

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 404/2007

Wednesday, this the 3<sup>rd</sup> day of December, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.P.Muthukoya,  
S/o late Sayed Mohammed Koya,  
Monthampalli House,  
Kalpeni Island,  
Lakshadweep.

....Applicant

(By Advocate Mr PV Mohanan)

v.

1. Union Territory of Lakshadweep,  
Kavarathi represented by  
the Administrator.
2. The Secretary (General Administration & Services),  
Union Territory of Lakshadweep,  
Secretariat, Kavarathi.
3. The Committee for Compassionate Appointment,  
Union Territory of Lakshadweep,  
represented by its Chairman,  
Secretariat, Kavarathi.

....Respondents

(By Advocate Mr S Radhakrishnan )

This application having been finally heard on 25.9.2008, the Tribunal on 3.12.2008 delivered the following:

ORDER

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

This is the second round of litigation by the applicant seeking a direction to the respondents to appoint him on compassionate grounds in place of his father late Shri Sayed Mohammed Koya, a Primary School Teacher who while on service died on 25.5.1998.



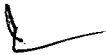
2. O.A.No.846/2005 filed by him was disposed of by this Tribunal on 29.11.2006 to re-consider his case. The relevant part of the said order is as under:

"7. I have gone through the records. I find that the applicant's case is a peculiar one in that the deceased employee had four wives and each family is living separately. The applicant's own family consists of seven members, out of the total of fifteen members. It is not clear from the records that, whether any share of family pension is being paid to the applicant's mother, who is the first wife, as seen from Annexure A-2(5) certificate given by the employer, only 3 persons are shown as receiving payments. It is also seen that the DCRG being divided among the four families and the applicant's share amounted to only one lakh and with a membership of seven, it cannot be construed as a very large asset. The Committee seems to have considered the entire amount of DCRG as having gone to the share of the applicant and similarly the family pension amount has also been taken into account. Perhaps this has been done because of the incorrect particulars given by the applicant himself mentioning the full amounts in his A-2 proforma application.

8. On considering the matters in totality, I am of the view that the case of the applicant has not been examined in the proper perspective taking his particular family situation. Therefore, I direct the applicant to make a comprehensive representation to the respondents within one month and direct the respondent (Administrator) to consider the same in accordance with the rules and in the light of the above observations under the Scheme for Compassionate Appointment, as expeditiously as possible, and to convey the decision taken, to the applicant.

9. O.A is disposed of as above. No costs."


3. In the Annexure A-5 representation dated 19.12.2006 made by the applicant, pursuant to the direction of the aforesaid order of this Tribunal, he has stated that his father married 4 wives and had 11 children in them. Though he had made an application immediately after the death of his father, the same was not considered by the respondents as the 3<sup>rd</sup> wife had raised some objections against it. Later on, she consented in the matter and accordingly he made a fresh application on 21.11.2002. He has also submitted that there were 13 posts identified by the respondents for compassionate appointment on 8.7.2003 and 2 out of them were that of the post of Primary School Teachers and he has the required qualification (SSLC with TCH) as per the notifications issued by the



Administrator on 19.4.2003 inviting applications for the said post. He has also submitted that he was born to the 1<sup>st</sup> wife of the deceased Government servant and there are six children including him and none of them are employed. In the 2<sup>nd</sup> and 3<sup>rd</sup> wives, there are 2 and 3 children respectively and there are no children for the 4<sup>th</sup> wife. The total DCRG received from the respondents after the death of his deceased father was Rs.2,40,325/- and the share of his mother was only Rs.1,20,175/- and out of which an amount Rs.6650/- was refunded on account of excess share of P.F received. The full family pension is being received by the 4<sup>th</sup> wife and there is no share in it to the applicant or to his other family members. He has also submitted that his late father has left behind only 450 sq. meters of land and a house thereupon which is in a dilapidated condition. His family's share is only one fourth of the said land and a room and therefore he, his mother and other children are living separately. One of his step brothers is employed in the Government and he cannot be considered as member of his family.

4. He has relied upon the judgments of the Apex Court in (i) **Balbir Kour and another v. Steel Authority of India Ltd.** [ (2000) 6 SCC 493], (ii) **Govind Prakash Verma v. LIC of India** [(2005) 10 SCC 289] and the judgment of the Hon'ble High Court of Kerala in **Canara Bank and others v. Priya Jayarajan** [2001(1) KLJ, 411] . In **Balbir Kour's** case (supra), the Apex Court has held as under:

".....But in our view this Family Benefit Scheme ,cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."




