

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01164/2019**

Dated the ^{Munday} 29 day of June, Two Thousand Twenty

CORAM : HON'BLE MR. T. JACOB, Member (A)

Selvi D. Sneka, D/o. Late P. Durairaj,
2/3 South Street,
No.10, Kariamanickam Village,
Manachanallur Taluk, Trichy 621005.

Applicant

By Advocate M/s. R. Selvakumar

Vs

1. Union of India rep by,
Secretary to the Government,
Ministry of Communication and
Information Technology, New Delhi 110001.

2. The Chairman cum Managing Director,
BSNL, New Delhi 110001.

3. The Chief General Manager,
(Circle High Power Committee),
BSNL Tamil Nadu Circle, Chennai 600006.

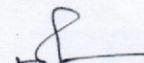
4. The Deputy General Manager (Admin/HR),
O/o. Chief General Manager, BSNL,
Tamil Nadu Circle, Chennai 600006.

5. The Principal General Manager, BSNL, Trichy 1.

6. The Asst. General Manager (Admin/HR),
O/o. Principal General Manager, BSNL, Trichy.

....Respondents

By Advocate Mr. M. Kishore Kumar (R2 to R6)



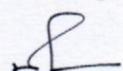
O R D E R
(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

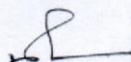
"To call for the records in Proceedings No. RET/31-69/2015/21 dated @ Chennai 6, dated the 28th day of June 2019, on the file of the 4th respondent, (forwarded by the sixth respondent vide proceedings dated 11th July 2019, in Proceeding Nos. E. 214/PD/2012/16-19/27) quash the same and to direct the respondents 2, 3 and 5 herein to consider the peculiar circumstances, as per 5.0 of the Compassionate Ground Appointments (CGA) Policy guidelines, enshrined in proceedings No. 273-18/2005-Pers.IV dated 27.06.2007 on the file of the 2nd respondent, for consideration of compassionate ground appointment due to death of Shri. P. Durairaj (Telecom Mechanic (HR MS 199201343), by awarding 34 weightage points additionally over and above 25 weightage points awarded, for assessment of indigent condition, enabling the applicant to come within the zone consideration for grant of compassionate ground appointment and for other orders in the interest of justice."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant's father, P. Durairaj died in harness on 11.07.2012 while working as Telecom Mechanic, Siruganur Telephone Exchange, Trichy District with a left over service of 5 years 7 months 20 days. The applicant has applied for a job on compassionate grounds after complying with all formalities on 11.09.2015 to the 5th respondent, who was the immediate employer of the deceased employee. The applicant is aged 25 years with education qualification of Diploma in Electrical and Electronic Engineering under the Tamil Nadu State Board of Technical Education and Training, Chennai 600025, having passed the same in April 2015. After demise of her father, she is taking care of paternal



grandmother, Valliammai, aged 84 years and living with her. The applicant's mother, Rajamani, died on 15.09.2008 prior to death of the applicant's father. As per the Compassionate Ground Appointments (CGA) Policy guidelines enshrined in proceedings No.273-18/2005-Pers.IV dated 27.06.2007 on the file of the 2nd respondent, the case of the applicant deserves to be considered given the facts that she is taking care and living with her 84 old paternal grandmother in a asbestos roof house worth Rs.50,000/- As per the guidelines, the applicant ought to score not less than 55 marks, enabling to consider her appointment on compassionate grounds. The 5th respondent, through the 6th respondent, on 06.06.2017 rejected the claim of the applicant on the ground that she had scored only 25 points whereas the minimum required bench-mark points is 55. Against the said order dated 06.06.2017, the applicant preferred an appeal to the 3rd respondent on 08.01.2018, which was rejected by a non-speaking order on 28.02.2018 by the 4th respondent on behalf of the 3rd respondent. Against the order dated 28.02.2018, she also preferred a statutory appeal to the 2nd respondent on 25.07.2018, especially, challenging the non-speaking nature of the order dated 28.02.2018. Though the 2nd respondent had not disposed of the appeal dated 25.07.2018, the 4th respondent, on behalf of the 3rd respondent, had issued the impugned order with the approval of the 2nd respondent, thus, closing the requirement to once again appeal to the 2nd respondent. The applicant states that the 3rd respondent has not applied, in proper perspective the peculiar circumstances, as per 5.0 of the Compassionate Ground Appointments (CGA)



Policy guidelines, which if so applied, would undoubtedly lead to award of not less than 59 points. Hence the applicant challenged the impugned order dt. 28.06.2019 on the peculiar circumstances which had been omitted to be considered by the 3rd and 5th respondents as follows :

a) Sl. No.1. Dependents weightage – 5 points per dependent.

