

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 17791 of 2009 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 658/2007 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH

PETITIONER:

REEJA.N.
RESIDING AT ROOM NO. 2, T.K.N. LINE PADANAPPALAM
KANNUR.

BY ADVTS.M/S.K.C.SANTHOSH KUMAR &
SMT.K.K.CHANDRALEKHA

RESPONDENTS:

1. DIRECTOR GENERAL OF POSTS
DEPT. OF POSTS SANCHAR BHAVAN NEW DELHI.

2. CHIEF POST MASTER GENERAL KERALA CIRCLE
TRIVANDRUM.

3. THE SUPERINTENDENT OF POST OFFICE
KANNUR DIVISION, KANNUR, KERALA..

4. UNION OF INDIA REP. BY SECRETARY
MINISTRY OF COMMUNICATIONS NEW DELHI.

R,R1 TO 4 BY. SRI. N.NAGARESH,ASST.SOLICITOR &
ADV.SMT.S.KRISHNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE APPLICATION SUBMITTED BY THE MOTHER OF THE PETITIONER

EXT.P2: -DO- SUBMITTED BY THE PETITIONER

EXT.P3: -DO- OF THE ORDER REJECTING THE APPLICATION DT. 11.12.2001

EXT.P4: -DO- MADE BY THE CENTRAL ADMINISTRATIVE TRIBUNAL
DT.27.10.2003

EXT.P5: -DO- APPLICATION SUBMITTED BY THE MOTHER OF THE PETITIONER

EXT.P6: -DO- ORDER REJECTING THE CLAIM OF THE PETITIONER

EXT.P7: -DO- APPLICATION ADDRESSED TO THE MINISTER OF COMMUNICATION
AND INFORMATION TECHNOLOGY DT.NIL

EXT.P8: -DO- APPLICATION DT.20.9.2007

EXT.P9: -DO- CERTIFICATE DT.18.6.2003 ISSUED BY THE TAHSILDAR KANNUR

EXT.P10: -DO- CERTIFICATE DT. 4.7.2003 ISSUED BY THE TAHSILDAR

EXT.P11: -DO- OF THE ORDER OF THE LEARNED TRIBUNAL DT.19.12.2008

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

W.P(C) NO. 17791 OF 2009

Dated this the 15th December, 2015.

JUDGMENT

Surendra Mohan, J.

The petitioner has filed this writ petition challenging Ext.P11 order of the Central Administrative Tribunal ('CAT' for short) dismissing O.A.658/2007 filed by the petitioner. The petitioner had approached the CAT challenging the rejection of an application submitted by her for compassionate appointment. The petitioner's father Shri. Ravindran while working as a sub postmaster died on 5.6.2001. At that time, the petitioner had not completed her graduation. Soon after the death of her father, an application for compassionate appointment had been submitted by her mother. However, the application was rejected by the third respondent stating that the family had received terminal benefits and that they

were drawing regular family pension. It was also found that, the family was possessed of their own house and other landed properties.

2. Aggrieved by rejection of the application, the petitioner along with her mother had filed O.A .201/03 before the CAT. She had also submitted an appeal against the rejection of her application. But no final orders had been passed thereon. Before the CAT, the respondents maintained that the appeal filed by the petitioner was not traceable. Therefore, a copy thereof that was produced, was directed to be considered. The petitioner was also permitted to make a supplementary application. The O.A was disposed of directing to consider the representation also. Thereafter, the matter was considered and Ext.P6 order was passed rejecting the petitioner's application. Ext.P6 is dated 15.4.2004. The petitioner did not immediately challenge the said order. Later on, the petitioner filed O.A.658/2007 challenging Ext.P6. The said O.A was dismissed by the CAT

finding inter alia that the O.A was belated, the petitioner had other landed properties and that there were no vacancies available for her appointment. The petitioner has filed this writ petition aggrieved by Ext.P11. According to Adv. K.C.Santhosh Kumar who appears for the petitioner, though late Ravindran owned an item of immovable property admeasuring 10 cents, the same had been purchased by availing a bank loan, during his life time. The said property was not capable of yielding any income. Though it is stated by the respondents that the petitioner was not eligible as per the scheme for compassionate appointment, no such scheme has been produced in these proceedings. It is also contended that, one of the reasons stated for rejection of the petitioner's application was that the family had been granted terminal benefits and family pension. Reliance is placed on the decision of a Division Bench of this Court in Canara Bank v. Priya Jayarajan [2001 KHC 306] to contend that, grant of terminal benefits would not disentitle a person from claiming

compassionate appointment. It is further contended that the authority has to apply its mind to the facts and circumstances of each case while considering an application for compassionate appointment. Each application has to be considered in accordance with the scheme that is applicable. If the scheme provides for relaxation of age and other parameters, the question as to whether relaxation has to be granted also is necessary to be considered. Therefore, according to the learned counsel this is a fit case in which the application of the petitioner ought to have been allowed.

