

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.847 of 2015

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

Soumya Ranjan Mohanty, aged about 26 years, S/o. late Brajakishore Mohanty, R/o. Vill/PO-Sailo, Govindapur, PS-Govindapur, Dist-Cuttack.

...Applicant

VERSUS

1. Bharat Sanchar Nigam Ltd., represented through its Chairman-cum-Managing Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
2. Chief General Manager, Eastern Telecom Region, Telephone Kendra (8th Floor) P-10, New C.I.T.Road, Kolkata-700 073.
3. Chief General Manager, BSNL, Odisha Telecom Circle, Bhubaneswar, Dist-Khurda-751 009.
4. Assistant General Manager (HR&A), O/o. Chief General Manager, BSNL, Odisha Telecom Circle, Bhubaneswar, Dist-Khurda-751 009.

...Respondents

For the Applicant: Mr.S.Patra-I,Counsel

For the Respondents: Mr.S.B.Jena, Counsel

Reserved On : 20.08.2020

Order On : 09.09.2020

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:

- “(a) The orders dtd. 12.03.2015 (Annexure-A/7), dtd. 27.05.2015 (Annexures-A/8) and dtd. 7.8.2013 (Annexure-A/10) be quashed.
- (b) The Respondents be directed to give appointment to the applicant under Rehabilitation Assistance Scheme immediately.
- (c) Pass any other order/orders as would be deemed just and proper.”

2. Facts of the matter in brief are that father of the applicant, while working as Cleaner (Group-D) under the Respondent-BSNL died in harness on 31.03.1997, leaving behind his widow, a minor daughter and the present applicant. At the time of death of his father, the applicant was eight years old. On 16.05.2001, applicant's mother submitted a representation to the General Manager, Eastern Telecom Region, Calcutta, with a request to grant compassionate appointment for her. Again in the year, 2009, the mother of the applicant submitted a reminder-representation to Respondent No.2 reiterating her earlier request for compassionate appointment. These representations are

annexed to the OA at Annexure-A/3 series. It is stated in the OA that one officer was deputed by the respondents to inquire into the matter and he submitted the report recommending compassionate appointment due to the indigent conditions of the family. Since there was no progress, applicant's mother met the higher authorities and she was assured that steps would be taken when her turn comes. Thereafter in the year 2006, she informed the authorities to consider compassionate appointment for her son, the present applicant. The office of Respondent No.3 sent a communication to the office of Respondent No.2 vide letter dated 24.11.2009 (Annexure-A/5 of the OA), the contents of which are extracted hereunder:

“Sub: Latest status of the case of Smt. Susama Mohanty for appointment on Compassionate Ground.

Ref: No.CGM/ETC/E-2/Comp.App/09-10 Dated at Kolkata 21st Oct. 2009.

With reference to the letter cited on the subject, this is to intimate you that the case of Smt. Susama Mohanty for her appointment on Compassionate ground had been forwarded to this office vide your letter No.E-2/Employment/11/61 dated 9th Oct. 2003. In the meantime, a letter has been received from her for consideration of Compassionate appointment of his son Sri Soumyaranjan Mohanty in her place forwarded by D.G.M.(Mice)ETC, BBSR vide his letter No.ETC/DGM-BN/E-2/Death/BKM/2006-07 dtd. 11.10.2006. In response to that letter the following documents/Certificates have been called for from DGM(Mtce), ETC, BBSR vide this office letter of even no.RE/9-145/2003 Dated 16th Sept. 2009.

- 1. Synopsis Part-A & Part-B to be filled by the candidate properly and the same should be recommended by the Head of the office.*
- 2. WPS with Enquiry Report should be furnished by the GMTD, Cuttack as per the new guidelines. Action may please be taken to furnish this office the above required documents early for further necessary action”.*

3. Thereafter, the respondents considered the case of the applicant for compassionate appointment and rejected it vide order dated 12.03.2015 (Annexure-A/7 of the OA), which is impugned in this OA. The order dated 12.03.2015 communicated the following reasons for rejection of the case:-

“Sub: Compassionate Ground Appointment case of Sri Soumya Ranjan Mohanty:

Kindly refer to your letter addressed to the CGM, ETC BSNL, Kolkatta on the subject cited above. In this connection it is to intimate that the application of Sri Soumya Ranjan Mohanty, S/o. late Braja Kishore Mohanty, Ex-Cleaner, ETC, Cuttack for his appointment under Compassionate Ground along with other required documents have been forwarded by CGM, ER, BSNL, Kolkatta to the CGM, BSNL, Odisha Bhubaneswar vide his letter CGM/ETC/e-2/Comp.Appt/2010-11 dtd. 03.04.2010. On completion of Departmental pre formalities the request was place before the Circle High Power Committee of BSNL, Odisha Circle in February, 2013. The CHPC considered the request in terms of DoP&T guidelines in OM No.14014/6/1994-Estt(D) dtd. 09.10.1998 and BSNL guidelines vide its OM No.273-18/2015-Pers. IV dtd. 27.06.2007. Taking into account the assets, liabilities of the family of the deceased official, support arrangements, involved time period, long term commitment/responsibility, overall indigent condition and other required parameters, the Circle High Power

Committee decided that the case is not found fit for Compassionate Ground Appointment and rejected the request.

