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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00283/2016

Monday, this the 8th day of October, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

N.K.Rajesh,
S/o Late N.N.Krishnan Kutty,
Ex-head Havildar, Customs and Central Excise.
Residing at Narayathuparabil House,
Santhiivas, Thottekkat Lane,
PO Punkunnam, Trichur 686002.Applicant

(By Advocate – Mr.U.Balagangadharan)

V e r s u s

1. The Commissioner of Central Excise,
Customs and Service Tax, C.R.Building, I.S.,
Press Road, Ernakulam-682 018.
2. The Commissioner of Customs (Prevention),
Catholic Centre, Broadway, Ernakulam-682 018.
3. The Union of India represented by Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi – 110 001.Respondents

(By Advocates Mr.Anil Ravi,ACGSC)

This Original Application having been heard on 3rd October 2018, the Tribunal on 8th October 2018 delivered the following :

O R D E R

O.A.No.180/283/2016 is filed by Shri.N.K.Rajesh aggrieved by the denial of compassionate appointment which he has sought on the death of his father, an erstwhile employee of the Customs. The reliefs sought in the O.A are as follows :

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1. Issue direction to 1st respondent to consider appointing the applicant on compassionate grounds to a suitable post.
2. Issue directions to respondents to consider sending the applicant for physical test and interview which are scheduled now to select incumbent under compassionate appointment scheme.
3. Issue direction to the first respondent to strictly follow the seniority as in Annexure A-7 while making appointment to compassionate grounds.
4. To declare that the applicant is entitled to be appointed on compassionate scheme.
5. Such other reliefs as may be deemed fit in the facts and circumstances of the case.

2. The applicant is the dependant of a deceased Central Government employee who was working as Head Havildar in Customs Preventive Unit at Chavakkad under the Commissioner of Customs, Cochin. He passed away on 28.6.2010 due to liver ailments. He is survived by his widow, two daughters and a son, who is the applicant in the O.A which is filed on the ground that the family has been left with no support. The applicant pleads that he may be considered for appointment on compassionate grounds under the respondents.

3. He submits that the terminal benefits which his mother received were not sufficient to defray the liabilities that the family is faced with. It was due to this reason that he had filed an application for appointment on compassionate grounds and the case was duly recommended by the Advisory Committee headed by the Commissioner. He has followed up the case by sending reminders, copies of which are at Annexure A-2 and Annexure A-3.

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4. Since then it has came to his knowledge that others who have applied for compassionate appointment and who preferred applications after him have been called for physical test and interview. Despite the fact that he was Sl.No.2 in the list prepared in 2010, he has not been called for the interview and physical test. A RTI query submitted has elicited the reply at Annexure A-6 dated 17.3.2016 that ten applicants have been called for physical test out of 43 applications received. As annexure to Annexure A-7 a list has been attached wherein the applicant figures at No.5 as the serial number out of 43 applicants. Yet he has not been favoured with a call letter. As the list at Annexure A-7 has been prepared on the basis of Point System adopted by the respondents, it is apparent to the applicant that the respondents have for unknown reasons omitted the applicant from consideration.

5. The respondents have filed reply statement. It is maintained in the reply statement that the applicant being a married person was not eligible for compassionate appointment held in the year 2014. However, as the said instructions were amended in 2015 he came into consideration as per the new instructions. Although ten married male applicants including Shri.N.K.Rajesh were considered by the Committee constituted for the purpose, the said Committee did not recommend the applicant for appointment.

6. Shri.U.Balagangadharan, learned counsel appearing on behalf of the applicant and Shri.Anil Ravi, learned ACGSC on behalf of the respondents

were heard. The primary contention of the applicant is that he lives in an extremely indigent set of circumstances and there was no ostensible reason to exclude him from consideration despite his relative high position in Annexure A-7 list. At this stage, this Tribunal wish to point out the thoroughly inadequate way in which the reply statement has been filed. The reason, according to the respondents, for omitting the applicant is mentioned as below :

“7. It is submitted with regards to the para 13 that the said committee shortlisted 5 candidates from the 10 married male applicants for physical test/data entry speed test. Shri.N.K.Rajesh was however, not found fit by the committee and hence excluded. The Committee after careful consideration had recommended only those deserving candidates as per the criteria mentioned in DoP&T instructions.”

7. There is no mention about the relative merit points scored by the various candidates and how Shri.N.K.Rajesh came to be omitted. Even assuming that Annexure A-7 is only the list of applicants and does not imply any priority in eligibility, elementary care is conspicuous by its absence in the attachment to the annexures enclosed with the reply statement. It is mentioned that a copy of the DoP&T O.M dated 30.5.2013 is at Annexure R-1 and that of DoP&T O.M dated 25.2.2015 is at Annexure R-2. Annexure R-1 and Annexure R-2 are only copies of Frequently Asked Questions on compassionate appointment from an internal note. Trying to get more clarity we had asked Shri.B.G.Krishnan, Joint Commissioner of CGST, Cochin to be present in Court. He explained that it is the relative economic status as compared to others by which the applicant fell short and not on account of the fact that he had failed in the physical test.

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8. On the basis of the facts available, this Tribunal is of the view that it is not evident that the applicant's case has been considered fairly and dispassionately. No details such as the relative marks scored in the points based system are available nor are the minutes of the Committee which examined the applications.

9. Under the circumstances, the O.A is disposed of with a direction to Respondent Nos.1-2 to consider the application of Shri.N.K.Rajesh afresh on the basis of documents that are available and to make justified recommendations. This shall be done within 30 days of receipt of a copy of this order. No costs.

(Dated this the 8th day of October 2018)

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00283/2016

1. **Annexure A1** – True copy of death certificate issued by cochin Corporation dated 20.7.2010.
2. **Annexure A2** – True copy of application submitted by the applicant dated 18.02.2013.
3. **Annexure A3** – True copy of the application submitted by the applicant dated 28.10.2014.
4. **Annexure A4** – True copy of the application submitted by the applicant dated 18.06.2015
5. **Annexure A5** – True copy of the application under RTI submitted by the applicant dated 17.2.2016.
6. **Annexure A6** – True copy of the letter dated 17.03.2016 issued by the CPIO and Assistant Commissioner.
7. **Annexure A7** – True copy of the Annexure I appended to Annexure 6
8. **Annexure A8** – True copy of the Annexure II appended to Annexure 7
9. **Annexure R1** – DOP&T's OM No.14014/02/2012-Estt.(D) dated 30.05.2013.
10. **Annexure R2** – DOP&T'S OM No.14014/02/2012-eEstt(D) dated 25.02.2015.
