D post only. As such, a son/daughter/near relative of deceased employee can be appointed to a Group C post for which he is educationally qualified, provided a vacancy in Group C exists."

From the above clause, it is evident that if vacancy exists and if the son/daughter/near relative of the deceased Government servant is qualified to be appointed to that post under the scheme, appointment should be given to that post. In this case, there is no case for the respondents that at the time when the applicant was considered for appointment on

compassionate grounds there was no vacancy in the cadre of Inspector of Central Excise. As a matter of fact, he was called for a physical endurance test and interview for appointment to the post of Inspector of Central Excise and admittedly he has come out successful in the test. But he could not be appointed by the 3rd respondent only because the approval of the Ministry was felt required, as the matter was, according to the respondents, pending for more than 5 years. Since there was a vacancy in which the applicant could have been appointed as Inspector of Central Excise as he was admittedly qualified for appointment to that post, it is not known as to why the Ministry did not approve his appointment as an Inspector of Central Excise. The Union of India represented by Secretary, Department of Revenue, Ministry of Finance and the Secretary, Central Board of Excise & Customs, New Delhi, are parties in this application. In the reply statement filed by the Assistant Collector, Central Excise on behalf of the respondents, apart from stating that the Board vide their letter dated 31.12.1990 have agreed to the appointment of the applicant as UDC on compassionate grounds, it has not been stated as to why approval was not granted for appointment of the applicant to the post of Inspector of Central Excise while he was educationally qualified and found fit and suitable in the physical endurance test and interview for the post of Inspector of Central Excise. It is true that there is no statutory right for a person to claim appointment to any post on compassionate grounds and that employment assistance on compassionate grounds is granted

as a concession. But even if it is a concession, in extending the benefits, persons similarly situated should be treated alike. The applicant has in this application quoted the instances of six persons similarly situated like him who were selected after he was found fit and suitable for appointment as Inspector of Central Excise ~~have been~~ appointed as Inspectors during the year 1990. The learned counsel for the applicant argued that while the applicant was educationally qualified and found fit and suitable in the test and interview held earlier, the action of the respondents in appointing him only in a lower post while appointing the other persons subsequently selected to a higher post amounts to hostile discrimination. The argument advanced by the learned counsel for the respondents revolves around two grounds-- one, that compassionate appointment being only a concession, the applicant has no legal right to claim that he should have been appointed as Inspector of Central Excise just for the reason that some other persons have been so appointed and two, that having accepted the appointment as UDC, according to the instructions regarding the appointment on compassionate grounds (Annexure D), a further request by the applicant for a better appointment cannot be entertained. The first ground raised by the learned counsel for the respondents would have had force if the applicant was even initially ~~been~~ considered for the post of UDC only and ~~xxxxxx~~ appointed to that post. But there is a case where the applicant was called for a physical endurance test and interview for the post of Inspector and of Central Excise ~~Maxxxxxxx~~ found fit and suitable

to be appointed to that post, There is no case that, there was shortage of vacancy to accommodate the applicant in that post. Apart from the fact that a reference had to be made to the Ministry for approval, no reason ~~is~~ seen stated as to why the applicant was not appointed as Inspector of Central Excise. That the matter was referred to the Ministry for approval alone ^{justifiable} would not be a reason for not appointing the applicant in a post to which he was found fit and qualified and to appoint him in a lower post. No reasonable explanation is forthcoming in the reply statement as to why the Board has decided that a post of Inspector of Central Excise should not be given to the applicant and that he should be appointed only as a UDC. The case of the applicant that six persons have been appointed to the post of Inspector of Central Excise during the same period and under the same circumstances has not been disputed. So, even if appointment on compassionate grounds is a concession, it ^{being} a concession made by the Government as a stated above, in extending the concession there cannot be a discrimination between persons similarly situated. The learned counsel for the applicant invited our attention to the decision of the Hon'ble Supreme Court in Smt. Kamala Gaiind v. State of Punjab and others, 1990 (Supp) SCC 800, the very short judgement reads as under:-

"1. Special leave granted.

2. We have heard counsel for the parties. Appellant's husband was working as an Additional District Judge in Punjab Judicial Service and was holding charge of a Designated Court when he was gunned down by the terrorists on September 1, 1986. It, appears that taking

into consideration the circumstances in which public officers engaged on duty are killed by the terrorists, government have framed a scheme for providing job to one of the members of the family so affected. Appellant's son, a graduate (by now a Law Graduate) was offered Class II State Service on the executive side while in similar situations dependants of public servants killed by terrorists have been given Class I post. Two instances have been cited, one being the case of an Executive Officer and the other of a Judicial Officer. In both the cases Class I jobs have been provided. Respondents have failed to indicate any justification for such discrimination. Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment. We, therefore, direct that within three months from now a suitable Class I post in P.C.S. Executive shall be provided to the appellant's son in lieu of the offer already made.