3. The contentions of the counsel for the petitioner are vehemently opposed by Shri. N.Nagaresh, the Assistant Solicitor General of India and Smt. Krishna S who appears along with him. According to the learned counsel, compassionate appointment is intended to relieve a family, at least marginally of the shock of losing its only bread winner. Upon the death of a person, the family would be plunged into a situation where it is deprived of its only source of income.

It is to tide over the situation that, immediately, at least one person is given employment. The employment so offered, can only be of some class III and class IV posts. Since such appointment is granted, over-reaching the normal method of appointment each application for compassionate appointment would have to be carefully scrutinized and granted strictly in accordance with the rules. Reliance is placed on the decisions of the Apex Court in *Umesh Kumar Nagpal v. State of Haryana* [(1994)4SCC 138] and *Himachal Road Transport Corporation v. Shri.Dinesh Kumar* [(1996)4SCC 560] in support of the above proposition. According to the learned counsel, the compassionate appointment has to be provided without loss of time, immediately after death of the person.

4. In the present case according to the learned counsel the petitioner's family owns landed property and they were living in their own house. Apart from the above, there was no vacancy available in the 5% quota that was earmarked for compassionate appointments. In spite of the above, the

question of relaxation of the rules was also considered and it was found that no relaxation was possible. Though Ext.P6 order was passed on 15.4.2004, the petitioner had not challenged the same within a reasonable time. For the above reason also it is contended that the CAT was justified in declining relief. Therefore, the counsel seeks dismissal of this writ petition.

5. Heard. It is worth noticing that, shortly after the death of Shri. Ravindran an application had been submitted by the petitioner's mother. At that time, it was stated in the application that the family owned an extent of 10 cents of land from which there was no income. There was another extent of 10 cents of land over which the father of late Ravindran had kudikidappu rights. The siblings of late Ravindran had also rights over the said property. It was stated that there was another item of property that belonged to the family of Shri.Ravindran. However, the above assertions have subsequently been stated to be incorrect, as evidenced from

Ext.P5 representation submitted by the petitioner's mother. It is explained that, the family of late Ravindran consisting of three brothers and his elder sister were living in a small house situate on 10 cents of land. The property belonged to the father of late Ravindran. An extent of 37.5 cents of wet land in survey No: 168/1 of Chirakkal Village that was in the possession of late Ravindran's father was water logged, without yielding any income. All his siblings were entitled to share in the above property. Therefore it is contended that rejection of her application on the ground that the family owned landed properties was not proper. The petitioner further alleges that, such details have been incorporated in the statement by ASPO, Kannur Sub Division, actuated by political rivalry. The explanation has been found to be unacceptable by the CAT. Nothing has been produced in these proceedings to warrant a different conclusion.

6. Apart from the above, Ext.P6 shows that the petitioner's application has been rejected for the reason that,

there was no vacancy available. Though relaxation of the normal procedure was not permissible, the said option was also considered. The above being the position, we do not find any infirmity in Ext.P4, on the merits. It is no doubt true that, the scheme for compassionate appointment under which the petitioner's application was considered is not before us. The petitioner blames the respondents for not having produced the same. However, the fact remains that the petitioner had also not taken any steps to produce the same.

7. Apart from the above, it is worth noticing that Ext.P6 order of rejection was passed on 15.4.2004. However, O.A.658/2007 was filed only after lapse of more than three years. There is no explanation for the delay in not having challenged Ext.P6 earlier. The counsel for the petitioner tried to explain the delay by pointing out that the parties were not possessed of sufficient awareness regarding their rights. The above explanation cannot be accepted for the reason that, the petitioner is a person who had filed O.A.201/2003 when an

appeal filed by her was not being disposed of. As per Ext.P4 order in the said O.A she had obtained a direction from the CAT to have her appeal considered and disposed of. It was pursuant to the said order that Ext.P6 was passed. Her subsequent inaction thereafter, in challenging Ext.P6 therefore, remains unexplained. In view of the delay, the CAT has found that the petitioner's O.A was highly belated. We concur with the said finding.

For the above reasons, the writ petition fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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