

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00927/2017

Wednesday, this the 9th day of January, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Nideesh Kumar S., aged 25 years, S/o. K. Somasekharan Nair,
18/2375 C, Chithira House, Kochupally Road, Thoppumpady,
Cochin – 682 005.

..... **Applicant**

(By Advocate : Mr. Biju C. Abraham)

V e r s u s

1. Union of India, represented by the Director, General, Fishery Survey of India, Botawala Chambers, Mumbai 400 001.
2. The Zonal Director, Cochin Base of Fishery, Survey of India, Post Box No. 853, Cochin-682 005.

..... **Respondents**

(By Advocate : Mr. C.P. Ravikumar, ACGSC)

This application having been heard on 09.01.2019 the Tribunal on the same day the following:

O R D E R(Oral)

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “i) To set aside Annexure A7 order as the same is illegal, arbitrary and discriminatory;
- ii) To declare that the applicant is entitled to compassionate appointment and denial of the same is discriminatory and unconstitutional.
- iii) To direct the respondents to consider Annexure A1, A4 and A5 and accommodate the applicant in any of the existing vacancies or vacancy that may arise in future under the respondents.
- iv) To issue such other order or direction this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- v) To award costs to the applicant.”

2. This Original Application is instituted towards rejection of Annexure A1 application for compassionate appointment vide the impugned order Annexure A3 in spite of the fact that the 2nd respondent vide Annexure A2 informed that there is no vacancy to consider compassionate applicant under 5% quota for the year 2012-13 and the case of the applicant will be considered in the next year 2013-14 subject to availability of vacancy. The applicant's mother late K.B. Komalam died on 22.9.2013 while serving as Office Superintendent in the office of the 2nd respondent. The applicant possess the qualification of Higher Secondary Examination (Science) and Marine Fitter Course from CIFNET, Visakhapatnam. The mother of the applicant had put in 34 years, 6 months and 22 days of service. The entire savings received was spent for the prolonged treatment of late K.B. Komalam and immovable properties except the only residential property were disposed of for clearing the liabilities on account the treatment expenditure. The father of the applicant is also a chronic patient and the nominal pension received by him is not adequate to meet the medical expenses of his father. The sister of the applicant has also right over the residential property. If the applicant is not considered for compassionate appointment, the entire family will be put to irreparable injury and hardship. Earlier the applicant approached this Tribunal vide OA No. 180 of 2016 wherein this Tribunal disposed of the OA directing the respondents to reconsider Annexure A1 and take a fresh decision stating proper reasons. However, the respondents rejected the request of the applicant vide Annexure A7 order.

3. Notices were issued to the respondents. Respondents entered appearance through Shri C.P. Ravikumar, ACGSC and filed a reply statement contending that the applicant's case along with other such cases were examined by the committee and the competent authority has agreed with the recommendation of the committee. For both the vacancies the offer was given to the widows of the employee. The applicant was found unsuitable under 5% quota for the compassionate appointment. The assets and liabilities furnished by the applicant in his application dated 29.12.2013 are as under:

i)	Gratuity	-	Rs. 10,00,000/-
ii)	GPF	-	Rs. 2,24,773/-
iii)	CGEGIS	-	Rs. 1,06,592/-
iv)	Leave encashment	-	Rs. 3,26,496/-
v)	Family pension	-	Rs. 9,600/-

Immovable property -

- a) House plot of 6,355 cents with a house at Ernakulam
- b) 4 cents of dry land at Trivandrum.

No liability was found in his application. Among the four applications received for compassionate appointments, two applications were found deserving based on the assessment of the assets and liabilities by the committee. The applicant's father is drawing family pension amounting Rs. 25,250/- plus dearness relief and medical allowance. The family of the deceased is survived with the husband who is a pensioner and the only son i.e. the applicant. Further there was no vacancy to consider the applicant and other claimants who were more deserving than the applicant for compassionate appointment. Respondents pray for dismissing the OA.

4. Admittedly the applicant's case could not be included in the selected candidates on each occasion for the reason that there were other candidates more deserving than the applicant for the limited number of vacancies available for appointment on compassionate grounds. The respondents state that there is no point for considering his case repeatedly again.

5. As per the extant Scheme notified by the Government of India for appointment on compassionate grounds it has been decided that there shall be no time limit for consideration of the applications for appointment on compassionate grounds. Further it has been made clear in the extant scheme that the prime concern in such repeated consideration is the prevalence of indigence in the family of the deceased employee. According to the applicant his family is receiving only Rs. 9,600/- by way of family pension which is hardly sufficient for making both ends to meet. However, this Tribunal feels that it is for the respondents to consider the indigence and come to a conclusion whether he is eligible for appointment on compassionate grounds based on the degree of indigence involved in his case. When there are other candidates seeking employment on compassionate grounds, a comparative evaluation of the degree of indigence of each candidate has to be made so as to select the most deserving one depending on the number of vacancies available during each consideration in the meeting of the Board of Officers. The Hon'ble Supreme Court in *Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.* - (2000) 6 SCC 493, held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. In

Govind Prakash Varma v. Life Insurance Corporation of India & Ors. - (2005) 10 SCC 289 the Hon'ble Supreme Court held that compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the rules. In so far as objection of the respondents regarding grant of terminal benefits is concerned, the Hon'ble Supreme Court in ***Canara Bank & Anr. v. M. Mahesh Kumar*** - (2015) 7 SCC 412 had ruled “grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance”. Since the applicant states that the indigence in the family is even now in existence this Tribunal is of the view that his request for appointment on compassionate grounds has to be repeatedly considered along with the other candidates as long as the applicant desires. If he is found more deserving than the other candidates who are considered along with him, he could be considered for appointment on compassionate grounds.

6. Therefore, the OA is disposed of with a direction to the respondents to consider the case of the applicant again in the forthcoming meeting of the committee for considering the requests for appointment on compassionate grounds. The 1st respondent should further exclude 'attributes' of terminal benefits while reconsidering the case. Parties shall suffer their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00927/2017

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the application dated 29.12.2013 submitted by the applicant.
- Annexure A2** - True copy of the memorandum No. F.8-108/2013 dated 19.2.2014 issued by the 2nd respondent.
- Annexure A3** - True copy of the memorandum No. F.8-108/2013 dated 30.7.2014 issued by the 2nd respondent.
- Annexure A4** - True copy of the representation dated 7.8.2014.
- Annexure A5** - True copy of the reminder dated 16.5.2015.
- Annexure A6** - True copy of the order dated 26.5.2017 passed by this Hon'ble Tribunal in OA No. 180/2016.
- Annexure A7** - True copy of the order dated 4.8.2017 of the Senior Administrative Officer of the 1st respondent.

RESPONDENTS' ANNEXURES

- Annexure R1A** – True copy of the detailsof medical reimbursement

-X-X-X-X-X-X-X-X-