

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 694 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Suramimani Singh, aged about 63 years, W/o Late Prafulla Chandra Singh,
2. Birendranath Singh, aged about 42 years, S/o Late Prafulla Chandra Singh,

Both are resident of At/Po.- Gudialbandh, P.S. Badasahi, Dist-Mayurbhanj.

.....Applicants

VERSUS

1. Union of India, represented through the Chief General Manager, Odisha Circle, Bharat Sanchar Nigam Ltd., Bhubaneswar, Dist-Khurda.
2. The Telecom District Manager. Bharat Sanchar Nigam Ltd., Baripada, At/Po- Madhuban, Dist. - Mayurbhanj.

.....Respondents

For the applicant : Mr. N.R. Routray, Counsel

For the respondents: Mr. K.C. Kanungo, Counsel

Heard & reserved on : 17.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The reliefs sought for by the applicant in this OA are as under:-

- “(a) To quash the office order No. E-119/Part-I/2012-13/38 dtd. 19.11.2012 (annexure-7) issued by the respondent No. 2.**
(b) To direct the respondents to provide appointment to the applicant No. 2 under the Rehabilitation Assistance Scheme with immediate effect.
(c) To pass any other orders(s), direction(s), as may deem fit and proper.”

2. The husband of the applicant no.1 (referred hereinafter as ‘deceased employee’), while working under the respondents-BSNL died in harness on 2.2.2001 vide the death certificate at Annexure-4 of the OA. The applicant no. 2, being the eldest son of the deceased employee, applied for appointment on compassionate ground in 2001. But the respondents did not take any action on it for 11 years till the request of the applicant no.2 was rejected vide order dated 19.11.2012 (Annexure-7 of the OA), which is impugned in this OA on the ground that the impugned order was illegal and arbitrary.

3. The grounds advanced in the OA included rejection without conducting any enquiry into the financial condition of the family and without assigning any

reason and after a delay of 11 years in contravention to the guidelines dated 27.6.2007 (Annexure-9 of the OA) and the scheme guidelines dated 9.10.1998 of the DOPT (Annexure-8) on compassionate appointment. It is also averred that the delay in the matter is fully attributable to the respondents for which the applicant should not suffer.

4. Respondents have filed Counter opposing the OA, but not disputing the basic facts. It is stated in the Counter as under:-

“5..... The application for CGA of the Applicant No 2 was first considered by the Circle High Power Committee (hereinafter referred as CHPC) on 24.03.2010 on completion of all pre departmental formalities along with the other pending cases. The CHPC considered the case of the Applicant basing on the information/facts furnished by the applicant and the head of the unit (where the ex-employee was working) taking into account the indigent condition of the deceased family prevailing at the time of death of the employee, in terms of DOP&T, New Delhi guidelines in OM No. 14014/94 Estt-(D) dtd. 09.10.1998 and BSNL guidelines vide 273-18/2005-Pers-IV dtd. 27.06.2007.

.....

10. It is most humbly and respectfully submitted that, request for CGA has been considered after completion of pre formalities along with other applications as per facts stated below.

- 1. No of dependents of the ex official- 05*
- 2. Pension paid from the date of death- Rs. 2095/- + IDA PM*
- 3. Terminal benefits paid to spouse- Rs. 3,40,049/-*
- 4. Left out service of the ex official- 05 years.*
- 5. Accommodation- own house.*
- 6. Annual income from agriculture- Rs. 11,000/-*

As the case is not indigent in comparison to the other co applicants, the HPC rejected the request of the Applicant for CGA. It is further respectfully submitted that the law is well settled in a catena of decisions pronounced by the Hon'ble Supreme Court.....”

5. Rejoinder has been filed by the applicant without contradicting the averments about the status of the family as stated in para 10 of the Counter, but reiterating the ground of delay as stated in OA and contending in para 4 of Rejoinder as under:-

“4. That, it is the case of the applicants is that the Respondents after receiving the application dtd. 02.02.2002 have slept over for ten years for consideration and consume two years for communication of the decision which is against the instructions issued by Respondent No. 1 upon which they have relied in their counter. Had the case of the applicant No. 2 could have considered by the next sitting of Circle High Power Committee after 02.02.2002, then the case of the applicant No. 2 could have been different.

It is pertinent to mention here that by way of non-disclosure about more indigenous candidates than the applicant No. 2 and secured more points by them by consideration of Circle High Power Committee is deliberate and intentional as because on production of the same the departmental authority/respondents could have been in problem by this Hon'ble Tribunal. Hence, there were actually no other indigenous candidates than the applicants and the stand and the stand taken in the counter is vague and absurd, for which the applicant No.2 may be provided employment on compassionate ground.”

