

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.378 of 2017

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

1. Manjun Bibi, aged about 59 years, W/o. Late Samsur Khan,
2. Ansar Khan aged about 33 years S/o Late Samsur Khan,
Both are residing at-Mulijhara, Post-Kusumi, P.S.- Tangi, Dist-Khurda.

...Applicants

VERSUS

1. Union of India represented through its Chairman cum Managing Director, Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, New Delhi-110001.
2. The Chief General Manager, Bharat Sanchar Nigam Ltd.
Orissa Circle, BSNL Bhawan, Near Indira Park,
Bhubaneswar-751009.
3. The General Manager Telecom District, Cuttack, Bharat Sanchar Nigam Ltd. Berhampur-768001.

...Respondents

For the Applicants – Mr.D.K. Mohanty, Counsel

For the Respondents – Mr. K.C. Kanungo, Counsel

Heard & Reserved on: 30.09.2020

Order on : 07.10.2020

ORDER

Per Mr.Gokul Chandra Pati, Member(A):

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 dt. 24.09.2016 under Annexure-A/ 7;*
- (ii) To direct the Respondents to consider the case of the Applicant No. 2 and provide him appointment on compassionate ground in accordance with the DOP and T instruction as stated above;*
- (iii) To pass any other order (s) as deemed fit and proper;”*

2. The applicants' case is that after his father's death on 30.7.2009, the applicant no.2, who is the elder son, applied for compassionate ground appointment (in short CGA) on 26.9.2012 (Annexure-A/5 of the OA) after collecting the required documents from the office of the respondents. The respondents called for some more additional documents on 5.1.2013 which were supplied by applicant no.2. Thereafter, his claim for CGA has been rejected vide order dated 24.9.2016 (Annexure-A/7) passed by respondent no.2, citing the DOPT OM dated 9.10.1998 and the circulars of BSNL on weightage point system dated 27.6.2007 and 1.10.2014 in the said order. The applicants have challenged this order in this OA on the following grounds:-

- (i) No cogent reason has been mentioned in the impugned order, which is illegal and passed with non-application of mind, without conducting any inquiry by Welfare Officer about the indigent condition of the family as required in DOPT OM dated 9.10.1998.
- (ii) The authorities have recommended for CGA to the dependents of the employees who expired after death of father of the applicant no.2 in this OA.
- (iii) As per DOPT OM dated 5.5.2003, a case is to be considered three times. Hence, applicant's case is to be considered twice more.
- (iv) The applicants' case for CGA has been rejected as per the circular dated 1.10.2014 of BSNL which is not applicable to this case. His case should have been considered as per the guidelines in force at the time of death of the father of applicant no.2 i.e. on 30.7.2009.
- (v) The weightage points of the applicant as per the circulars referred in the impugned order have not been disclosed by the authorities. Hence, the rejection order cannot be said to be a reasoned order.

3. The respondents have opposed the OA by filing the Counter with the following grounds:-

- (i) Applicant no.2 applied for CGA on 26.9.2012 after a gap of about three years from the date of death of his father and after submission of all relevant documents on 8.4.2016, his case for CGA was considered by the Circle High Power Committee (in short CHPC) in July, 2016 and it was rejected on the basis of the point assigned as per the circular dated 27.6.2007 and 1.10.2014 of BSNL (Annexure-R/2 & R/3 of Counter) vide order dated 24.9.2016 (Annexure-A/7). The decision was taken after taking into account all relevant factors.
- (ii) The applicants have not disclosed how they have been prejudiced because of application of the guidelines dated 1.10.2014 which has modified the point system for assessment of cases for CGA.
- (iii) The applicants' score on the point system was 50 as explained in para 6 of the Counter. Since it is less than the minimum score of 55, it was considered to be not indigent as per the circular dated 1.10.2014 (Annexure-R/2 of Counter). If his case is reconsidered, the result will not be different as there will be no change in above score.
- (iv) In the subsequent circular dated 21.4.2016 (Annexure-R/4 of the Counter), it is also reiterated that the cases with score of 55 or more will be treated as eligible for consideration for the CGA.
- (v) It is not the case of the applicant that anyone with less point than the applicant has been allowed the benefit of the CGA. The order dated 24.9.2016 (A/7) passed by respondents is as per the instructions issued by the DOPT and BSNL.

