

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 386 of 2002

Thursday, this the 3rd day of July, 2003.

C O R A M

HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER  
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.A. Zulfikar Ali,  
Residing at 20/283, Nadeera Manzil,  
Pettathodi, Pudupalli Street,  
PALAKKAD : 678 004./

..Applicant

[By Advocate Mr. V. Chithambaresh]

Vs.

1. The Union of India represented by its  
Secretary to Ministry of Communications,  
New Delhi.
2. The Post Master General,  
Department of Post,  
Northern Region, Kerala Circle,  
Kozhikkode : 673 011.
3. The Superintendent,  
R.M.S. 'CT' Division,  
Kozhikkode : 673 032.

..Respondents

[By Advocate Mr. Shri Mahesh, ACGSC]

O R D E R

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

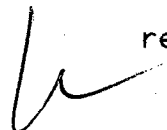
Applicant is the son of late Shri P.B. Alikoya, who, while working as a Sorting Assistant at Palakkad R.M.S. CT Division, died of cardiac arrest on 6.8.1999 leaving behind his widow Smt. Nadira Alikoya, the applicant and three daughters. The applicant is the eldest among the children. The second respondent sent a communication to the widow of the deceased intimating the existence of the Scheme of compassionate appointment to the dependants of employees dying-in-harness. The mother of the applicant immediately submitted a request to the second respondent praying for compassionate appointment to her son under the said Scheme. The applicant had completed S.S.L.C. and obtained a certificate from I.T.I. in Electronic Technician

h

course. The applicant's mother explained the financial difficulty faced by the family of the deceased due to various loan amounts availed by the deceased to construct their house and also for the marriage of two of their daughters. Inaction on the part of the respondents prompted the applicant's mother to make yet another request on similar lines to the second respondent in reply to which a communication (Annexure A/4) was received by the applicant to the effect that his case for compassionate appointment had been recommended by that office and necessary papers had been forwarded to the Chief Post Master General, Thiruvananthapuram. Thereafter, at a later point of time, the second respondent sent a communication (Annexure A/5) to the applicant stating that since the family of late Alikoya had received all terminal benefits as well as the family pension, the applicant is not eligible for compassionate appointment. The applicant challenged Annexure A/5 communication in OA No. 494/2001 and this Tribunal vide order dated 23.08.2001 directed the respondents to consider the case of the applicant and pass appropriate orders. Pursuant to the said direction, the second respondent again passed order dated 11.3.2002 (Annexure A/6) in the same fashion as that of Annexure A/5, turning down the claim of the applicant for appointment on compassionate ground. Aggrieved by the said order, the applicant has filed this O.A. praying for following reliefs:


- (i) To direct the respondents to give compassionate appointment to the applicant under the dying-in-harness Scheme.
- (ii) Declare that Annexure A/6 order is arbitrary and liable to be set aside.
- (iii) grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant."

2. The respondents have filed reply statement contending that the claim for appointment of the applicant was examined by the Circle Relaxation Committee which met on 5.2.2001, but did not recommend the case and the decision of the Committee was accepted



by the Chief PMG and the applicant was informed of the same vide A/5 communication. In compliance of the order dated 23.8.2001 of this Tribunal in OA No. 494/2001, the Circle Relaxation Committee reconsidered the case and again rejected, which was duly communicated to the applicant vide A/6 communication. The respondents submitted that there was no inaction on the part of the department as the case was processed on the basis of the information collected by the Inspector, RMS, Palakkad, and thereafter the decision was taken. The Circle Relaxation Committee found that the case of the applicant was not coming under the compassionate appointment Scheme. They submitted that Annexure A/1 was only a communication informing about the Scheme for compassionate appointment and there was no undertaking, assurance or admittance that one of the dependents of late Alikoya would be given compassionate appointment. As such the applicant's claim deserves to be rejected. The respondents further submitted that according to the extant rules on the subject, compassionate appointment can be provided only to fill up 5% of the vacancies that arises for direct recruitment. Consequently, it has become essential to ensure that only the most deserving cases are approved. The family of the deceased was not in indigent condition also. It is further averred that the compassionate appointment cannot be claimed as a matter of right as it is basically a help extended by the department to one of the dependants of the deceased, considering various aspects including the financial position of the family etc. based on various guidelines, regulating the grant of such appointments.