As the paternal grandmother, Valliammai, aged 84 years is a dependant mother of the deceased employee, P. Durairaj, who is sick and an old aged Octogenarian, the applicant is entitled to 10 points instead of 5 points awarded.

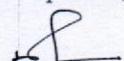
b) Sl. No. 3 – Left over service weightage : 5 years 7 months 20 days,

The weightage should be for 6 years (ie 6 points) as rightly calculated by the 5th respondent, but wrongly shown as 5 points by the 3rd respondent.

c) Sl. No. 4 – Applicant's weightage : Widow – 15 points, for others – no points.

The peculiarity of the case of the applicant is that she is unmarried, having lost both the parents and living with 84 years old paternal grandmother. The prevailing living condition of the applicant would be more worse than a widow and, as such, the applicant deserves to be awarded 15 points on par with a widow.

d) Sl. No. 5 – Terminal benefits: Total Rs. 9,58,030/00. Since the amount is less than 10 lakhs, only 1 point was awarded. The amount of Rs. 9,58,030/00 includes General Provident Fund : Rs.1,66,974/00, Encashment of Leave : Rs.2,51,130/00 and DCRG : Rs. 5,39,930/00. If the sum of Rs. 5,39,930/00 alone is taken, then the applicant ought to have been awarded 5 points, instead



of 1 point, thus, additionally 4 points to be included.

e) Accommodation : Own House 0. Rented House 10,

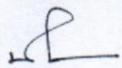
The applicant was awarded 0 as she was living with her paternal grandmother.

The applicant is living in a house belonging to her grandmother, that too in a asbestos sheet roofed house and, hence, the authorities had awarded no points, which is illegal. Hence the applicant states that her case deserves to be awarded 59 points, making her entitled to be in the zone of consideration for compassionate ground appointment and, hence, she has filed this OA seeking the above reliefs.

3. The applicant has relied upon the following orders of the Tribunal in support of her submission:

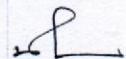
- i. Order dt. 01.02.2016 in OA 1533/2013 in the case of P. Saravanan Vs. Union of India & ors.
- ii. Order dt. 01.02.2011 in OA 783/2010 in the case of P. Saravanan Vs. Union of India & ors.

4. The respondents have filed a detailed reply statement stating that the applicant's father, Sri. P. Durairaj, who was working as Telecom Mechanic in Trichy SSA died on 11.07.2012. The deceased official is survived by one unmarried daughter, Kum. D. Sneka, aged 18 years. The wife of Sri. P. Durairaj predeceased him on 15.09.2008. The applicant herein Selvi. D. Sneka daughter of late P. Durairaj applied for compassionate ground appointment (CGA) on 11.09.2015. The family pension was fixed at Rs. 7775/- + IDA as on 12.07.2012.



The left out service at the time of death of the deceased employee was 5 years 7 months. Family of the deceased received terminal benefits of Rs. 9,58,034/-.

The applicant is living with her grandmother who owns a house. As per the advice of the Hon'ble Chairman, National Commission for Scheduled Tribes in the meeting held on 20.11.2006, BSNL introduced a weightage point system within DoPT guidelines, vide No. 273-18/2005-Pers.IV dated 27.06.2007. The applicant's case for compassionate ground appointment was considered by the High Power Committee in accordance with the DoPT OM dated 09.10.1998 & BSNL policy guidelines dated 27.06.2007 and the rejection was conveyed vide letter dated 06.06.2017. The appeal thereon preferred by the applicant was rejected on 28.06.2019. In the present OA, the applicant has challenged the rejection order dated 28.06.2019. The Circle High Power Committee awarded the weightage points strictly as per BSNL CO letter 273-18/2005-Pers.IV dated 27.06.2007. As per clause 5.0 of the said BSNL policy guidelines, where there is a problem in attributing points on any of the aspects due to peculiar circumstances in any specific case, the same is to be sent to BSNL Corporate Office along with supporting documents including the check list for consideration and decision by Corporate Office. In the case of the applicant herein, there was no problem found by the Committee in attributing the weightage points and also no peculiar circumstances like death in militant attack or some family members suffering from serious ailments like cancer, kidney was found by the Committee to refer the matter to BSNL Corporate Office. In all the