4. The respondents have relied on the judgments of Hon'ble Apex Court in the cases of State of J&K & others vs. Sajad Ahmed Mir, (2006) 5 SCC 766, Umesh

Kumar Nagpal vs. State of Haryana & others JT 1994(3) S.C. 525, State of Gujarat & Ors. vs. Arvind Kumar Tiwari & Anr. in Civil Appeal No. 6468 of 2012, State Bank of India vs. Raj Kumar (2010) 11 SCC 661, Chief Engineer (Naval Works) & Another vs. A.P. Asha (2015) 14 SCC 310 and MGB Gramin Bank vs. Chakrawarti Singh in Civil Appeal No. 6348 of 2013. Reliance is placed on the judgment of this Tribunal in cases Mr. H.C. Patel vs. UOI & others in OA No. 377/2008 (Ahmedabad Bench) upholding the weightage point system, Bishok Kumar Prusty vs. UOI & others in OA No. 946/2013 (Cuttack Bench), Sri Janki Prasad Mishra vs. UOI in OA No. 110/2012 (Lucknow Bench).

5. No Rejoinder has been filed by the applicant in this OA. Mr. D.K. Mohanty, learned counsel for the applicants was heard. He submitted that there was a delay on the part of the applicant no.2 to apply for CGA due to the fact that no welfare officer was deputed by the respondents to assist as required under para 12(b) of the DOPT OM dated 9.10.1998 (Annexure-R/1 of the Counter). It was also submitted by Mr. Mohanty that the circular dated 1.10.2014 of the BSNL, which has been applied in this case by the authorities to reject the claim, is not at all applicable to this case as the death of applicant no.2's father was on 30.7.2009. He cited the judgment of Hon'ble Apex Court in the case of N.C. Santosh vs. State of Karnataka by which it has been held that the rules relating to CGA as applicable on the date of consideration of the case would be applicable. It was argued by Mr. Mohanty that the applicant's case has been rejected on the basis of the point score without any consideration of his case. He further submitted that the judgments cited at Annexure- R/5 and R/7 of the Counter will not be applicable to the present OA.

6. A written note of submissions has been filed by the applicants' counsel, stating therein that there is no delay in submission of the application for CGA and has referred to the judgment of Hon'ble High Court in the case of Pabitra Moahan Palei vs. Registrar of Cooperative Society, reported in 2014 (I) OLR 777. It is also submitted that the applicants' case has not been sent for consideration as his score was less than 55. It is also stated that since the application for CGA was submitted in 2012, the letter at Annexure-R/2 is not applicable to his case. Reference to the order dated 29.4.2016 of this Tribunal in OA No. 122/2015 has also been made in which it was held that the guidelines of 27.6.2007 of BSNL will not be applicable for deciding a case in which death occurred prior to 2007. In support of such stand, a judgment dated 20.4.2012 of Hon'ble Punjab and Haryana High Court in the case of Krishna Kumari vs. State of Haryana & others in CWP No. 4303 of 2009 has been furnished with the written note by applicants' counsel. In reply to the

letter dated 9.4.2019 of BSNL to keep the compassionate appointment scheme in abeyance for three years in respect of the vacancies arising after 1.4.2018, it is stated in the written note that in this case death of applicant no.2's father was on 30.7.2009 for which such instruction will not apply to this OA.

7. Mr. K.C. Kanungo, learned counsel representing the BSNL respondents was heard. He objected to the submissions of Mr. Mohanty that the applicant's case was not considered since the impugned order dated 24.9.2016 (A/7) has disclosed the fact that the CHPC has considered the case of the applicant no.2 for CGA and has rejected it due to his score which is less than the minimum score of 55 specified in the circular at Annexure- R/2, R/3 and R/4. Mr. Kanungo also opposed the relief sought for in the OA on the ground that it is belated with no explanation for the delay. He cited the judgment in the case of Sajad Ahmed Mir (supra) in support of his arguments that belated request for CGA is to be rejected. In this regard, he pointed out that the legal heir certificate was obtained by the applicant in the year 2012 which was after about three years from the date of death of his father and that no case has been mentioned by the applicants in which a candidate with a score less than the applicant has been allowed CGA. Mr. Kanungo also reiterated the judgments in the Counter in support of the respondents' case. It was further submitted that the applicant's case has been rejected because of low merit which cannot be enhanced even if the circular dated 27.6.2007 is applied to his case and the decision will not be different. Mr. Kanungo argued that the judgment of Lucknow Bench of the Tribunal in the case of Sri Janki Prasad Mishra (supra), copy of which is at Annexure-R/6 of Counter, is fully applicable to this OA.

8. Having regard to the submissions by both the parties, the relevant questions to be answered in this OA are:

(i) Whether the request of the applicant no.2 for CGA can be treated as a belated request which is not admissible in view of the judgment in the case of Sajad Ahmed Mir (supra)?

(ii) Whether the applicants' contention about applicability of the circular dated 1.10.2014 (Annexure-R/3) to this case is sustainable?

