

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/231/2016

Date of Reserve: 17.01.2020
Date of Order: 14.02.2020

CORAM:
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Manoj Kumar Das, aged about 33 years, S/o. Late Jogendra Das (Ex.Telephone Mechanic, BSNL, Jharsuguda – presently At-Sisua, Post-Bairua, PS-Olatpur, Dist-Cuttack.

...Applicant
By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, New Delhi-110 001.
2. The Chief General Manager, Bharat Sanchar Nigam Ltd., Orissa Circle, BSNL Bhawan, Near Indira Park, Bhubaneswar-751 002.
3. The General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Sambalpur-768 001.
4. The Sub-Divisional Officer (Phones), Jharsuguda, Sambalpur-768 002.

...Respondents
By the Advocate(s)-Mr.S.K.Pattnaik
Mr.P.K.Pattnaik
Mr.H.K.Tripathy

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the letter dated 28.10.2012 communicated on 12.04.2013 & order dated 09.03.2015 under Annexure-A/8 series & A/10.
- ii) To direct the Respondents to consider the case of the Applicant and provide appointment on compassionate ground to the applicant in accordance with the DOP&T instructions stated above.
- iii) To pass any other Order(s) as deemed fit and proper.

2. Shorn of unnecessary details, it would suffice to note that applicant's father while working as Telephone Mechanic under the Respondent-BSNL passed away on 04.02.2005, leaving behind his wife, one son, the present applicant and two unmarried daughters. The request of the applicant for compassionate appointment was recommended to the BSNL Corporate Office and in consideration of the same, the High Power Committee (HPC) of Corporate Office regretted for granting compassionate appointment in favour of the applicant vide communication dated 12.04.2013. Thereafter, the applicant submitted an application to the Chief Minister of Odisha ventilating his grievance, which having been taken up with the BSNL, the applicant was intimated vide letter dated 9.3.2015 (A/10) that the CGA cases which have already been considered and decided by the High Power Committee of BNNL Corporate Office as per the existing Scheme/Procedure at that point of time need not be reopened. Aggrieved with this, the applicant has approached this Tribunal seeking for the reliefs as referred to above.

3. The grounds on which the applicant has based his claim are that his father having passed away in the year 2005 and the applicant having applied for consideration his grievance on compassionate grounds soon thereafter, the rules governing compassionate at the relevant point of time should have been adhered to and not the rules and on the other hand, circular dated 1.1.2014 is not applicable to his case. Secondly, it has been urged by the applicant that the respondents without assessing the indigent condition of the family in an objective manner, have rejected his case, which per se is wrong and illegal.

4. Respondents have opposed the prayer of the applicant by filing a detailed counter-reply. According to respondents, the Circle High Power

Committee (in short CHPC) held on 24.03.2010 considered the applications of 152 candidates including the applicant as per guidelines issued by the DoPT OM dated 09.10.1998 read with Weightage Point System (in short WPC) introduced by BSNL vide letter dated 27.06.2007. The CHPC considered all the points like death terminal benefits provided to the deceased family, family pension provided, the assets, accommodation, liabilities of the deceased official, support arrangements, long term commitment, overall indigent condition, date of application for CGA and other required parameters. The applicant having scored 58 points, i.e., above 55 points, his case was recommended to the BSNL Corporate Office for further consideration. The High Power Committee of Corporate Office regretted the case of the applicant. Respondents have pointed out that the number of vacancies under CGA quota being limited, the appointments are made in favour of the candidates found to be more distressed conditions. In this regard, the respondents have stated that the last person selected had secured 69 points as against 58 points secured by the applicant. They have produced the proceedings of the High Power Committee dated 15.06.2012 vide R/7.

5. Applicant has filed a rejoinder to the counter. In the rejoinder, the applicant has relied on the decision in Canara Bank & Anr. Vs. M.Mahesh Kumar reported in 2015 AIR SCW 3212, in which it has been held that circular dated 14.02.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the Respondent as per circular of 1993. In the said judgment, it has also been held that the benefit taken by the deceased family is no way be equated with the benefit of employment under compassionate quota taking into account Balbir Kaur's case in which it was directed to consider the case of the Respondents for

compassionate appointment as per the scheme which was in vogue at the time of death of the concerned employee. The applicant has pointed out that in O.A.No.122/2015 disposed of on 29.04.2016, this Tribunal has taken the similar view.

6. Heard the learned counsels for both the sides and perused the records. Also perused the written note of submission filed by the applicant.