3. The appeal is disposed of accordingly. No costs."

5. The learned counsel for the applicant submitted that the same principle applies to the case on hand also. Their Lordships of the Supreme Court in the case under citation were considering the case under the scheme for providing job to one of the members of the family affected by the attack of terrorists in Punjab. The scheme for compassionate appointment generally applicable to the dependents of deceased employees of the Government of India and the scheme which was considered by their Lordships in the case under citation are two different schemes. So, the facts and circumstances of the case cited are different from the facts and circumstances of the case in hand. But there is one principle which is common, i.e. even in giving some benefits on compassion, if there is no justifiable basis, discriminatory treatment between identically situated persons cannot be justified. Therefore, to that extent the dictum applies to the facts of this case also. The second ground taken by the learned counsel for the respondents, namely, that having accepted

the appointment to the post of UDC under the scheme,,the applicant is not entitled to seek a better appointment.~~xxxxxxx argument~~
also does not have ^{much} ~~force~~. Though at the first instance, the applicant was considered only for the post of LDC, he was not offered an appointment immediately as there was no vacancy available. Thereafter, in the year 1989 after the applicant became a graduate, he submitted an application for appointment as Inspector of Central Excise on compassionate grounds. It was pursuant to this application that the applicant was called for a physical endurance test and interview and was found fit and suitable. Persons similarly situated were considered and have been appointed as Inspectors of Central Excise after the applicant was considered. The applicant accepted the post of UDC as he had no other alternative to save his family from indigence. That should not be held out as a reason for not appointing him to the post of Inspector of Central Excise for which he has been found fit and suitable. In almost similar circumstances, the Hon'ble High Court of Punjab and Haryana has in Tarsem Kumar Sehgal v. State of Punjab & others, 1987(2) SLJ 131 held as follows:-

"It is not disputed that the petitioner satisfied the educational and other requirements for the post of Inspector. He was, therefore, entitled to be appointed as an Inspector and not as a Clerk on 16th November, 1981 when the petitioner was offered the post of Clerk because on that date he stood in a position identical to the position of the persons named above in regard to his right to be appointed to the post of Inspector.

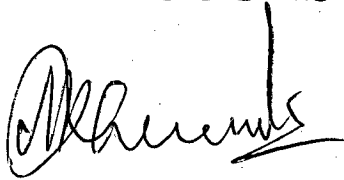
For the reasons aforementioned the respondents are directed to appoint the petitioner as Inspector with effect from 20th November, 1981, the date on which he had joined as Clerk. He would be entitled

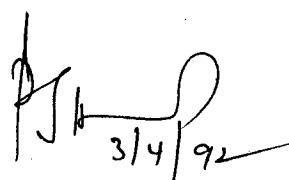
to all consequential reliefs regarding payment of salary as Inspector and his seniority on that post. The arrears of his salary shall be paid to him within six months from today. His seniority will also be fixed within that period in accordance with law. The writ petition is allowed accordingly with cost which is assessed at Rs.200/-."

We agree with the view taken in the above quoted ruling of the Hon'ble High Court of Punjab and Haryana to the extent that the very fact that the applicant has accepted the post of U.D. Clerk which was offered to him would not disentitle the applicant to claim appointment to the post of Inspector of Central Excise to which he was eligible to be appointed. Therefore, we reject the contentions raised on behalf of the respondents.

6. In the facts and circumstances of the case, we allow the application in part and direct the respondents to appoint the applicant as Inspector of Central Excise within a period of one month from the date of communication of this order. If a post of Inspector is not vacant, a supernumerary post should be created and maintained until a regular vacancy arises.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

3-4-1992

*ps

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.No.113/92 in

O. A. No. 338/91
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DATE OF DECISION 04.11.1992

**Union of India (Secy., Deptt
of Revenue) and others** **Review**
Applicant (s)

Shri Sankaran Kutty Nair **Review**
Advocate for the Applicant (s)

Versus

Shri PK Sathesh
Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **PS Habeeb Mohamed** - **Administrative Member**
&
The Hon'ble Mr. **AV Haridasan** - **Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ne*
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

(Hon'ble Shri AV Haridasan, JM)

The respondents in the Original Application are seeking a review of our order on the ground that our finding and decision are wrong and opposed to law. The Review Application is time barred. But the Review Applicants have filed a Miscellaneous Petition for condonation of delay. Though delay can be condoned, we do not find any justifiable ground for review. There is no conflict between our finding and the dictum of the judgement referred to in the RA. Annexure R1 is not at all relevant, and even if that was produced, the decision could not have been different. There is no reason why that was not produced

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in time if the review applicants/respondents could rely on that. However, we are of the view that if the respondents are aggrieved by the order, the remedy is to file a SLP and that review applicants will not lie for the reasons stated above.

2. Hence, the Review Application is rejected by circulation.


(AV HARIDASAN)
JUDICIAL MEMBER


(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

04.11.1992

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