

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/211/2019

Date of Reserve:21.11.2019

Date of Order: 03.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Basudev Nag, aged about 28 years, S/o. Late Harekrushna Nag, At-Ganjuddar, PO-Maruan, Patnagarh, Dist-Bolangir.

...Applicant

By the Advocate(s)-M/s.K.Swain

P.N.Mohanty

P.K.Mohapatra

U.Chhotray

-VERSUS-

Union of India represented through:

1. The DCC and Secretary (T), Department of Telecommunication, Sanchar Bhawan, 20, Ashok Road, New Delhi-110 001.
2. Chief General Manager, BSNL, Odisha Circle, Bhubaneswar-751 009, in the District of Khurda.
3. Assistant General Manager (HR&A), O/o.CGM, BSNL, Odisha Circle, Bhubaneswar in the District of Khurda.
4. Welfare Officer/Investigating Officer, Sub-Divisional Engineer, Office of BSNL, Patnagarh-767 025, Dist-Bolangir.

...Respondents

By the Advocate(s)-Mr.K.C.Kanungo

Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant in this O.A. is the son of the deceased employee, who, while working as Regular Mazdoor under the Respondent-BSNL passed away in the year 2012, leaving behind his wife, three daughters of which, two are unmarried and one son, the present applicant. It is submitted that the married daughter is also a dependent on the applicant's family. Applicant's grievance relates to consideration of his request for appointment on compassionate ground. In this Original Application under Section 19 of the A.T.Act, 1985, he has, therefore, prayed for direction to be issued to Respondents to appoint

him under C.G.A. Scheme within a stipulated time, as may be directed by this Tribunal.

2. It reveals from the record that the Assistant General Manager (HR&A), in the Office of CGM, BSNL, Odisha (Respondent No.2) has passed a speaking order dated 24.09.2016 (A/5) on the request made by the applicant for Compassionate Ground Appointment (CGA), the relevant part of which reads as follows:

"BSNL since its inception on 01.10.2000 follows the Compassionate Ground Appointment policy based on Govt. Of India Instructions issued by DoPT, vide its OM No.14014/94/6/Estt.(D) dated 09.10.1998. The main objective of policy is to grant appointment on compassionate grounds to a dependent family member of a Govt. Servant who died in harness or retired on medical grounds thereby leaving his family in penury and without any means of livelihood to relieve the family of the Govt. Servant concerned from financial destitution and to help him get over the emergency. The number of vacancies is limited to CGA quota and is offered to the candidate found more needy.

Your request for CGA was placed before the CHPC of BSNL, Odisha Circle held on 20.07.2016 on completion of all pre-Departmental formalities. The following points were taken into account to judge the indigent financial condition of the family of the deceased employee (i) Number of dependents, (ii)left out service of the deceased employee, (iii) Monthly basis pension paid to the spouse/dependant family member, (iv) Total terminal benefits paid (v) income of the family from other source except pension, (vi)Accommodation – Family living in their own house/rented house, (vi) Belated request if any. Keeping in view the assets/liabilities of the family of the deceased official, support arrangement, constitution of family and overall assessment of the condition of the family, the High Power Committee of BSNL, Odisha Circle, Bhubaneswar found that case is below the criteria required for CGA and decided that the case is not fit for Compassionate Ground Appointment and rejected the request of the applicant for CGA under provisions of the scheme laid down in DoPT OM No.14014/6/94-Estt.(D) dated 09.10.1998 and BSNL weightage point system guidelines vide 273-18/2005-Pers.IV dated 27.06.2007 and No.273-18/2013/CGA/P-IV dated 01.10.2014.

Further the settled legal proposition on Compassionate Ground Appointment has been pronounced by the Hon'ble Supreme Court of India in various cases time and again that appointment under CGA cannot be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances, i.e., eligibility and financial condition etc. The same stand has been reiterated by the Hon'ble Apex Court in a recent case in CA No.6348/2013 arising out of SLP(C) No.13957/2010 on dated 7.8.2013.

In view of above, your request for appointment under compassionate ground is rejected by the competent authority of BSNL".

3. This matter came up for admission on 26.03.2019 and on being pointed out that this OA is hit by delay and laches, the applicant has filed M.A.No.312 of 2019 for condonation of delay. The delay as explained by the applicant in Paragraphs-3 and 4 of the Misc. Application reads as follows:

"3. That on receipt of the said rejection order dated 24.9.2016 the applicant immediately thereafter on 6.10.2016, 27.12.2017 and in the year 2018 made series of representations to the authorities to reconsider his case for appointment. The aforesaid representations are still pending and no order has been passed till date. Therefore, the applicant was in anticipation of his appointment relying on the authorities as the authorities had assured the applicant to reconsider his case sympathetically. But after awaiting more than two years when no steps were taken by the authorities the applicant was compelled to approach the Hon'ble Tribunal for getting relief.

4. That since the applicant was anticipating an appointment under CGA Scheme and for that awaiting for more than two years was a bona fide concept on the part of the applicant, the delay in filing the aforesaid OA may be condoned and the case may be heard on merit".

4. We have heard the learned counsels for the parties and perused the records. In order to consider the matter on the point of delay, we would like to quote hereunder, Section 20 & 21 of the Administrative Tribunals Act, 1985.

Section - 20 :

"20. Applications not to be admitted unless other remedies exhausted.—

- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
- (2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—
 - (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.—

- (1) A Tribunal shall not admit an application,—
 - (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2)

of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

5. Admittedly, vide Office Order dated 24.09.2016 (A/5), the request of the applicant for Compassionate Ground Appointment was rejected. The applicant

in the Misc. Application for condonation of delay has pointed out that soon after receipt of the rejection order, he submitted representations dated 06.10.2016, 27.12.2017 and in the year 2018 and since, it did not yield any fruitful result, he has approached this Tribunal in the present O.A. As already quoted above, Section-20 (1) of the A.T. Act provides that "A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances". Section-20(2) (A) lays down that " if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance" Section – 21(a) stipulates that "in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made". It is not the case of the applicant that the impugned order whereby his request for Compassionate Ground Appointment has been rejected is not a final order within the meaning of Section-20 and 21 of the A.T.Act, 1985. Secondly, nowhere in the Misc.Application for condonation of delay, it has been stated by the applicant the above rejection order dated 24.09.2016 (A/5) being not the final order, there exists provision of preferring appeal against the said order under the relevant service rules so as to enable him to exhaust the departmental remedies. As per the provisions of the Act, as quoted above, against the impugned order dated 24.09.2016, the applicant ought to have approached this Tribunal within a period of one year, i.e., 23.09.2017. But he has approached this Tribunal in the instant O.A. on 19.03.2019, which is after

about more than one year and six months of the prescribed period of limitation. The delay as explained by the applicant in the Misc. Application is not convincing and therefore, this Tribunal is not inclined to condone delay in approaching this Tribunal. We are also of the opinion that the impugned order dated 24.09.2016 (A/5) being the final order, there exists no provision for preferring appeal under the relevant service rules.

6. For the reasons aforesaid, the O.A. is dismissed at the threshold being barred by limitation. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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