In **Govind Prakash Verma's** case (supra), the Apex Court has held as under:

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

In **Canara Bank and others's** case (supra), the Hon'ble Court of Kerala has held as under:

"We cannot forget the constitutional philosophy enshrined in Articles 15 and 16 of the Constitution of India. When a request made by a widow for compassionate appointment is granted the constitutional objective of strengthening and improving the status of women could be achieved. By granting compassionate employment to a widow in this case we can strengthen and improve the status of the woman and could also achieve gender equality especially in a case where the widow has satisfied all the requirements of the compassionate appointment scheme. We are of the view that the Canara Bank authorities have committed a grave error in not entertaining the application preferred by the widow and lost sight of the horrendous suffering of the widow who is to look after the minor children, widowed mother of the deceased, widowed sister and mentally and physically handicapped brother of the deceased by birth. All of them were under the care and support of the deceased. We may in this connection also refer to some of the provisions in the



scheme which would indicate that the granting of terminal benefits to the dependent of a deceased employee is of not much consequence in considering the application for compassionate appointment. Clause 3.2 of the scheme says that in case the dependent of deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if the terminal benefits is given, the applicant is a minor, the Bank would keep the appointment open till the minor attains the age of majority. So also in the case of member of the family sponsored for appointment desires to wait till he/she attains certain educational qualifications, his/her candidature would be considered provided the date so stipulated is within four years from the date of death of the employee. This would also indicate that the granting of terminal benefits is of no consequence. Further we may also notice clause 10 which deals with special provisions. It is stated that if the applicant is employed elsewhere, and if the job in the Bank is going to help him/her financially, such requests may also be entertained as per norms. Further, if any member of the family is already employed with the Bank, the Bank may consider giving employment to another member of the family depending on the merits of individual. Conjoint reading of all those clauses would show that granting of terminal benefits is of no consequence in the matter of considering the claim for compassionate appointment. In view of the above mentioned circumstance we have no hesitation to hold that the petitioner is legally entitled to have his application considered for compassionate appointment in the service of the Canara Bank."

5. The respondents have re-considered the case of the applicant in terms of the direction of this Tribunal on 29.11.2006 in O.A.846/2005 (supra) and issued the Annexure A-6 OM dated 11.5.2007 stating that the applicant cannot be given appointment because of his relative low merit compared to the other persons who have been recommended for appointment on compassionate grounds. The respondents have submitted that the committee for compassionate appointment in its meeting held on 16.9.2005 and 19.9.2005 considered the cases of the applicant and 79 others for the 13 vacancies identified for compassionate ground appointment but the applicant could not be offered any appointment because of his low merit compared to other most deserving cases. Two of the identified posts were offered to Primary School Teachers but none of the 13 selected candidates were having the required qualification to be appointed as Primary School Teacher. Therefore, the selection committee had asked the



concerned department to identify another 2 posts of Group 'C' or 'D' in place of the post of Primary School Teacher/Trained Graduate Teacher to give posting to selected deserving candidates and permitted the department to make appointment to the vacancies of Primary School Teacher/Trained Graduate Teacher in accordance with the Recruitment Rules. The criteria for consideration were the assets of the family, monthly income, number of employees amongst the dependent family members and minor dependents. According to them, the dependents of the deceased employee have received an amount of Rs.2,40,352/- as DCRG and are in receipt of family pension of Rs.3,700/- per month. They have also stated that the retirement benefits were considered as a whole for the sake of uniformity and not as divided amounts on the basis of the number of wives and the children in them left behind by the deceased Government servant.

6. I have heard Shri PV Mohanan, counsel for the applicant and Shri S Radhakrishnan, counsel for respondents. I have also called for the relevant file regarding appointment on compassionate ground from the Lakshadweep Administration and perused the same. As held by this Tribunal in its earlier order dated 29.11.2006 in O.A.846/2005, the applicant's case is a peculiar one. The deceased Government servant left behind 4 wives and 12 children. The property of the deceased Government servant was only a plot of land consisting of 450 sq.mts. and a small house therein. As the size of the house was small, the applicant's mother and her 6 children including the applicant are living separately. When there are 4 wives and 11 children, of course, there may be disputes as regards the receipt of terminal benefits and the appointment of a member of the house on compassionate ground are concerned. Though the applicant had made his application for a compassionate appointment immediately after the death of his father, because of the dispute raised by the 3<sup>rd</sup> wife of the



applicant's deceased father, the same was not considered. Finally, all the family members have decided that the 4<sup>th</sup> wife would receive family pension of Rs.3700/- in full and applicant would apply for the compassionate appointment. Therefore, the applicant again submitted his application for compassionate appointment on 21.1.2002. Admittedly, there were 13 posts available for offer under the compassionate ground category. Two posts were that of Primary School Teachers. Applicant was fully eligible for the same. The details of the 13 posts identified for compassionate appointment as stated in order dated 8.7.2003 were as follows:

Name of the post Identified	No. of posts	Department to which attached
1. Junior Investigator Technology	1	Science &
2. Cook	2	Education
3. Primary School Teacher	2	Education
4. Trained Graduate Teacher (Hindi)	1	Education
5. Lab Helper	1	P.W.D.
6. Fieldman	1	Agriculture
7. Chainman	1	Collectorate
8. Library Helper	1	S.J.E.C.
9. ANM	1	Medical & Health Services
10. Peon	1	Secretariat
11. Watchman	1	Secretariat"

7. From the above it is seen that 7 posts out of 13 identified posts belonged to Group 'C' category and the remaining 6 posts, belonged to Group 'D' category.

