

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.411/2002.

Thursday this the 21st day of August, 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. K.Ushakumari,  
W/o Late Shri Somasekharan Nair,  
Usha Vilasom, Melathumele,  
Vattiyoorkavu,  
Thiruvananthapuram.
2. S.Sajeev Kumar,  
S/o Late Shri Somasekharan Nairof do. do.
3. S.Sajith Kumar,  
S/o Late Shri Somasekharan Nair of do. do.  
Applicants

(By Advocate Shri.Vishnu S.Chepazhanthiyil)

Vs.

1. The Head, P&GA, VSSC  
I.S.R.O. P.O., Thiruvananthapuram.
2. V.S.S.C., represented by its Director,  
I.S.R.O. P.O., Thiruvananthapuram.
3. Union of India, represented by its  
Secretary, Department of Space and Chairman,  
I.S.R.O., Bangalore,
4. Secretary, Department of Personnel and Training,  
Ministry of Personnel, Public Grievances and Pensions,  
New Delhi. Respondents

(By Advocate Shri C.N.Radhakrishnan)

The application having been heard on 21st August, 2003,  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, three in number, are aggrieved by A-11  
order dated 24.9.02 whereby the application dated 8.7.96 and the  
subsequent representations for compassionate appointment  
preferred by the 1st applicant Smt. Ushakumari, widow of late  
Somasekharan Nair in favour of her son S.Sajeevkumar, the 2nd  
applicant have been turned down. The applicants are also

aggrieved by A-17 O.M dated 3.12.99 and A-18 O.M. dated 22.6.2001 in so far these communications contained a stipulation that the cases of compassionate appointments ought to be disposed of with reference to vacancies that might arise within a period of one year. The 1st applicant is the widow of late Shri Somasekharan Nair who died in harness as Attendant 'C' while working in VSSC, Trivandrum. The 2nd and 3rd applicants are the dependent sons of the late Somasekharan Nair. The following reliefs are sought by the applicants:

1. Call for the records and quash Annexure A-11.
2. Direct the 3rd respondent to consider and pass orders on Annexure A-10 & A-16.
3. Declare Annexure A-17 and Annexure A-18 as illegal and arbitrary and quash the same.
4. Declare Annexure A-17 and Annexure A-18 are unreasonable and opposed to the spirit of the scheme in Annexure A-12 in as much as it does not permit carry forward of vacancies earmarked for compassionate appointment from year to year.

2. Respondents have filed a reply statement opposing the O.A. while admitting that there was some delay in sending a reply to the applicants, the respondents have stated that the delay was on account of the fact that since there was no vacancy readily available the respondents had been trying to consider the case of the 2nd applicant for appointment on compassionate grounds against future vacancies. According to the respondents, in view of the modification of A-12 Scheme for compassionate appointments by way of A-17 and A-18 O.Ms., the respondents had no choice but to issue the impugned letter A-11, since after a due examination the respondents found that, it would serve no purpose to wait any longer. In their rejoinder, the applicants reiterated their

claim and raised the contention that, while no details of available vacancies have been furnished by the respondents, they ought to have taken up the deserving cases including that of the applicant with other Ministries/Departments/Offices of the Government of India or other institutions under the Department of Space for any year after 1996. In their additional reply statement the respondents have clarified that they have been considering the deserving cases for appointment on compassionate grounds within the parameters of the Scheme and that, accordingly, they had appointed the dependants of 13 deceased employees on compassionate grounds during the period of 1996 to 2002. It is also averred by the respondents that no compassionate appointment has been given to any of the dependants of the employees who died after the death of the 2nd applicant's father on 6.6.96. Compassionate appointments can be made only in accordance with the instructions on the matter subject to the fulfilment of the conditions prescribed therefor and also keeping in view the various rulings of the Hon'ble Supreme Court on the matter. Accordingly, the applicants' case also received due consideration. After examining the applicants' case for compassionate appointment within the respondents organization, the respondents were about to circulate the matter to other departments for exploring the possibility of accommodating the 2nd applicant by way of compassionate appointment. However, before that could be done, the A-18 O.M. modifying the A-12 Scheme to the effect that it would serve no purpose, to circulate the cases amongst other departments and organisations, since it would only keep a needy person in a state of false hope. In the further statement dated 4.10.2002, the respondents have furnished a break up of all the appointments in group C&D made between 1996

2.

and 2002 which included the particulars of the 13 persons who were appointed on compassionate grounds between 1996 and 2002. According to the respondents, therefore, in spite of the delay in the impugned communication (A-11) the applicants' case had received genuine consideration and therefore, there is no merit in the O.A.