3. Shri V. Chithambareash, learned counsel, appeared for the applicant and Shri Mahesh, ACGSC, appeared on behalf of the respondents.



4. When the case came up before Single Bench (the Judicial Member) on 3.12.2002, considering the fact that large number of cases on compassionate appointment are coming up before the Tribunal, it was felt that a thorough hearing with participation of lawyers practising in this Tribunal and the Hon'ble High Court of Kerala, be held; and accordingly, the matter was posted before the Division Bench. Smt. Susheela Bhatt, Secretary, Indian Law Institute, Kerala Branch, High Court of Kerala, was appointed as Amicus Curiae to assist the Court on the subject. When the case came up for final hearing on 24.1.2003, most of the lawyers on either side practising in this Tribunal as well as in the High Court participated and made their valuable contribution. The general argument of all of them was, by and large, that the rule position regarding the compassionate appointment was settled by the pronouncements in various cases by the Hon'ble Supreme Court. The object of the Scheme is to grant appointment on compassionate grounds to a dependant family member of a Government servant dying in harness or retiring on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it tide over the emergency. The Scheme, O.M. No. 14014/6/94-Estt.(D) dated 9th October, 1998 (revised consolidated instructions), for compassionate appointment, states that :

"Dependant Family Member" means -

- (a) Spouse; or
- (b) Son (including adopted son); or
- (c) Daughter (including adopted daughter); or
- (d) Brother or sister in the case of unmarried Government or member of the Armed force referred to in (A) or (B) of this para.

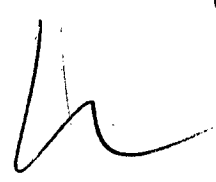
"Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis.

Eligibility:



- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) Applicant for compassionate appointment should be eligible and suitable for the posts in all respects under the provisions of the relevant Recruitment Rules.

**Determination/Availability of Vacancies:**

- (a) Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.
  - (b) Compassionate appointments can be made up to a maximum of 5% of vacancies failing under direct recruitment in any Group 'C' or 'D' post. The appointing authority may hold back up to 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise, so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz., SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and, if he belongs to General category he will be adjusted against the vacancy point meant for general category.
  - (c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment, if he is eligible as per the normal rules/orders governing such appointments
  - (d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g., sports quota vacancy.
  - (e) Employment under the Scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.
  - (f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative
- 

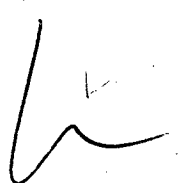
Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

5. The Scheme has been approved by Hon'ble Supreme Court in catena of judgements, some of which are as follows:

(a) Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Haryana and Others, JT 1994 (3) SC 525, has laid down following important principles for compassionate appointment:

- (i) Only dependents of an employee dying in harness leaving his family in penury and without means of livelihood can be appointed on compassionate ground.
- (ii) The posts in Groups 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground and no other post, i.e., in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.
- (iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.
- (iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
- (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.
- (vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- (vii) Compassionate appointment cannot be offered by an individual functionary on an ad hoc basis.

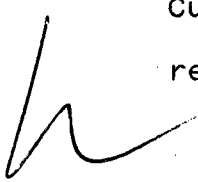
(b) In Auditor General of India and Others vs G. Anantha Rajeswara Rao, (1994) 1 SCC 192, Hon'ble Supreme Court has held that appointment on grounds of descent clearly violates Article 16(2) of the Constitution; but if the appointment is confined to the son or daughter or widow of



the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the even of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable.