9. Regarding the question at (i) above, the undisputed fact is that after death of the father of applicant no.2, application for CGA was filed on 26.9.2012 after a gap of about three years from the date of death. The respondents have relied on the judgment in the case of Sajad Ahmed Mir (supra) to argue that the request for CGA is belated and hence, it is liable to be rejected. It is noticed that the ground of delay in submission of the application for CGA has not been mentioned in the impugned order dated 24.9.2016 (A/7) as a ground for rejecting the request for CGA. This ground has been subsequently mentioned

in the Counter. Further, the OM dated 9.10.1998 (Annexure-R/1) of the DOPT provides for consideration of belated requests for CGA vide paragraph 8 of the said OM. The respondents have not followed the aforesaid procedure for examining belated requests for CGA since this matter was not referred to the Secretary of the concerned Ministry /Department for a final decision as revealed from order dated 24.9.2016.

10. In the case of Sajad Ahmed Mir (supra), relied on by the respondents, the application for CGA was filed in 1991 after a delay of more than four years from the date of death and the said application CGA was rejected and communicated to the applicant in that case in March, 1996. No action was taken after such communication of rejection. Then in the year 1999, the authorities communicated the decision again after which, the applicant for CGA in that case filed a writ petition before Hon'ble High Court, which was first dismissed. It was challenged in intra court appeal before Division Bench which allowed the appeal. The State authorities, being aggrieved by the order of the Division Bench, filed the appeal, in which it was held by Hon'ble Apex Court as under:-

“In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999.”

From above observations in the judgment, it is clear that the applicant in the cited case had delayed in challenging the decision of the authorities to reject his case in March, 1996 for which his first writ petition was dismissed. In the present OA, though there is delay on the part of the applicant no.2 to approach authorities for CGA, but there is no delay in challenging the rejection order dated 24.9.2016 (Annexure-A/7 of the OA) and this OA has been filed challenging the said decision within the time stipulated under law. Further, the respondents in this OA have not treated the request of the applicant no.2 for CGA as belated request as per the provisions in paragraph 8 of the DOPT OM dated 9.10.1998. Therefore, the facts of the present OA are different from the facts in the case of Sajad Ahmed Mir (supra) for which the cited judgment is distinguishable.

11. For the reasons mentioned in paragraphs 9 and 10 of this order, I am unable to agree with the contentions of the respondents' counsel that the

request of the present applicant was liable to be rejected on the ground of delay and answer the question at (i) of paragraph 8 in negative.

12. Regarding the question at (ii) of paragraph 8 of this order, the applicant contends that the circular dated 1.10.2014 (Annexure-R/3) of the BSNL, which has been relied on by the respondents while rejecting his request for CGA, will not be applicable to this case since it was issued after death of the applicant no.2's father. Respondents have countered the contention by citing the judgment of Hon'ble Apex Court in the case of Chakrawarti Singh (supra), copy of which is enclosed at Annexure-R/7 of the Counter. In that case, the scheme for CGA was modified during pendency of the application for CGA and the applicant in that case had claimed the benefit of the old scheme that was prevalent at the time of his father's death. On such a claim, Hon'ble Apex Court held in that case as under:-

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not 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 conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr.* (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

The law laid down in the above cited case is that a case for CGA is to be considered as per the scheme that is in force at the time of consideration and a candidate for CGA has no right to claim that his case be considered as per the scheme existing on the date of death.

13. The issue about applicability of the rules for CGA has also been considered by Three Judge Bench of Hon'ble Apex Court in the case of **N.C. Santhosh vs. State of Karnataka & Ors.** in Civil Appeal Nos. 9280-9281 of 2014 vide the judgment dated 4.3.2020, in which it is held as under:-

"19. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar*⁸ 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.”

14. In view of the above discussions and applying the settled position of law to the present OA, it is clear that the applicant no.2 in this OA cannot claim to be considered as per the guidelines on CGA as on the date of his father's death on 30.7.2009 and his request for CGA is to be considered as per the guidelines on CGA that are in force as on the date of consideration of such request. Reliance in the OA on the judgment of Hon'ble Apex Court in the case of **Canara Bank & another vs. M. Mahesh Kumar** reported in 2015 AIR SCW 3212 will be of no assistance to the applicants. However, it is noticed that the case of the applicant no.2 in this OA was considered by the CHPC on 20.07.2016 as stated in para 1 of the Counter. The respondents have also enclosed at Annexure-R/4 of the Counter the revised guidelines dated 21.4.2016 of BSNL on CGA which was in force at the time of consideration of the case of the applicant no.2. But instead of applying the revised guidelines dated 21.4.2016 for the case when it was considered by CHPC on 20.7.2016, the respondents have applied the guidelines dated 1.10.2014 (Annexure-R/3). The pleadings of the respondents have not disclosed the reason for not considering the case as per the revised guidelines of the BSNL at Annexure-R/4.