3. I have considered the pleadings on record and the arguments put forward by Shri Vishnu S.Cempazhanthiyil learned counsel for the applicant and Shri C.N.Radhakrishnan, learned counsel for the respondents. Shri Vishnu, learned counsel for the applicant would focus attention on the contention that the impugned A-11 order is too terse to understand the reasons for the decision taken by the respondents in not acceding to the request for compassionate appointment in favour of the 2nd applicant, that the applicants' case was not circulated amongst other Ministries and organisations in the light of A-12 scheme and that to the extent the respondents have failed to take up the applicants' case for consideration for compassionate appointment in other departments or organisations till A-18 is issued , there is a clear violation of conditions in terms of A12 scheme. In otherwords, according to Shri Vishnu, A-17 and A-18 O.Ms. could only be of prospective application and the applicants' case would fall squarely within the ambit of A-12 scheme before it was modified by A-17 and A-18. It is forcefully contended by the learned counsel for the applicants that none of the dependents of the employees who expired between 1996 and 2001 has received any consideration because of the unreasonable application of one year limit with reference to the availability of vacancies. Shri C.N.Radhakrishnan on the other hand argued that the respondents

2

have acted very well within the parameters of A-12 Scheme as modified by A-17 and A-18 O.Ms. which were issued long before the O.A. was filed by the applicants and that the applicants' case had received proper consideration. Although it was not obligatory on the part of the respondents organisation to take up the matter with the other departments/organisations, the respondents made earnest efforts to get the applicants' case forwarded to other departments for consideration. However, in view of A-18 dated 22.6.2001, the respondents realised the futility of keeping the whole matter pending any longer, since it would not have furthered to the applicants' cause. According to the learned counsel for the respondents, it was under these circumstances that the communication A-11 dated 29.4.02 was issued after a fairly long wait. He would also reiterate that the respondents had given 13 appointments on compassionate grounds and that, not a single dependant of employees who died after the death of the 2nd applicant's father has been given compassionate appointment ignoring the applicants' case. He would invite my attention to several rulings of the Hon'ble Supreme Court including those in Union of India Vs. Bhagwan Singh (1996 (1)LLJ 1127) and Union of India Vs. Jogindar Sharma 2002 8 SCC 65 to support his contention that the Courts and Tribunals would not be justified in interfering with the Scheme of compassionate appointments formulated on the basis of the Government policy as well as the Supreme Court's rulings on the subject. It is emphatically stated by the learned counsel for the respondents that no case of procedural irregularity or malafides has been advanced by the learned counsel for the applicant and that therefore, no interference was called for.

Q.

4. On a consideration of the relevant facts and arguments, I am of the view that this case does not call for any interference. It is true that A-11 impugned communication dated 29.4.2002 is too short to reveal the actual reasons for rejection of the applicants' case. However, on a perusal of the impugned A-17 and A-18 communications it would show that A-12 scheme stood modified to the extent spelt out therein and these orders were well within the knowledge of the applicants when the O.A. was filed. That apart, the spirit of A-17 and A-18 O.M.s remains upheld in the decision in Union of India Vs. Joginder Sharma ((2002) 8 SCC 65) wherein the Hon'ble Supreme Court has observed as under.

"4. Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India V. Asha Ramachandra Ambekar held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

Q.

5. So far as the case on hand is concerned, both the Tribunal as well as the High court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the courts/tribunals can compel the competent authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of the law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope or the tribunal/court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf of the respondent, have been properly explained by the appellant to be not really and in substance a deviation from the general policy not to relax so as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds."

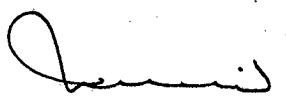
5. I do not find any material in this case to question the validity of the policy modification contained in A-17 and A-18. The applicants' contention to the effect that this can be with prospective application is of no assistance to the applicant ~~as~~ <sup>as</sup> it is not shown that any job on compassionate grounds which the applicant would have got has been lost on account of any inaction or malafides on the part of the respondents. There is nothing on record to show that the respondents have acted in violation of the procedure prescribed for granting appointment on compassionate grounds. The records would show that the respondents had applied their mind after waiting for a reasonable time to accommodate the applicant and having found that it was not possible they have expressed their regret to accede to the request of the applicants for appointment on compassionate grounds.

Q.

6. In the circumstances, the impugned orders cannot be faulted and in the light of the Supreme Courts' decision cited by the respondents I hold that any interference in the matter would be totally unwarranted. The O.A. is liable to be dismissed.

7. In the result, the O.A. is dismissed. No costs.

Dated the 21st August, 2003.

  
T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

rv