6. The respondents have filed Additional Counter, stating that the delay in consideration of the proposal was due to the fact that for compassionate ground appointment (in short CGA) maximum number of posts which can be filled up through CGA is 5% of total vacancy. When the vacancy against 5% CGA quota arose, the applicant's case was considered in 2010. It is also averred that the applicant has not taken any steps in the matter for 11 years and woke up after the proposal was rejected by BSNL vide order dated 19.11.2012 (Annexure-7). It is stated that the family has managed to sustain for 17 years which shows that it was not in crisis. In this regard, the respondents have referred to the judgment of Hon'ble Apex Court in the case of **State of J&K vs. Sajad Ahmed Mir (2006) 5 SCC 766 and Local Administration Dept. & Anr. vs. M. Selvanayagam @ Kumaravelu, AIR 2011 SC 1880 and in the case of State of Himachal Pradesh & Anr. vs. Shashi Kumar, Civil Appeal No. 988 of 2019** in support of their averments opposing the OA.

7. Heard learned counsel for the applicant. He submitted that the applicant has filed the MA No. 761 of 2014 alongwith the OA for condoning delay in filing the OA. He submitted that the said MA is not disposed of. He highlighted the delay on the part of the respondents in considering the matter. He also submitted that the judgments in the case of MGB Gramin Bank vs. Chakrawarti Singh and Canara Bank vs. M. Mahesh Kumar were referred to larger Bench in the case of **N.C. Santosh vs. State of Karnataka** by Hon'ble Apex Court and the judgment dated 4.3.2019 in the said case fully covers the present case of the applicant.

8. Learned counsel for the respondents was heard. He stressed on the point of delay on the part of the applicant in raising his grievance before the Tribunal if no action was taken by the respondents in the matter for 11 years as alleged in the OA. Besides referring to the judgments referred to in the pleadings of the respondents, learned counsel for the respondents filed a copy of the order of this Tribunal in the case of **Namita Dhal vs. The Secretary, Government of India, Ministry of Communication & Information Technology & others in OA No. 138/2016** in which BSNL was also one of the respondents. It was also submitted that the facts and reliefs sought for in the case of Namita Dhal (supra) are similar to the present OA, to which the order of the Tribunal in Namita Dhal case will be fully applicable. Learned counsel for the respondents further submitted that the applicant's case was considered on merit on the basis of the point system as per the circular dated 27.6.2007 (Annexure-9) and he did not score higher than the persons whose cases have been considered for compassionate appointment by BSNL.

9. We have considered the matter as submitted by learned counsels for both the parties and the pleadings on record. Before we consider the matter on merit, the issue of delay is to be considered first as this point has been raised by the respondents. The judgment of Hon'ble Apex Court in the case of Sajad Ahmed Mir (supra), the respondent had applied for CGA after more than 4 years from the date of death of his father and he also filed writ petition after 3 years from the date of rejection. There was no application for condoning such delay. In this factual background, the appeal was allowed by Hon'ble Apex Court with observation that the family survived for more than four years between the date of death and date of application for CGA and taking other facts of the case. In the present OA, the applicant had applied for CGA on 2.2.2002 as against the date of death of 2.1.2001 (as stated in para 2 of the

Counter) and for delay in filing the OA, the applicant has filed the MA No. 761/2014 with prayer to condone the delay in filing the OA. Hence, the case of Sajad Ahmed Mir (supra) is factually distinguishable.

10. Similarly in the case of M. Selvanayagam (supra), no application was made by the wife of the deceased employee soon after death of the employee and she made an application for CGA after more than four years from the date of death of the deceased employee. Then after 7 years and 6 months of death of the deceased employee, his son made an application for CGA, which was rejected on the ground that the wife of the deceased employee did not make any request for appointment which showed that no serious financial crisis was caused to the family due to death of the employee. The writ petition, filed by the son of the deceased employee was allowed by Hon'ble High Court. That order was challenged in appeal which was allowed and order of Hon'ble High Court was set aside by Hon'ble Apex Court. As discussed in the preceding paragraph, the facts of the present OA before us are distinguishable from the case of M. Selvanayagam (supra).

