

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00282/2018

Tuesday, this the 27th day of August, 2019.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

P. Muthuraman, 31 years
S/o. M. Papanasam (late),
(Ex-Monument Attendant/Archaeological Survey of India/
Thiruvananthapuram Circle)
Permanent Address : Thiruppoor Kumaran Street
Charanmahadevi, Thirunelveli District,
Tamil Nadu – 627 414. - Applicant

[By Advocate Mr. Sarath for Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Tourism & Culture,
New Delhi – 110 001.
2. The Director General of Archaeological Survey of India,
Janpath, New Delhi – 110 019.
3. The Conservation Assistant,
Archaeological Survey of India,
Trivandrum Sub Circle, Block No. 1,
Flat No. 101 & 102, KSHB Flats,
EMS Nagar, Vanchiyoar (P.O),
Thiruvananthapuram - 695 035.
4. The Superintending Archaeologist,
Archaeological Survey of India,
Puratattve Bhavan, KSHB Flats,
Block No. 8, FF 19A, Pullazhy,
Thrissur – 680 012.
5. The Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pension,
New Delhi – 110 001. - Respondents

[By Advocate : Mr. Anil Ravi, ACGSC]

The application having been heard on 27.08.2019, the Tribunal on the same day delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

Applicant is seeking appointment on compassionate appointment grounds as his father passed away while working as Attendant on 27.11.2005. The grievance of the applicant is that his case has not been considered in accordance with existing Government Rules and guidelines and applicant and his family are living in a penurious circumstance. Since the selection for compassionate appointment took place in the year 2008 and the case of the applicant as well as Mr. P.S. Sreejith was rejected by the respondents. Mr. Sreejith had approached the Hon'ble High Court of Kerala and the High Court has decided in his favour. As follows”-

“4. Even in their counter affidavit the petitioner's eligibility for compassionate employment under the compassionate employment scheme is not disputed. While detailing the conditions for giving such compassionate employment in the counter affidavit, they do not dispute as to why the petitioner is not entitled to. They would submit that only 5% vacancies can be set apart for filling up vacancies under the compassionate employment scheme. But they do not state as to whether in the 5% quota, vacancies are there. As such, going by the counter affidavit, I do not find any objection against the claim of the petitioner for appointment under the dying-in-harness. Of course, they would contend that this Court cannot direct appointment under the compassionate employment scheme and only direct consideration of the claim under the compassionate employment scheme. I am of opinion that when one party claims appointment under the compassionate employment scheme and another party denies such claim, it is for this Court to decide the eligibility of that person to decide whether that person is eligible for compassionate employment. I do not think that such powers of the High Court under Article 226 of the Constitution of India can be denied by anybody. In fact I am surprised that the Government had the temerity to issue Ext. R1(a) seeking to curtail powers of the Courts and

Administrative Tribunals in that regard, which is negation of the Rule of Law and the authority and independence of the Courts and Administrative Tribunals, who are constitutional authorities, over whom the Government has no supervisory powers. Here going by the counter affidavit, I do not find any objection to the appointment of the petitioner under the compassionate employment scheme. No definite statement is there that there is no vacancy for accommodating the petitioner. On the other hand, the petitioner has specifically stated in the writ petition that there are vacancies, which is not disputed. In the above circumstances, I am inclined to accept the claim of the petitioner. Accordingly, it is declared that the petitioner is entitled to compassionate employment in any of the office of the respondents in a suitable post, to which the petitioner is qualified. Orders accepting the claim of the petitioner, giving him appointment under the compassionate employment scheme shall be issued and he shall be allowed to join duty, as expeditiously as possible, at any rate, within three months from the date of receipt of a certified copy of this judgment.”

2. The applicant further submits that the applicant and Mr. Sreejith are similarly situated and he is also entitled to the appointment under compassionate appointment grounds as per the policy of the Government. After the judgment passed by the Hon'ble High Court, the applicant has also represented giving legal notice (Annexure A-5) to the respondents which was replied by Annexure A-1, wherein it was mentioned by the respondents that when a committee did not recommend the case of the applicant for compassionate appointment in the said meeting, it is not possible to re-open the cases already decided in the past. Feeling aggrieved by this the applicant approached this Tribunal seeking the following reliefs:-

- “(i) Call for the records leading to the issue of A6 and quash the same*
- (ii) Declare that the applicant is entitled to be considered for an appointment on compassionate grounds in the light of the observations and declaration of the Hon'ble High Court of Kerala in its judgment dated 14.02.2012 in WP(C) No. 11240/2008 in a similar case.*
- (iii) Direct the respondents to consider and grant the*

applicant an appointment on compassionate grounds commensurate with his educational qualifications, in the light of the observations and declaration of the Hon'ble High Court of Kerala in its judgment dated 14.02.2012 in WP(C) No. 11240/2008, with all consequential benefits emanating therefrom.

(iv) Award costs of and incidental to this application.

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case”.

