



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

M.A.NO.060/01092/2018 IN/AND

O.A.N0.060/00862/2018

Chandigarh, this the 20.02.2020

(Order reserved on: 11.02.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Swarn Kaur W/o Late Sh. Sher Singh, age 53 years, R/o Vill. Nathmalpur, PO Morinda, Teh Chamkaur Sahib, Distt. Ropar, Punjab-140101 (Group-C).

Applicant

(BY: MR. ROHIT SETH, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India, Ministry of Communication and Information Technology, Department of Telecommunication, New Delhi-110001. (Deleted vide order dated 5.2.2019)
2. General Manager, Telecom District, Bharat Sanchar Nigam Limited, Sector 34, Chandigarh-160022.
3. Assistant General Manager (HR) office of GMTD, Sector 34, Chandigarh-160022
4. S.D.E (HRD) Office of General manager Telecom Distt. Sector 34, Chandigarh-160022.
5. Kalawati W/o Late Sh. Ram Asra, Sr. TOA C/o Office of General Manager Telecom Distt. Sector 34, Chandigarh-160022.
6. Asha Devi W/o Late Sh. Tarsem Singh, T.S.O. C/o Office of General Manager Telecom Distt. Sector 34, Chandigarh-160022.
7. Radha Rani W/o Late Sh. Goverhan Lal, Ex-PA TM of CHD SSA C/o office of General Manager Telecom Distt. Sector 34, Chandigarh-160022. (Respondents No.5 to 7 proceeded ex-parte vide order dated 30.11.2018).

**(BY:MR. RAJESH GUPTA & MR. K.K.THAKUR,
ADVOCATES)**

Respondents



ORDER
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The applicant has approached this Tribunal with a prayer to quash order dated 3.4.2014 (Annexure A-1), vide which her claim for appointment on compassionate ground has been rejected and for issuance of direction to the respondents to re-consider her case for such appointment, being more meritorious as compared to others etc.

2. The facts which lead to filing of this O.A. are that Late Sher Singh (husband of applicant), was working as TOA (P), and died in harness on 12.7.2006, after prolonged illness, leaving behind applicant (widow) and three children. The family was granted paltry sum of Rs.2-3 lac on demise of the bread earner. In 2006, an application was submitted for appointment of Gurpreet Singh (elder son) of deceased employee. Then applicant submitted application dated 24.9.2009, for her own appointment on compassionate ground. At that time, Scheme dated 14.6.2006 (Annexure A-4) was prevalent and Instructions dated 27.6.2007 (Annexure A-5) were introduced subsequently. The claim of applicant was, however, rejected on 3.4.2014 (Annexure A-1) on the basis of High Power Committee



meeting held on 22.6.2010. RTI information was obtained by applicant as per letter dated 2.5.2017, disclosing therein Point System Chart (Annexure A-6). She was shown to have obtained 71 points, more than other candidates, who were given appointment. She submitted representations and RTI applications in 2017. From RTI information, she came to know that Kalawati, Asha Devi and Radha Rani (private respondents) with 58, 59 and 68 points were granted compassionate appointment against Group D posts as on 4.11.2010, 14.1.2011 and 7.12.2017 etc. though she is having more merit. Hence, the O.A.

3. On the basis of the aforesaid facts and sequence of events, M.A.No. 060/01092/2018 seeking condonation of delay of 1212 days in filing the O.A. has also been filed. In short, it is submitted that delay was not intentional but purely bonafide and as such it should be condoned to secure ends of justice.