The Committee has recommended altogether 13 persons for appointment in the order of their relative merit irrespective of the facts that they were entitled for Group'D' or Group'C' categories of posts. Only 9 candidates out of the 13 recommended candidates could be offered appointments as the following 4 of them were not eligible for the Group'C' posts identified for compassionate ground appointments by the Administration:

10	Shri M.P.Bojoy, Pallikkara, S/o Shri P.M.Sreedharan Maniriaparamba, Govindapuram.P.O., Valayanad Village, Koshikode
11	A Bismilla Khan, S/o Shri PP Yousuff Ammelam House, Andrott
12	Smt K Nafeesath, S/o Shri PP Abdul MajeedKunninamel House, Kalpeni
13	Shri K.M.Kuhsin, S/o Shri K Kuttiammed Keela Muchiyam, Kavaratti


As a result, they have not recommended anyone for the 2 posts of Primary School Teachers, one post of TGT in the Education Department and plus one post of ANM in Medical Services. Therefore, vide order dated 19.11.2005, the Secretary/Administration has asked the Department of Education of Medical Health Services to identify Group'C' posts non-technical in lieu of the post ,of Primary School Teacher, TGT and ANM respectively. Now the question is when the UT of Lakshadweep has identified 2 posts of Primary School Teacher, 1 post of TGT and 1 post of ANM for appointment on compassionate ground, which have fallen under the 5% direct recruitment quota whether it was open for the selected candidates to recommend to offer compassionate appointment to some other persons who were not eligible for appointment against Group'C' posts. The contention of the respondents is that the applicants financial position is better than the financial position of the 13 persons who have already been identified.

8. In my considered view, the respondents have committed grave error on two counts in identifying the most deserving 13 persons for the 13 posts





identified for compassionate appointment under 5% direct recruitment quota. First of all, it is an admitted fact that 7 out of the 13 identified posts belonged to Group'C' and the balance 6 posts belonged to Group'D'. The respondents should have identified the most deserving candidates category wise. In other words, the applicants who were eligible for Group'C' posts and Group'D' posts should have been screened separately with reference to the number of posts earmarked for compassionate appointments in the respective categories. Thereafter, the respondents should have identified the most deserving persons from among those applicants against those posts. Instead, the respondents have released candidates without any consideration for the posts which have been identified under the 5% direct recruitment quota. As a result, they could not find candidates for 4 Group'C' posts. Not only that, the committee, without any authority, but also directed the respondent-Department to release 4 more Group'D' vacancies in lieu of the 4 Group'C' vacancies. This is obviously against the Scheme for Compassionate Appointment, as the percentage of Group'D' posts now being filled up will exceed the prescribed mandatory limit of 5% of the direct recruitment vacancies. Moreover, the financial position of the candidate is quite a relative situation. The hard fact of the matter is that the deceased employee has left behind 4 wives and 11 children. The applicant has other 5 siblings and his widowed mother. They have received only 1,20,175/- as DCRG. Secondly, the plot of land possessed by all the wives and children of the deceased employee was only 450 sq.mts of land. Applicant, admittedly, is fully qualified for the post of Primary School Teacher and two posts have already been earmarked for compassionate ground appointments under the 5% direct recruitment quota. When there was a post of Primary School Teacher already available for appointment under the compassionate ground, the respondents should have considered his relative merit vis-a-vis the other candidates, if any, applied for that post and who are eligible to be appointed.



9. In view of the above position, the recommendation of the selection committee with regard to the applicant is not sustainable. They have no authority to divert the Group'C' vacancies to Group'D' vacancies. The applicant cannot be compared with the candidates eligible for appointment only against Group'D' post. Such a comparison is nothing but discriminatory. The "Committee for Compassionate Appointment" has not recommended the case of the applicant for the sole reason that the "dependents of the deceased have received an amount of Rs.2,40,352/- as DCRG and are also in receipt of a monthly pension of Rs.3,700/-. For the reasons stated earlier in this order, the said decision of the Committee is not sustainable. Considering the fact that the applicant has been waiting for the last over 10 years and this is his second round of litigation, I, consider it necessary to direct the respondents to appoint the applicant as Primary School Teacher on compassionate ground subject to the condition that he fulfils all the requirements of the recruitment rules for the said post. The respondents shall, therefore, issue necessary orders to the applicant appointing him as Primary School Teacher within a period of one month from the date of receipt of this order. There shall be no order as to costs.

Dated, the 3<sup>rd</sup> December, 2008.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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