- (c) In the cases of Himachal Road Transport Corporation vs. Dinesh Kumar [JT 1996 (5) SC 319] and Hindustan Aeronautics Limited vs. Smt. A. Radhika Thirumalai [JT 1996 (9) SC 197], the Apex Court has made it clear that the appointment on compassionate grounds can be made only if a vacancy is available for that purpose.
- (d) In Civil Appeal No. 11881 of 1996 reported in (2000) 6 SCC 493, Balbir Kaur and Another vs. Steel Authority of India and Others, Hon'ble Supreme Court has declared that the compassionate appointment could not be denied on the ground that the Family Benefit Scheme was available and further viewed that the lump sum payment of Provident Fund is an insulating factor for the family to cope with the situation arising out of death of the employee. Such payments ought not to be withheld by making it compulsory for the family to subscribe to the Scheme though it is open to Steel Authority of India Limited (SAIL, for short) to give option to the family of deceased employee either to seek compassionate appointment or to go in for monthly payment. SAIL being an "authority" under Article 12 could also not evade its constitutional responsibility towards its employees and social and economic justice. Their Lordships further observed that denial of compassionate appointment in deserving cases, perceived as denial of social and economic justice as enshrined in the Constitution. Law Courts cannot be mute spectators where relief is denied to the horrendous sufferings of a family which has lost its breadwinner. Constitutional philosophy should be allowed to become a part of every man's life and then only the Constitution can reach every one. This was an observation made by Hon'ble Supreme Court in the context of compassionate appointment in the decision aforesaid.

6. These are the factual aspects and the position of law that has been canvassed by the learned counsel on either side. Smt. Susheela R. Bhatt, Amicus Curiae, has thrown light to the Court by advancing her submission on the subject and submitted that the Scheme has been brought out by way of OM No. 14014/6/94-Estt.(D) dated 9.10.1998 after taking into consideration various circumstances and factors and precautions necessary for the evolution of the Scheme. Unless the Scheme is ultra-vires under Article 307 of the Constitution or shown to be mala fide, the same cannot be interfered with by the Tribunal. Learned Amicus Curiae also advanced her arguments on the scope of judicial review under Sections 14 and 19 of the Administrative Tribunals



Act, 1985, with reference to judicial pronouncements. In support of her submission, she cited the judgement reported in (1996) 32 ATC 150, Pepsu Road Transport Corporation vs. Satinder Kumar and Another, in which Hon'ble Supreme Court has held as follows:


"6. We understand the predicament into which the order under appeal has put the petitioner-Corporation. The High Court in the course of its order observes:

"Though the factual position is admitted by the respondents, yet it has been pleaded by the respondent-Corporation, that no doubt for appointing a person as a clerk, the petitioner does fulfil the qualifications, yet if the post is to be filled by open competition by direct recruitment, the applicant must be either M.A. or second division graduate, with three years' service in Government, Semi-Government or Local Body Organisation.

After hearing the learned counsel for the parties, we are satisfied that the plea taken by the respondents is untenable, inasmuch as when employment is to be provided under the policy instructions of the State Government, on compassionate grounds, it is not to be treated as appointment by open competition and direct recruitment. Therefore, the qualifications possessed by direct recruits are not to be taken into consideration. When an employee dies in harness and his widow or ward is to be helped by providing employment on priority basis, in place of the deceased, the appointment is always on compassionate grounds, even by relaxation of rules, if necessary."

We find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be matric, however, generally graduates and even post graduate degree holders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of the post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the Courts to compel appointment to particular posts. The fact of the matter is that though this kind of appointment is sui generis, and it is reasonable to expect that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification."

7. She further submitted that the compassionate appointment as evolved is a policy decision of the Executive which cannot be interfered with by the Judiciary unless marred by mala fides. It





is trite law that the policy decisions of the Government cannot be interfered by the Courts/Tribunals [Ref: State of Himachal Pradesh and Another vs. Jafli Devi, (1997) 5 SCC 301].