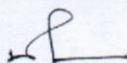


cases of CGA, the decision of the High Power Committee on each and every CGA application and the weightage points awarded under each head are forwarded to BSNL Corporate Office for further scrutiny and approval of competent authority in BSNL Corporate Office. In the case of the applicant also, the CGA application and all related documents including the details of weightage points awarded under each head and the decision of the High Power Committee were sent to BSNL Corporate Office and after detailed scrutiny of all those documents, the competent authority approved the decision of the High Power Committee. Hence, the averment of the applicant that her case deserves to be considered under clause 5.0 of BSNL letter dated 27.06.2007 is not correct. The respondents pray for the dismissal of the OA.

5. The respondents have relied on the decision of this Tribunal dt. 26.11.2019 in OA 996/2017 in the case of R. Rahul Gandhi Vs. The Chief General Manager, BSNL & anr.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. There is no dispute with regard to the service of the deceased employee with the respondents. It could be seen on the perusal of the records that the applicant is the only daughter of the deceased employee and she has lost her mother as well. She is living with her paternal grandmother who is 84 years old. The case of the applicant is that the respondents have not considered the attributes with regard to the dependency and failed to award marks on that

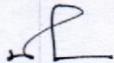


account. The respondents have also not awarded sufficient marks for the residual service and illegally taken into account the GPF benefits while counting pensionary benefits.

8. For the sake of brevity and better appreciation of facts, the details of the weight-age points awarded to the applicant under each head are reproduced hereunder:-

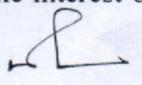
Sl. No.	Details	Particulars	Weightage awarded as per DOPT & BSNL Policy guidelines	Remarks
1	No of Dependent at the time of death	1 (only daughter the applicant)	5	1 X 5
	Unmarried daughter	1 (applicant)	5	1 X 5
2	Family pension	Rs. 7775/-	8	Rs. 7775/- + IDA as applicable
3	Left out service	5 years 7 months 20 days	5	1 point for each year left out service
4	Applicant's weightage	Widow – 15 Others – 0	0	CGA Applicant-daughter
5	Terminal benefits	9-10 lakhs – 1	1	(Rs. 9,58,034/-)
6	Accommodation	Living in a rented house – 10 Others – 0	0	Not living in rented house
		Total	24	

9. The contention of the applicant is that for the weight-age towards



dependency, 5 points for the applicant and 5 points for the paternal grand-mother i.e., $5+5 = 10$ points ought to have been granted. For the residual service of 5 years 7months and 20 days, 6 points ought to have been granted. The applicant is residing in a rented house and hence 10 points ought to have been awarded towards accommodation. The applicant deserves to be awarded 15 points on par with a widow taking the object of providing compassionate ground appointment in a subjective manner. The GPF amount ought to be removed while calculating the terminal benefits. The respondents have also included towards terminal benefits, the Encashment of leave drawn by the applicant. If all these factors had been considered by the respondents, the applicant would have secured 59 points and become eligible for grant of compassionate appointment.

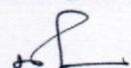
10. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non-statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a Government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of



justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

11. The BSNL is following a weightage point system from the year 2007 to judge the indigent condition of the family in an objective manner for qualitative and non arbitrary assessment and to bring uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment under the overall policy guidelines of the Department of Personnel and Training vide OM dated 09.10.1998. As per the policy guidelines, all the applications will be considered by the Circle High Power Committee consisting of three senior level officers and cases with net points below 55 (ie., 54 or less) shall be treated as non-indigent and rejected while the cases of net point 55 or above shall be prima-facie treated as eligible for further consideration by Corporate office High Power Committee.

12. The learned counsel for the applicant submitted that the applicant's request has been rejected due to incorrect evaluation by the respondent



department, which further led to her receiving less weightage points. He submitted that in these circumstances, the intervention of the Tribunal was a must to undo the injustice meted out to the applicant.