11. In the case of Shashi Kumar (supra) cited by the Respondents, following observations have been made by Hon'ble Apex Court regarding the facts of the case:-

“The father of the respondent, who was working as HFO in the Horticulture Department at Kullu, died on 29 March 2005 while he was in service. On 8 May 2007, the respondent submitted an application for compassionate appointment. The application was forwarded by the Deputy Signature Not Verified Director, Horticulture at Kullu to the competent Digitally signed by SANJAY KUMAR Date: 2019.01.25 14:26:33 IST Reason: authorities on 14 September 2007. On 15 January 2008, the Additional Secretary (Horticulture) to the Government of Himachal Pradesh addressed a communication to the Director of Horticulture stating that the income certificate which had been forwarded together with the application did not include the pension which the family was receiving from the Government. Accordingly, the Additional Secretary required that a certificate of income, including pension, should be obtained from the concerned SDM by the applicant.

The Writ Petition before the High Court was instituted on 11 May 2015, well over seven years thereafter. The respondent has averred that he had made representations, but to no avail, as a result of which he was eventually compelled to initiate proceedings under Article 226 of the Constitution of India before the High Court.....

.....

Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is

evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J&K Vs. Sajad Ahmed Mir¹² and Local Administration Department Vs. M. Selvanayagam¹³.

We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.”

From above, it is clear that the respondent in the case of Shashi Kumar (supra) had delayed approaching High Court for about seven years after the decision of the authorities to call for the revised income certificate and Hon’ble Apex Court found the claim of the respondent in the cited case to be barred by limitation. In the present OA before us, the applicant has approached the Tribunal after some delay for which he has filed the MA No. 761/2014 for condoning the delay. Hence, the judgment in the case of Shashi Kumar (supra) will not be helpful for the respondents.

12. Learned counsel for the respondents has filed a copy of the order dated 1.3.2019 of this Tribunal in the case of Namita Dhal (supra) in OA No. 138/2016 to argue that factually the OA No. 138/16 was similar to the present OA, for which the order dated 1.3.2019 will also cover the present OA. On perusal of the cited order dated 1.3.2019, it is seen that the applicant in OA No. 138/16 had applied for CGA within one year of the death of her husband in 2001. The said application was rejected by the BSNL authorities on 19.10.2012 which was challenged before the Tribunal in OA No. 963/2012, which was disposed of vide Tribunal’s order dated 11.2.2015 directing the respondents to consider the case of the applicant twice more as per DOPT instruction dated 5.5.2003. On reconsideration, BSNL rejected the case vide order dated 9.10.2015 which was impugned in OA No. 138/16. After considering the pleadings of the parties, it was observed by this Tribunal in order dated 1.3.2019 as under:-

“6. From the pleadings of the parties, the sole point needs to be determined is whether 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 since the cause of action arose in the year 2001 when her husband had passed away.

.....

8.....Since the applicant has failed to take timely action, the contention that the rules as were prevalent at the time of death of her husband should have been made applicable while considering her request for compassionate appointment, does not stand to reason. This apart, the respondent-BSNL have pointed out that consequent upon third consideration, a rejection order dated 24.09.2016 was communicated to the applicant which appears to be not under challenge in this O.A. Be that as it may, since the applicant has failed to exercise her remedy in the nick of the time and only approached this Tribunal in the year 2012 challenging the impugned order of rejection dated 19.10.2012 against a cause of action that arose in the year 2002 when she submitted her, application for compassionate on 29.05.2002, her claim that since the death of her husband occurred in the year 2001 the rules governing compassionate appointment at that time should have been made applicable is improper and irrational.

9. Having regard to what has been discussed above, the Tribunal answers the point in issue by holding 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.”

13. The Tribunal in OA No. 138/16 had considered the delay on the part of the applicant to approach the Tribunal for inaction of the BSNL and after rejection of the case by BSNL, the applicant had taken the plea that the rule for CGA that was applicable in the year 2001 would be applicable for consideration of the case and such plea of the applicant was not accepted by the Tribunal in view of the lapses on her part to approach Tribunal since no action was taken by BSNL on her application for CGA filed in 2002. It would be seen that when the applicant of OA No. 138/16 had challenged the order dated 19.10.2012 in OA No. 938/12, the Tribunal had directed the BSNL to consider her case twice more and BSNL had complied that order as would be seen from para 8 of the order dated 1.3.2019 extracted supra. Hence, the case of the applicant in OA No. 138/16 was considered for CGA thrice by BSNL, which is not the case for the present applicant in OA No. 649/14. Under such factual circumstances, the Tribunal order dated 1.3.2019 will not be applicable to the present OA.

14. Regarding the time limit, we take note of the following provision in the DOPT OM dated 16.1.2013 in which the guidelines on compassionate appointment have been consolidated:-

“8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT:

Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case.”