7. First of all, it is to be noted that the applicant has filed M.A.No.272 of 2016 praying for condonation of delay. It has been submitted that applicant's father while working as Telephone Mechanic under the respondent-BSNL passed away on 04.02.2005 and soon, thereafter, the applicant submitted an application for compassionate appointment, which was forwarded to the competent authority for consideration in the year 2006. While he was expecting a favourable decision, all on a sudden he was communicated with a letter dated 12.04.2014 annexing the order dated 18.10.2012 rejecting the request of the applicant for compassionate appointment. The applicant's family being in distressed condition could not make any way out and as such, the applicant submitted a representation to the Chief Minister of Odisha on 29.01.2014 ventilating his grievance. The matter having been taken up, the CGM, Odisha Circle vide letter dated 09.03.2015 rejected the request of the applicant. The applicant has also pointed out that being a member of SC community and being ignorance of law, apart from being of have-nots, he could not approach this Tribunal within the prescribed period of limitation and therefore, he has prayed for condonation of delay.

8. This Tribunal has considered the delay in question and upon being satisfied that there was sufficient reasons which prevented the applicant from

approaching the Tribunal within the prescribed period of limitation, the delay is hereby condoned and thus, M.A.No.272/2016 is allowed.

9. Coming to the merit of the matter, in the first instance, it is profitable to note that in the impugned communication dated 18.10.2012 (A/8), it has been indicated that taking into account the assets, liabilities of the families of the deceased official, support arrangements, involved time period, long term commitment/responsibility, overall indigent condition and other required parameters, the High Power Committee decided that the cases are not found fit for Compassionate Ground Appointment and the same has been conveyed vide BSNL Corporate Office letter No.268-79/2002-Pers. IV/LE dtd. 15.06.2012. On a reference being made to the proceedings contained under the said letter dated 15.06.2012 (R/7), it reveals that the name of the applicant finds place at SI.No.29. Under the heading "Brief Particulars about the cases", it has been indicated as follows:

"The ex-official expired on 4.02.2005 at the age of 40 years survived by his wife & one sons, two daughters. The family is living in a rented house. The family pension is Rs.4960+DA and other terminal benefits were Rs.2,47,231. The son has applied for CGA vide application dated 13.02.2006".

10. At this juncture, it is pertinent to note that the Respondents in their counter-reply have stated that the Circle High Power Committee (in short CHPC) held on 24.03.2010 considered the applications of 152 candidates including the applicant as per guidelines issued by the DoPT OM dated 09.10.1998 read with Weightage Point System (in short WPC) introduced by BSNL vide letter dated 27.06.2007. In support of this, they have not produced a scrap of paper before this Tribunal. On the contrary, they have produced the proceedings of the HPC dated 15.06.2012 (R/7), which do not appear to be countenanced with the proceedings of HPC held on 24.03.2010 and therefore,

there is no doubt that there is a credibility gap in between the two. However, the Respondents have admitted that the applicant having scored 58 points was recommended to the High Power Committee for consideration for CGA. Respondents have also pointed out that the last candidate who had secured 69 points was appointed on compassionate grounds. However, they have not produced any corroborative document in this regard. Be that as it may, no reasonable or justifiable ground is apparent in the impugned rejection letter except making a mention that 'not found fit for Compassionate Ground Appointment'. This, in our considered view, is whimsical and capricious inasmuch, as the said consideration is not based on due application of mind nor the rejection based on sound reasoning, notwithstanding the fact that the applicant has scored 58 points, which is more than the prescribed 55 point.

11. Next point to be considered is whether the applicant's case could have been considered under BSNL WPS of 2007. This point has been answered by this Tribunal in O.A.No.260/138/2016 disposed of on 01.03.2019 with a finding that the respondent-BSNL were justified in considering the request for compassionate appointment of the applicant within the scope and meaning of BSNL WPS of 2007 instead of guidelines issued vide DOP&T OM dated 09.10.1998 even if the cause of action arose in the year 2001 when her husband had passed away.

12. From the above analysis, it is to be considered as to whether the respondent-BSNL were justified in stating that compassionate appointment of the applicant having been considered and decided by the High Power Committee of BSNL Corporate Office as per existing Scheme/Procedure, need not be reopened. Be it noted that the case of the applicant for compassionate appointment was considered in the year 2012, as is evident from R/7

submitted by the applicant. Therefore, the question of applicant's case being considered for Compassionate Ground Appointment vide BSNL Corporate Office, New Delhi letter No.273-18/2013/P-IV dated 01.01.2014 does not arise. Since the applicant has admittedly scored 58 points which is above the minimum prescribed point i.e., 55, it is a fit case which should be reconsidered in pursuance of DOP&T instructions issued vide OM dated 26.07.2012 to the effect that there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case.

13. Having regard to what has been discussed above, this Tribunal directs the respondents to reconsider the case of the applicant in the next HPC meeting and communicate the decision thereon to the applicant soon thereafter.

14. With the above observation and direction, this O.A. is disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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