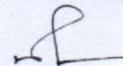
13. It is pertinent to refer to the Circular issued by the Corporate Office of the BSNL dated 19.04.2019 conveying the decision of the Board to keep in abeyance the policy of implementation of compassionate ground appointment for three years for vacancies arising after 01.04.2018 due to stressed financial condition of the company. It has further been clarified vide letter dated 27.06.2019 that unfilled vacancies of the previous years are to be carried forward to the next year after conducting Circle High Power Committee meeting for vacancies upto 31.03.2018, which means there would be no compassionate ground appointment upto 2021 for vacancies arising after 01.04.2018.

14. It could be seen on the perusal of the record, the respondents have rejected the claim of the applicant for award of higher marks on the following grounds:-

i. As per DOPT policy guidelines issued vide OM 14014/6/94-Estt(D) dated 09.10.1998 on Compassionate Ground Appointment,

Dependant family member means

- a) Spouse or
- b) Son (including adopted son) or
- c) Daughter (including adopted daughter)
- d) Brother or Sister in the case of unmarried Government servant.



Who are wholly dependent on the Government servant at the time of his death.

Hence, mother of the deceased is not considered as a dependent family member.

ii) Weightage point is awarded only when the family is living in rented house.

iii) Weightage points of 15 is awarded only if the widow of the deceased applies for CGA.

iv) Only one point can be awarded when the terminal benefit is between 9-10 lakhs.

v) The weightage point is awarded for each year of left out service subject to maximum of 15 points. Hence, CHPC awarded 5 points for left out years of service of 5 years 7 months 20 days.

vi) In case of terminal benefits, the total amounts settled/paid to the dependents of the ex-official who expired while in service is the benefit to be utilized by the dependents whether the benefits are from DCRG, GPF, Leave encashment, CGEIS / GSLI, LIC policies, any other savings etc. In this case, the terminal benefits received is Rs. 9,58,034/-. Hence, 1 point is awarded

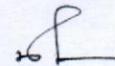
15. For assessment of weightage point under Terminal benefits, as per the weightage point system, the total terminal benefit (without adjustment) based on the status of ex-official is only to be taken into account. The commitments/ expenditure/ repayments of dues incurred from the terminal benefits are not to be taken into account. In case of accomodation, the applicant is residing in a house belonging to her paternal grand-mother, thereby, the applicant is not in a



situation to pay the rent for her accommodation and, hence, zero mark is allotted under the item "Accommodation". Hence, the weightage points awarded by High Power Committee are correct and the rejection of the CGA application of the applicant and the appeal thereon is absolutely in accordance with the BSNL policy guidelines dated 27-06-2007 introduced within the DoP&T guidelines dated 09-10-1998. Hence, the applicant is not entitled for appointment under compassionate ground and the order dated 28-06-2019 is valid and maintainable as per law.

16. I find that the case of the applicant largely hinges on the fact that the totality of the circumstances have not been evaluated properly by the respondent department and the fact that the weightage points given to her cannot be made applicable to her. Undoubtedly, the family of the deceased was struck by misfortune on account of the untimely demise of the Government employee. Thereafter, the respondents rejected the case of the applicant in tune with the norms and guidelines of the Government on the subject. It was decided by the respondents that the family is not living in indigent condition and her case was accordingly rejected by way of a speaking order dated 28.06.2019. As laid down by the Hon'ble Supreme Court in the case of State Bank of India & Anr. v. Raj Kumar, reported in 2011 (1) SCC (L&S) 150, the fact remains that :

"the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited



quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

.....
Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable."

17. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 had held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

18. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Limited (TANGEDCO) in W.P.3882/2014 dated 06.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

"28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the question of providing compassionate appointment to the writ petitioner does not arise at all."



19. In my view, the respondents are correct in applying the methodology of weightage points while considering the case of the applicant for compassionate appointment. I also feel that immediate need of the assistance to the family, which is envisaged under the compassionate appointment scheme, hopefully, does not exist after a period of almost 8 years having elapsed between the date of death of the applicant's father and hearing of present OA. Further, a stale claim cannot be got resurrected under the garb of fresh representation. The decision of the Circle Relaxation Committee cannot be faulted with.

20. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court and High Court (supra), I find no reason to interfere with the impugned order of the respondents dated 01.06.2016. The OA is liable to be dismissed and is accordingly dismissed. No costs.