8. It has also come to our notice one of the latest decisions of Hon'ble High Court of Kerala in Sunil Kumar K.G. vs. Union of India and Others, I.L.R. 2003 (2) Kerala in which Hon'ble High Court 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.

9. In the given case, the reasons for rejection of the claim of the applicant has been elaborated in para 2 of the impugned order Annexure A/6, which is reproduced below:

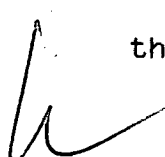
" The purpose for appointment on compassionate grounds is intended to render immediate assistance to the family of a Government servant who dies in harness or retire on invalidation on medical grounds leaving his family in indigent state. Such appointment can be provided only to fill up 5% of vacancies that arises for direct recruitment. Consequently it becomes essential to ensure that only the most deserving cases are approved as per the purpose stipulated for the Scheme of such compassionate appointments. In this case, the family of late P.B. Alikoya had received the admissible terminal benefits and is drawing regular family pension. Also Shri Alikoya would have retired on superannuation on 30.06.2001 and he would have become eligible for a pension of Rs. 1275/- only against family pension of Rs. 2250/- now drawn by your mother. It is almost double the pension that Shri P.B. Alikoya would have drawn had he retired on superannuation. The youngest daughter of late P.B.

h

Alikoya would have reached 16 years of age at the time of normal retirement of Alikoya. The widow of P.B. Alikoya who is receiving a family pension of Rs. 2250/- has to take care of only one unmarried daughter. You were 24 years at the time of death of your father on 6.8.1999 and now 26 years. For various purposes, like family pension, LTC etc., sons above the age of 25 years are not considered to be a member of the family. Thus, a man above 25 years is expected to be dependent on himself."

10.. One of the main limbs of the arguments by almost all advocates participated in the referendum is to the effect that the object of the Scheme is laudable with a view to achieve the social, economic and constitutional obligations. Analysing the impugned orders with reference to the above decisions and the recent decision of Hon'ble Supreme Court reported in JT 2002 (7) SC 425, Union of India vs. Joginder Sharma, wherein the rules position with regard to compassionate appointment has been considered and settled, we are of the view that the applicant in this O.A. is not entitled to any relief and the reason given in the impugned orders is justified.

11. As already stated, the Scheme is introduced by the Government of India to grant appointment on compassionate ground to a dependant family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without means of livelihood. Hon'ble Supreme Court has made it clear that even having found that the appointment on grounds of descent violates Article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is justified. Admittedly, this Scheme is a benevolent Scheme based on a policy decision, which is left to the discretionary wisdom of the executive. The Courts/Tribunals'

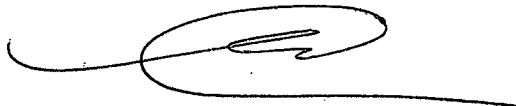


power to interfere with the rationality of the Scheme can be exercised only if the same is shown to be malafide. In Karampal vs. Union of India, 1985 2 SCC 457, Hon'ble Supreme Court has held that the Courts shall not interfere with working of the Scheme brought out by the Government and implementation of the rules and regulations thereof merely on the ground of hardship.

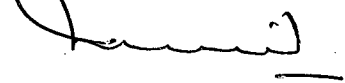
12. Considering all these aspects and the legal position as on date, we are of the view that this Tribunal cannot interfere with the impugned order Annexure A/6 and, therefore, the O.A. is liable to be rejected. The O.A. is accordingly dismissed with no order as to costs.

13. Before parting with, we would like to place on record our appreciations for the meaningful arguments advanced by all counsel participated as well as Advocate Smt. Susheela Bhatt, appeared as Amicus Curiae in this case.

(Dated, 3rd July, 2003)



K.V. SACHIDANANDAN  
JUDICIAL MEMBER



T.N.T. NAYAR  
ADMINISTRATIVE MEMEBR

CVR.