

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O. A. NO. 350/2010

Dated this the 13<sup>th</sup> day of January, 2011

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## HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

A Salim  
Rayyan House, H.NO.59-A  
Mahatma Nagar  
Vadakkevila , Pallimukku  
Kollam

**..Applicant**

By Advocate Mr. Vishnu S. Chempazhanthiyil

vs

1	The Director of Postal Accounts Kerala Circle, Department of Posts Thiruvananthapuram	
2	Union of India represented by Chief Postmaster General Kerala Circle, Thiruvananthapuram.	Respondents

By Advocate Mr. MVS Nampoothiri

The Application having been heard on 5.1.2011 the Tribunal delivered the following:

## ORDER

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant is aggrieved by non-consideration of his request to grant either pension or compassionate allowance.

2 The applicant entered service of the Department of Posts as a Group-D employee on 21.9.1971 in the office of the Deputy Director of Audit & Accounts (P&T), Thiruvananthapuram. He passed the departmental examination for promotion and was posted as Sorter and continued in the post upto 1982. The applicant was afflicted by some unknown disease by which he suffered severe headache and disorientation as a result of which he lost his mental equilibrium and therefore, he could not attend office. He was under treatment in Medical College, Thiruvananthapuram (A-1) where he underwent major surgeries. On getting better after continuous treatment he requested the respondents to permit him to join duty. However, he was informed that disciplinary proceeding was initiated against him which resulted in removal from service. He submitted A-3 representation explaining the matter in detail and asked for the copies of the proceedings, order removing him from service and for release of his GPF. The GPF was paid to him. Pointing out identical case of Shri N. Dev who was absent for 10 years and sanctioned pensionary benefits, he requested for compassionate allowance (A-4). As there was no action he filed this O.A. challenging the non-consideration of his request as he has more than 10 years service under the respondents, he was not aware of the disciplinary action, the authority should have sanctioned compassionate allowance not exceeding two third of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension, and that the non-consideration of A-4 is illegal and arbitrary.

3 The respondents in their reply statement contended that the case of the applicant is time barred one and that the department was not aware of the infliction of the unknown disease as claimed by him. He was

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on unauthorisedly absent from duty from 1982 onwards and was removed from service after an ex-parte inquiry and that he has approached the Tribunal after 25 years from the date of his removal that the records are not available except the pay bill register pertaining to the period 1981-82. They further stated that the compassionate allowance cannot be claimed as a matter of right.

4 The applicant has filed rejoinder to the reply statement.

5 The applicant commenced service w.e.f. 22.9.1971 and absented himself from duty from 1982 onwards. Admittedly, there is delay of more than 25 years and he approached the respondents for the first time only on 24.4.2008 (A-3). The delay in filing the O.A has not been explained except the statement that he had been afflicted with the disease.

6 The applicant contends that he was under treatment for an unknown disease. He has not produced any material to show that he has been under treatment in 1982 or any nearby date. The Annexure A-1 series of records produced by the applicant pertains to the consultation/treatment of the applicant w.e.f. 31.5.2006 to 30.9.2006. The Annexure A-2 certificate is issued on 31.12.2009 certifying that the applicant was undergoing treatment of the Doctor who is only Lecturer in Psychiatry, Medical College which does not appear to be true to believe that the Doctor treated the applicant from 1985 onwards.

7 Rule 41 of "Classes of pensions and Conditions" governs grant of compassionate allowance which is extracted below:

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(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration sanction of a Compassionate Allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension..."

### Government of India decisions

#### (1) Guiding principles for the grant of Compassionate Allowance:-

It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question, it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course or misconduct carries with it the legitimate inference that the officer's vice has been dishonest, there can seldom be any good case for a Compassionate Allowance. Poverty is not an essential condition precedent to the grant of a Compassionate Allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not except perhaps in the most exceptional circumstances, sufficient for the grant of a Compassionate Allowance.

Therefore, it is for the authority competent to take a decision on the facts and circumstances of each case. Hence, I do not find any infirmity with the rejection of A-3 representation or non-grant of compassionate allowance to the applicant at this distance of time.

8 In the result, the O.A is dismissed on the long delay and laches as well as on merits. There shall be no order as to costs.

Dated 13<sup>th</sup> January, 2011.

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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