3. Notices were issued and Mr. Anil Ravi, learned ACGSC put appearance and filed a detailed reply statement.

4. The first objection raised by the respondents is that the present O.A is barred by limitation. He submitted that there is a delay of 29 days in filing the O.A as the challenge in the O.A is against Annexure A-6 order dated 15.02.2017. He further relied upon the judgment in ***State of Himachal Pradesh & Ors. v. Shashi Kumar (2019)3 SCC 653*** and also ***Union of India v. Anandan.*** He further submits that the applicant could not be considered for appointment on compassionate grounds, since compassionate appointment can be made upto a maximum of 5% of the vacancies falling under Direct Recruitment quota. Lastly, after the lapse of 12 years from the date of death of his father he has approached this Tribunal and policy of the Government is to cut down the penurious circumstance but till date there is no penurious circumstance available for his case. Compassionate appointment is not a matter of right, it is welfare measure of the Government.

5. Heard the learned counsel on both sides at length and perused the records.

6. After considering the rival contentions, I am of the view that the present delay of 29 days is condoned simply for the reason that there is merit in the O.A. The applicant's case should have been considered at par with Mr. Sreejith. After perusing the records, this Tribunal has not found what are the circumstances for rejecting the application of the applicant therein. The applicant is having only one living home. Rs. 3,364/- is paid as family pension and GPF balance is Rs. 46,868/-.

7. The Hon'ble Apex Court in ***Canara Bank & Anr. v. M. Mahesh Kumar*** – (2015) 7 SCC 412 held that grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The relevant part of the judgment reads:

“19. In so far as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant 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 terminal benefit is given, if the applicant is minor, the bank would keep the appointment open till the minor attains the majority.”

In O.A No. 180/560/2017 dated 27.02.2019 a similar issue has been dealt with. The operative portion of the order is extracted below:-

“5. The short point raised by the applicant herein is whether the house property which is his ancestral property shall be taken into account while rejecting the case of the applicant by awarding '40' points. In this case there is nothing to prove that the immovable property owned by the family of the deceased employee was capable of generating income. This Tribunal is at a loss to understand how the market value of the property owned by the family is going to improve the financial condition of the family, because a family cannot be expected to sell its landed property and to eak their livelihood out of such sale proceeds. That is not the objective of the Scheme for compassionate

appointment. Therefore, this Tribunal is of the view that awarding negative/reduced marks for possessing a land which is not capable generating income or agricultural produce is absolutely against the Scheme for compassionate appointment notified by the DoP&T to be followed by the other Departments of Government in India. Hence, this Tribunal directs the respondents to treat the land owned by the family of the applicant as "No land" if it is incapable of generating agricultural or other income. In terms of the judgment passed by Apex Court, the house property should be excluded because it is not generated any income for the family.

6. In view of the above, this Tribunal is of the view that applicant's case should be reconsidered by the respondents within a period of 90 days by excluding the immovable property inherited by the applicant herein. However, liberty is granted to the applicant to submit a detailed representation with proofs to the satisfaction of the respondents. With this observation, the Original Application is disposed of. No costs."

8. Therefore, considering the case of the applicant on compassionate appointment ground, they should not consider two factors.

- 1) Amount received by the family as pensionary benefits.
- 2) The house which owned by the deceased employee or their family for living purpose.

9. After hearing both sides, I am of the view that the O.A is having merit and is accordingly allowed. Respondents are directed to reconsider the case of the applicant as per the Government policy and the case of the applicant should be placed in the next committee, if vacancies are available as per the recent guidelines issued by the Government in which the point system should be followed. This exercise shall be done within three months from the date of receipt of a copy of this order. No order as to costs.

(Dated, 27th August, 2019.)

(ASHISH KALIA)

JUDICIAL MEMBER

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Applicant's Annexures

- Annexure A-1 - A true copy of communication bearing No. 13/233/2001-02/ Admn/5419 dated 12.01.2006 from the office of the 4th respondent.
- Annexure A-2 - True copy of Proforma Application Form dated 10.07.2007.
- Annexure A-3 - A true copy of a communication bearing No. 13/6/TSR/08-Admn-230 dated 16.01.2008 to the applicant's mother.
- Annexure A-4 - A true copy of judgment dated 14.02.2012 in WP(C) No. 11240/2008 rendered by the Hon'ble High Court of Kerala
- Annexure A-5 - A true copy of Lawyer Notice dated 12.01.2017 addressed to the 2nd respondent.
- Annexure A-6 - A true copy of letter bearing 18-06/2017-Adm-II dated 15.02.2017, issued from the office of the 2nd respondent.
- Annexure A-7 - A true copy of order dated 18 Jul 2017 in unnumbered WP(C) of 2017 (ZWPC 444/2017) rendered by the Hon'ble High Court of Kerala.
- Annexure A-8 - A true copy of letter bearing No. 67/1/2017-Adm.II dated 04 May 2017, along with the Minutes of the Meeting of the Departmental Selection Committee held on 22.02.2008 and 07.04.2008 issued under the RTI Act from the office of the 2nd respondent.

Annexures of Respondents

- Annexure R-1 - Letter No. F.14/31/2017 dated 04.07.2008
- Annexure R-2 - Guidelines issued by the Govt. of India vide Department of Personnel and Training letter No. 14014/6/94/Estt.(D) dated 09.10.1998.
- Annexure R-3 - List of vacancies under Direct Recruitment Quota for the years 2006 to 2008.
- Annexure R-4 - OM No. 14014/3/2011-Estt(D) dated 26.07.2012
- Annexure R-1A - Copy of DoP&T O.M No. 14014/6/94/Estt.(D), dated 09.10.1998
- Annexure R-1(B) - Copy of Director General, ASI's letter No. F. 14/31/2007-Admn.II dated 04.07.2008.