4. The respondents No.2 to 4 have filed a reply. They submit that applicant has not given any justifiable grounds to seek condonation of delay in filing the O.A. and as such M.A may be dismissed. On merit, they submit that applicant was given family pension of Rs.4150 plus DA in addition to gratuity. The pension



was also revised. The case of her son for appointment on compassionate ground was considered and rejected by Circle High Power Committee (CHPC) in its meeting held in the year 2009. Then she applied for her own appointment. It was considered on 22.6.2010 by CHPC as per Guidelines dated 9.10.1998 and 27.6.2007 which rejected it as conveyed to applicant on 3.4.2014. As per respondents, a balanced and objective assessment of the financial condition of the family has to be made taking into consideration its assets and liabilities and all other relevant factors, such as presence of earning members, size of family, age of children, own house and essential needs of the family like education, marriage and medical needs etc. This is done to assess degree of indigence among all the eligible candidates considered for appointment within prescribed ceiling of 5%. With a view to bring uniformity, a weightage point system was issued by BSNL vide Annexure A-5. As per this, the cases with 55 or more net points are treated eligible for consideration by CHPC. Obtaining 55 or more points does not ensure that one can get appointment automatically as vacancies are limited under 5% quota.



The applicant has filed a rejoinder reiterating the submissions made in the O.A.

5. Heard learned counsel for the parties and examined the material on file.

6. The learned counsel for the applicant vehemently argued that there are sufficient grounds for condonation of delay in filing the O.A. and as such delay be condoned and O.A. be heard and decided on merits. On merit, it is argued that applicant was more meritorious as compared to private respondents who secured lesser marks and as such applicant deserves appointment on compassionate grounds. This was equally resisted by the learned counsel for the respondents with a prayer to dismiss the M.A / O.A.

7. It is not in dispute that on the demise of the deceased employee, son of applicant applied for appointment on compassionate ground on 28.11.2006. Ultimately, his case was considered and rejected on 7.5.2009 on the ground that he had secured only 52 marks, which was well below the minimum qualifying marks of 55. Then mother of the applicant made attempts for her own appointment vide application dated 23.3.2009. After some correspondence, it was



rejected vide letter dated 3.4.2014, on the premise that her case was considered by CHPC in its meeting held on 22.6.2010 in detail, on the basis of information / facts furnished by her as well as terminal benefits given by department to her, in the light of Policy decision dated 9.10.1998 and weightage point system, as per letter dated 27.6.2007. The sequence of events shows that the applicant has been not vigilant enough to file the instant O.A. in time and the reasons given by her for condonation of delay are vague and sweeping and do not inspire any confidence and in any case, submission of representation belatedly or filing of applications under RTI Act, cannot extend the period of limitation, and as such these kind of claims do not deserve to be accepted and should be rejected outrightly being barred by law of limitation and laches.

8. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service



matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

9. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and



decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

10. Again in the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."



11. Not only that, even on merits, the sole ground raised by the applicant is that she was more meritorious as compared to other candidates. A perusal of the check list with reference to weightage point system of the son of applicant shows that he had indeed secured only 52 marks in all, after considering various parameters laid down therein , which was well below the minimum marks of 55 and as such it was rejected by the relevant committee. The comparison drawn by the applicant with 3 private respondents is of no help to her as case of her son was considered on Circle Level basis, whereas cases of the indicated three ladies was decided at BSNL, Corporate Office, New Delhi, level. Moreover, they had secured marks above the cut off whereas son of applicant could not even obtain minimum cut off marks.

12. The case of the applicant was also considered by the respondents. She is shown to have secured 71 marks and her case was recommended also for appointment on compassionate grounds. However, her claim was also rejected on the ground that deceased had expired at the age of 50 years. The family was living in a rented house. The family pension is Rs.4,150+IDA and other terminal benefits were



Rs.3,63,619/- . The children are grown up now and can self sustain the family. In view of this, the Court cannot sit in appeal over the decision taken by the relevant committee unless same is shown to be perverse or actuated with malafide intentions, which are apparently missing in the case in hand. Again, the applicant cannot compare her case with 3 cases of private respondents on the basis of her having secured more marks as her case relates to consideration on a Circle level basis.

13. In the wake of aforesaid discussion, the M.A as well as O.A. turn out to be devoid of any merit and are dismissed. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK
MEMBER (J))**

Place: Chandigarh
Dated: 20.02.2020

HC*