15. Learned counsel for the respondents have extensively relied on the order dated 4.7.2017 (Annexure-R/6) of Lucknow Bench of this Tribunal in OA No. 110/2012 while arguing his case. In that OA, the death of the applicant's father occurred on 3.2.2003 and his application for CGA was rejected vide order dated 9.1.2009 which was communicated to the applicant in 2011. The applicant in that OA cited the judgment of Hon'ble Apex Court in the case of **Canara Bank & Anr. vs. M. Mahesh Kumar** reported in 2015 (33) LCD 2058 to contend that the weightage system adopted by BSNL by circular dated 27.6.2007 should not have been applied to his case which should have been considered as per the guidelines in force on 2003 when his father died. After adjudicating the matter, such contention of the applicant in that OA was rejected in the cited order with the following observations:-

“16.3. The case of M. Mahesh Kumar (supra) in the present case is not applicable because in M. Mahesh Kumar's case the entire scheme was changed and right of compassionate appointment was vanished in the subsequent scheme. Therefore, the Hon'ble Supreme Court had ruled that the right, which was available in a particular scheme at the time of moving the application and death of the employee, cannot be scraped by a subsequent policy. But the case, in hand, this is not a situation. As per DoP&T scheme, compassionate appointment could only be granted to 5% of the vacancies meant for direct recruitment quota. Hence in view of the above, shorting out of candidates was necessary and if any scheme is formulated, which would apply equally to all the

applicants while considering their indigence and makes the process more transparent by eliminating arbitrariness in the system the same cannot be a ground to set aside the appointment already made in consonance with the scheme.”

Thus it was held that the action of the respondents to select the candidates for CGA by adopting the point system cannot be said to be change of scheme for CGA for which the judgment in *M. Mahesh Kumar (supra)* was not applicable. As discussed in paragraph 14 of this order, the settled position of law in this regard after the judgment dated 4.3.2020 in the case of *N.C. Santhosh (supra)* the guidelines and norms for CGA as on the date of consideration of the application will be applicable and the contention in the OA to consider the case of the applicant no.2 as per the guidelines at the time of his death is not tenable.

16. In the case of *Bishok Kumar Prusty (supra)* in OA No. 946 of 2013 vide order dated 15.6.2015 (Annexure-R/5 of the Counter), similar claim by the applicant to consider his request for CGA as per the guidelines in force at the time of death of the deceased employee and not to apply the guidelines dated 27.6.2007 regarding point system was rejected by the Tribunal.

17. As discussed in paragraph 13 and 14 of this order, the contention in the OA to consider the case of the applicant no.2 for CGA as per the guidelines existing on the date of death of his father cannot be sustained. At the same time, the respondents' action to consider the case of the applicant no.2 on 20.7.2016 in terms of the guidelines dated 1.10.2014 (Annexure-R/3) instead of the revised guidelines dated 21.4.2016 (Annexure-R/4) cannot also be sustained in view of the settled position of law laid down in the judgment in the case of *N.C. Santhosh (supra)*. In the circumstances, the question at (ii) of paragraph 8 of this order is answered in affirmative since the matter should have been decided as per the revised guidelines dated 21.4.2016.

18. In view of the above discussions, the applicant's case deserves to be reconsidered in accordance with the guidelines dated 21.4.2016 of BSNL (Annexure-R/4 of the Counter) or any other revised guidelines in force. There may be some change in the points to be assigned to the applicant no.2 as per the guidelines dated 21.4.2016 in which the norms for assigning points are different from the norms in the guidelines dated 1.10.2014 (Annexure-R/3). Hence, this OA is disposed of with a direction to the respondents to reconsider the case of the applicant no.2 for compassionate appointment in accordance with the guidelines of BSNL and DOPT which are in force on the date of such reconsideration and communicate the decision in the matter to the applicant no.2 by a speaking order within two months from the date of receipt of a copy

of this order. It is also made clear that if the respondents rely on the point system as per the extant guidelines, then the points assigned to the applicant no.2 will be communicated alongwith the aforesaid speaking order. It is further clarified that in case the decision has been taken by BSNL to keep the scheme of compassionate appointment, then above direction for reconsideration of the case of the applicant no.2 will be implemented within two months from the date from which the compassionate appointment scheme will be revived by the BSNL.

19. The OA is disposed of in terms of the directions in paragraph 18 of this order. There will be no order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath