

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 26th day of February 2020.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/01094/2014

Ranvir Singh son of Late Shri Jagdish Singh Parihar Ex. T.M. R/o Village and Post Jaigara, Tehsil Kairavali, District Agra.

.....Applicant

By Advocate: Shri A.K. Dave

Versus

1. Chief General Manager, BSNL (Recruitment Section) U.P. (West) Telecom Circle MDA Building 1st Floor, Meerut.
2. Assistant General Manager (HR II) Bharat Sanchar Nigam Limited (A Govt. of India Enterprises) O/o Chief General Manager (Recruitment Section) UP (West) Telecom Circle MDA Building 1st Floor, Meerut 250005.
3. G.M. T.D. B.S.N.L Mathura.

.....Respondents

By Advocate: Shri D.S. Shukla

ORDER

1. The present O.A. has been filed by applicant Ranvir Singh seeking the following reliefs:-
 - "(i) to issue order or direction for quashing the impugned order dated 2.2.2013 (Annexure 1) passed by respondent NO.2.
 - (ii) to issue order or direction to the respondent No.2 for calling the records of the applicant for the perusal of this Hon'ble Tribunal.
 - (iii) To issue order or direction to the respondent No.2 to refer the case of the applicant to the Secretary to department of communication to creating supernumerary post.
 - (iv) to issue order or direction to the respondents to appoint the applicant on compassionate ground as per his qualification.

- (v) *To issue any appropriate order or direction which this Hon'ble Court may deem and proper in the present facts and circumstances.*
- (vi) *Award the cost of the petition".*

2. Case of applicant is that his father Jagdish Singh Parihar died on 14.02.2008 while serving in the respondents department. The applicant filed an application seeking the appointment on compassionate ground which was rejected by way of impugned order dated 02.02.2013. Applicant has challenged the impugned order on the ground that it is cryptic and non-speaking and does not give out the merit points secured by the applicant and even the basis for calculating the merit points has been wrongly taken into consideration by the respondents and has been passed taking into account parameters and conditions which are vague in nature and are not specifically applicable to the case of the applicant. Hence, the present O.A. for direction to the respondents to appoint the applicant on compassionate ground.
3. In the counter affidavit, the stand of respondents is that the case of applicant was considered since he had more than 55 points but taking into account the various parameters, the High Power Committee did not consider the family to be living in penury and, therefore, recommended the rejection of his case.
4. In the rejoinder affidavit, it has been averred by the applicant that he has attached the list of complete CGA cases with 55 point or more (Annexure 3) wherein it has been shown that Kusum Lata has secured 61 points whereas applicant secured 72 points but yet the respondents have given compassionate appointment to the said Kusum Lata and rejected the claim of applicant. Applicant in the rejoinder has further referred to the case of Sachin Gaur who is at Sl. No. 2 in the list (Annexure 3), who despite being awarded 69 merit points was rejected by the respondents for compassionate appointment and in the OA No. 889 of 2013, the Tribunal quashed the impugned order and directed the respondents to consider the claim of said applicant for compassionate appointment as per the

guidelines of the Corporation giving due consideration to the weightage net point.

5. I have heard and considered the arguments of learned counsel for the parties and gone through the material on record as well as citations relied upon by parties. Learned counsels for the parties during their arguments have reiterated the pleas taken by them in their respective pleadings.
6. Learned counsel for respondents referred to ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138***, which lays down that compassionate employment cannot be granted after lapse of reasonable period which must be specified in the Rule. In the present case, learned counsel has been unable to point out the rule specifying the reasonable period. Respondents also relied upon ***State of H.P Vs. Shashi Kumar, (2019) 1 SCC (L&S) 542*** wherein the delay was not condoned on the ground that one of the children of the deceased was a major at the time of death of Government employee and, therefore, the delay could not be condoned as the application should have been filed at the time of the death of said Government employee. A case where each of the children is a minor falls in a different class altogether. Therefore, acts of the cited case are different from facts of present O.A.
7. Learned counsel for respondents placed reliance upon judgment dated 28.8.2009 passed in O.A. 377/2008 in case titled **Himmatbhai Chimanbhai Patel Vs. BSNL and another**. I have perused the judgment, which rather supports the case of applicant on all fours. Paragraph 11 of the judgment reads as below:-

"11. Therefore going by above proposition which now stands finally established we do not think that it would be appropriate to interfere in the matter especially since the weight age system has proven itself to be valid and will eliminate the element of corruption and nepotism; which were the base of challenge in the Court of law by the non selected persons claiming appointment on compassionate ground".

8. Learned counsel for respondents also referred to Civil Misc. Writ Petition No. 22238 of 2003 titled Rakesh Kumar Chauhan Vs. The Central Administrative Tribunal decided on 21.05.2003 by the Hon'ble High Court, Allahabad wherein the Hon'ble High Court held that application for compassionate appointment should not be entertained after expiry of 15 years. The facts of the citation are different from the facts of the present case, wherein there was no delay in filing the application before the respondents.
9. Learned counsel for the respondents also referred to Civil Appeal No. 6224 of 2008 titled Union of India Vs. Shashank Goswami decided on 23.05.2012 by the Hon'ble Apex Court wherein the compassionate appointment was set aside on the ground that the retiral benefits received by family of deceased are to be taken into account while considering the case for compassionate appointment. However, this ground is to be taken into consideration if it has been specifically mentioned in the scheme of the compassionate appointment of an Organization.
10. Learned counsel for the applicant has relied upon the dated 12th April 2016 in O.A. No. 889 of 2013 titled Sachin Gaur Vs. BSNL and submitted that Sachin Gaur and applicant Ranvir Singh figured in the same selection and list (Annexure No.3 of the present OA). The case of Sachin Gaur was rejected by the respondents on almost similar grounds as that of present applicant Ranvir Singh and in the aforementioned OA, the impugned order rejecting the claim of compassionate appointment was quashed and respondents were directed to reconsider the case of said Sachin Gaur. Elaborating further, learned counsel for applicant submitted that on the same reasoning as given in OA No. 889/2013, the present O.A deserves to be allowed.
11. It would be pertinent to reproduce the relevant part of the judgment in OA No. 889/2013. The same reads as under:-

"16. The object of the scheme of compassionate appointment is to release the family of the government servant for financial destitution. In the present case, the family was given sufficient

fund so it cannot be said that the family was in financially destitute or in starving condition.

17. Counsel also relied upon a Supreme Court Judgment in Umesh Kumar Nagpal vs. State of Haryana, reported in JT 1994 (3) SC 525. Counsel, further, submitted that in the policy lay out by the respondents dated 27.7.2007, there is no provision that if an appeal is made by the person for reconsideration of already rejected case, the same will be considered according to the weightage point system. If in any appeal case, net point come 55 or more the complete case along with check list may be sent to the Corporate Office for decision. Counsel for the respondents, lastly, submitted that since there is considerable lapse of time after the death of the applicant's father, the applicant cannot claim the compassionate appointment as of right and case was rightly rejected by respondents authority. Hence, the O.A. lacks merits and deserved to be dismissed.

18. I am unable to accept the contention raised by counsel for the respondents. It is true that applicant cannot claim as of right the appointment on the compassionate ground. On the contrary, the respondents cannot reject the application for compassionate ground in arbitrary manner.

19. The facts which are not in disputed by the parties are that the father of the applicant was an employee of the respondents' corporation. He died at the age of 49 years in an accident. He left behind his widow, two sons and one daughter. It is also not disputed that the daughter is mentally retired and disabled at 62%. It is also not denied that the applicant initially moved an application in 2006 in the duly filled format supplied by the respondents. It is also not disputed that on the basis of weightage system the applicant scored 70 net points and as per the policy the applicants securing more than 55 net points found to be eligible and they have to be sent for consideration of the High Power Committee of the corporation.

20. The net points secured by the applicant which are 70 in number based on the criteria laid down by the Corporation itself considering the number of dependency, amount of family pension, amount of retiral benefits and other relevant consideration and on considering the above said circumstances, the net 70 points awarded to the applicant. The impugned order simply rejected the claim of the applicant by stating in a stereo type manner and after considering financial condition, length of service and financial status of the family assets and liabilities and rejecting the claim. This rejection nothing but a stereo type order without considering the applicant's case individually. On one hand, the respondents are awarding net points considering the financial and dependency and other relevant factors and giving it heavy weightage to the applicant and on other hand, without disclosing any substantial reasons for rejection rejected the application of the applicant.

21. The example of one lady scoring 61 marks and giving appointment to her by the corporation as illustrated by the applicant, the respondents have failed to give any satisfactory answer for ignoring the applicant's claim and giving appointment to lady who secured less marks. The oral rely given by the respondents that appointment was given to lady being widow is against the fact. She was also given 15 points weightage marks of her being widow only than the net points comes to 61 while, in the case of applicant, who secured 70 points without any additional weightage although Court is of the view that the applicant should also be given some additional weightage on account of disabled sister and young age of the widow mother, who could not apply for appointment due to her involvement in continuously looking after her mentally retired daughter.

22. Thus, considering all the facts stated above, the Court is of the view that the impugned order passed by the respondents is cryptic in nature and in stereo type language without giving any specific consideration to the applicant's application is not sustained in the eye of law and is liable to be quashed.

23. Accordingly, the O.A. is allowed, and the impugned order dated 19.03.2013 is hereby quashed and the respondents are directed to reconsider the claim of the applicant No.1 for compassionate appointment as per the guidelines of the respondents' corporation giving due consideration to the weightage net points policy. This exercise should be done within a reasonable period preferably within three months. No costs.

12. I need not repeat the reasoning given in OA No. 889 of 2013 as quoted above but the same has to be accepted while allowing the present O.A. Accordingly, impugned order dated 02.02.2013 is set aside and quashed and respondents are directed to reconsider the claim of applicant for compassionate appointment as per the guidelines of the Corporation giving due consideration to the weightage net point policy and dispose of the case within 03 months from the date of receipt of a certified copy of order by way of reasoned and speaking order with intimation to the applicant. O.A. is accordingly disposed of. No costs.

(RAKESH SAGAR JAIN)

Member (J)

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