In the light of the above guidelines of the DOPT regarding time limit for consideration of the case for compassionate appointment, we are of the view that the impugned rejection order dated 19.11.2012 (Annexure-7 of this OA) will not give a fresh cause of action to the present applicant, whose case has

been considered only once by BSNL as would be revealed for the pleadings on record. Under the circumstances, we reject the objections raised by the respondents on the ground of delay and hold that the OA deserves to be considered on merit. Accordingly, the MA No. 761/2014 filed by the applicant to condone the delay in filing the OA is allowed and the delay in filing the OA is condoned.

15. Regarding merit of the OA, learned counsel for the respondents had submitted at the time of hearing that the point score of the applicant as per the policy guidelines of BSNL dated 27.6.2007 (Annexure-9) is not high enough to merit appointment on compassionate ground and other candidates who had been appointed on compassionate ground had higher score in the point system than the applicant. In the counter, the respondents have cited the judgment of Hon'ble Apex Court in the case of State of Gujarat & Ors. vs. Arvind Kumar Tiwari & Anr in Civil Appeal No. 6468/2012, State Bank of India vs. Raj Kumar (2010) 11 SCC 661 and MGB Gramin Bank vs. Chakrawarti Singh in Civil Appeal No. 6348/2013 in the Counter. These judgments lay down the principle that the requests for compassionate appointment are to be considered in accordance with the approved scheme taking into account the indigent condition of the family of the deceased employee. Applying this principle to the present case of the applicant, the respondent-BSNL was required to consider the applicant's case for CGA as per the policy guidelines of BSNL. The impugned order of rejection dated 19.11.2012 (Annexure-7) stated that his case was considered as per the circular dated 9.10.1998 of the DOPT and dated 27.6.2007 of the BSNL Corporate Office and not found fit for CGA. Nothing has been stated in the pleadings of the respondents about the score of the applicant as per the circular dated 27.6.2007 vis-a-vis the cut off score for other candidates who were selected for compassionate appointment. In the judgment of the Principal Bench in OA No. 377/2008 cited in the Counter (Annexure-R/1), the score of the applicant was disclosed to be 49 against the minimum required score of 55. But the score of the applicant in this OA has not been disclosed.

16. Further, it is averred in the Counter that BSNL has modified the procedure for consideration of the cases for CGA as per the circulars dated 1.10.2014 and 13.10.2014 (Annexure-R/2 & R/3 of the Counter). As per the modified procedure, the selection of candidates for CGA will be done at Circle level instead of at the level of the Head Office of BSNL. It also provides that if any case will be ordered by the Tribunal for reconsideration, then it will be done as per the revised procedure.

17. We take note of the judgment dated 4.3.2020 of Hon'ble Apex Court in the case of N.C. Santhosh vs. The State Of Karnataka in Civil Appeal Nos. 9280-9281 of 2014, in which the dispute related to the question whether the rule for CGA as on date of consideration of a case would be applicable. The petitioner in the case was appointed on compassionate ground although he was ineligible as per the amended rule which was in force as on the date of consideration of the case and after it was known, his appointment was terminated. The petitioner challenged the said termination unsuccessfully before State Administrative Tribunal and Hon'ble Karnataka High Court. Hon'ble Apex Court after considering the judgments on the subject in different cases, held as under:-

“17. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court’s view in SBI vs. Raj Kumar (supra) and MCB Gramin Bank vs. Chakrawarti Singh (supra) on one side and the contrary view in Canara Bank & Anr. vs. M. Mahesh Kumar (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in State Bank of India & Ors. vs. Sheo Shankar Tewari⁶ the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

18. The above discussion suggest that the view taken in Canara Bank & Anr. vs. M. Mahesh Kumar (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellants counsel on Canara Bank & Anr. vs. M. Mahesh Kumar (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik vs. State of Karnataka & Ors.⁷, it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

19. In the most recent judgment in State of Himachal Pradesh & Anr. vs. Shashi Kumar⁸ the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State’s policy.

20. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

18. In view of the discussions above the rule as on the date of consideration of the case of compassionate appointment would be applicable to decide the case. In the present OA, the rule regarding the point system will be applicable. But since the respondents have not disclosed the score of the applicant on the point system in the impugned order or in their pleadings in this OA, we are of the considered view that the case of the applicant for compassionate appointment needs to be reconsidered once more by the respondent-BSNL in accordance with the revised policy guidelines at Annexure-R/2 and R/3 of the Counter and the decision be communicated through a speaking order to the applicant within four months from the date of receipt of a copy of this order.

19. The MA No.761/14 is allowed as discussed in paragraph 14 of this order and the OA is allowed to the extent as mentioned in paragraph 18 above. Under the circumstances, there will not be any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)