The above information has already been intimated to the CGM ETC, Kolkatta and DGM ETC(Mtce), Bhubaneswar for further communication to the applicant vide this office letter No.RE/9-Genl./2002/102 dtd. 07.08.2013."

4. Applicant has also challenged the communication dated 27.05.2015 (Annexure-A/8) informing the applicant that his case has been reviewed and it was found to be without merit. It was mentioned therein that the case was rejected earlier by the High Power Committee of BSNL, Odisha Circle as communicated vide letter dated 07.08.2013 through CGM, ETC, Kolkatta and again vide letter dated 12.03.2015 (Annexure-A/7). The applicant avers that they were not informed about the order dated 7.8.2013, copy of which was obtained by the applicant after being informed about it. The applicant has also challenged the rejection letter dated 07.08.2013 (Annexure-A/10). Having come to know about this, he requested the authorities to provide a copy of that letter which he received along with some other documents.

5. The grounds on which the applicant has based his claim are as follows:

- i) As per settled principles of law, compassionate appointment should be provided to tide over the sudden financial crisis caused to the family due to the death of the sole breadwinner. The Respondent-BSNL has delayed a decision in this case without any rhyme or reason and then rejected the request for compassionate appointment without even considering the enquiry report submitted earlier by Mr.Basu and as such, this action of the Respondent-BSNL amounts to arbitrary exercise of power and non-application of mind.
- ii) The Income Certificate issued by the competent authority would go to show that there is no agricultural land and the income of the family has been shown in the said certificate is Rs. 55, 540/- per annum out of pension, which is not the actual income to be considered for compassionate appointment. Therefore, it is claimed that the distressed condition of the family was evident.
- iii) At the time of death of his father, the applicant was eight years old and one unmarried daughter was there in the family. With much difficulties and after taking hand loan, the marriage of the daughter was solemnized in the year 2011 and the loan raised has stood as liability against the family as on date.

6. Opposing the prayer of the applicant, respondent-BSNL has filed a detailed counter, raising the point that the O.A. is liable to be dismissed as it is time barred and since the applicant has not filed any application with the reasons of delay for condoning the delay in filing the OA.

7. It has been submitted by the Respondents that after death of Braja Kishore Mohanty (applicant's father), while working under the establishment of CGM, ETR, Kolkata (respondent no.2), his wife applied for compassionate appointment on 08.10.1998. During the course of scrutiny, it was observed that some relevant documents, i.e., Death Certificate, Legal Heir Certificate, Income Certificate etc. were not furnished along with the application. Therefore, the CGM, ETR, Kolkata was requested by the CGM, Odisha Telecom Circle (respondent no.3) to arrange to furnish the said documents for consideration vide letter dated 29.07.2004 under intimation to the mother of the applicant. Subsequently in the year 2006, the mother of the applicant made a request for appointment of her son, the present applicant, on compassionate ground vide her letter dated nil which was forwarded by the DGM(ETC), Bhubaneswar to the respondent no.3 vide letter dated 11.10.2006 (Annexure-R/2 series of Counter), stating that her son who was a minor at the time of death of the employee, is a major in the meantime. The Office of DGM (Mtce), ETC, Bhubaneswar under the CGM, ETR, Kolkata was requested by the Odisha Telecom Circle vide letter dated 16.11.2009 to supply the recommended copy of the Application Form for the Compassionate Ground Appointment (in short CGA) with relevant documents and the weightage points along with Enquiry Report for further consideration.

8. It is stated in the Counter that after completion of necessary formalities, compassionate appointment case of the applicant along with other pending applications was placed before the Circle High Power Committee, Odisha Circle (in short CHPC) in February, 2013. The CHPC considered the same in the light of the DoP&T guidelines issued vide OM dated 09.10.1998 (Annexure-R/4) read with weightage point system introduced by BSNL vide Corporate Office letter No.273-18/2005-Pers. IV dated 27.06.2007 (Annexure-R/5 of the Counter) and taking into account the assets, liabilities of the deceased official, support arrangements, long term commitment, date of application, overall indigent condition and other required parameters, the request of the applicant for compassionate appointment was rejected by the CHPC. The decision was communicated to the CGM, ETR, Kolkata by the CGM, BSNL, Odisha Circle vide letter No.RE/9-Genl./2002/102 dated 07.08.2013 (Annexure-A/10 of the OA) for onward intimation to the applicant. Consequent upon this rejection, the applicant requested vide his letter dated 20.03.2015 to review his case, which was also rejected vide letter dated 27.05.2015 (Annexure-A/8 of the OA).

9. Justifying the decision, the respondents averred that an amount of Rs.75,321/- towards Death Terminal Benefits was immediately provided to the family of the deceased and basic family pension of Rs.1510 plus 50% DA upto

30.03.2004 and Rs.1237 + CDA per month w.e.f. 31.03.2004 (revised thereafter 0.01.2007) was also paid to the family. As per the report of the Inquiry Officer, the family of the deceased employee was living in their own house. According to respondents, BSNL introduced Weightage Point System vide letter No.273/18/2005-Pers.IV dated 27.06.2007 (R/5) in order to bring uniformity in assessment of indigent condition of the family for offering CGA under the policy guidelines of DOP&T OM dated 09.10.1998 (R/4). It has been submitted that as per Clause 2.0 (II) of the circular dated 27.06.2007, cases with net points below 55 are treated as non-indigent and are to be rejected by the Circles. Respondents have brought to the notice of this Tribunal the score card details in respect of the applicant as under:-

Sl.No.	Item	Basis on which points awarded	Points
1.	Dependents Weightage	(a)Total no. of dependent(s) – 3 Wife, daughter and son	20
2.	Family Pension and Terminal Benefits	(a)Amount of basic family pension Rs.1273 +(CDA 50%) and (b)Total terminal benefits of Rs.75321/-	20 + 10 = 30
3.	Years of Left out Service & Accommodation.	1)Years of left out service. 2)Family living in own house.	15 + 00 = 15
4.	Applicant's weightage	Others	0
5.	Negative Points	Belated appln> 10 years	35
Total Points: (1+2+3+4+5)			30

10. According to the Respondents, the applicant having scored 30 points, which was below 55 points, was not recommended by CHPC to BSNL Corporate Office for further consideration and therefore, his case was rejected by the CHPC meeting held in February, 2013. It was communicated to the respondent no.2 vide order dated 7.8.2013 (A/10) for informing the applicant. Following judgments have been cited in the Counter to support the respondents' case:-

- (i) State of J&K vs. Sajad Ahmed Mir, (2006) 5 SCC 766
- (ii) Haryana SEB vs. Krishna Devi, (2002) 10 SCC 246
- (iii) Eastern Coalfields Ltd. vs. Anil Badyakar, (2009) 13 SCC 112
- (iv) State of Gujarat & Ors. vs. Arvind Kumar Tiwari & Anr., CA No. 6468/2012
- (v) State Bank of India vs. Raj Kumar, (2010) 11 SCC 661
- (vi) MGB Gramin Bank vs. Chakrawarti Singh, Civil Appeal No. 6348 of 2013
- (vii) CAT (Ernakulam Bench) OA No. 758/2012 (Weightage system was upheld)
- (vii) Bishok Kumar Prusty vs. UOI & others in OA No. 946/2013
- (viii) CAT, Ahmedabad Bench Mr. H.C. Patel vs. UOI & others (OA No. 377/2008) in which the weightage system was upheld.

11. Respondent No.2 (CGM, ETR, Kolkata) has filed a separate counter, reiterating the facts and stating that the application for CGA has been filed after a long gap of 20 years. It is also stated that the applicant's father (deceased employee) was not absorbed in BSNL for which BSNL is not liable to provide CGA, which can be considered by Department of Telecommunication. It is noted that **the Counter filed by respondent no.2 is silent about the applicant's averment in the OA that he was not communicated the order dated 7.8.2013 (A/10).**

12. Applicant has filed a Rejoinder to the Counter, submitting that Annexure-A/4 of the O.A. would go to show that his mother had submitted an application for CGA on 08.10.1998, which was forwarded to the Recruiting Orissa Telecom Circle on 9.10.1993, i.e., after a gap of five years of submission of application. For the reasons best known, no action was taken to provide compassionate appointment in favour of his mother and as a result, she had to undergo mental agony and having suffered from various ailments, she became unfit for the job. This being the situation, applicant's mother requested the authorities to provide employment assistance for her son, the present applicant, in view of the distressed conditions of the family. According to the applicant, there has been no delay in submission of application for employment assistance on compassionate ground after the death of his father either in case of his mother or for himself and it was the respondents for whose laches and dealing with the matter in a lackadaisical manner, the delay has occurred, for which the applicant is in no way responsible. Therefore, it has been contended that the objection raised by the respondents in their counter-reply that the OA suffers from delay is out of place.

13. Applicant has brought to the notice of this Tribunal that during the course of time when the application for compassionate appointment was pending consideration by the Respondents, applications submitted by similarly placed persons were considered. In this respect, the applicant has given the instances of one Benudhar Das, who died on 20.07.1999, his son viz., Shri Kailash Das was provided compassionate appointment vide order dated 24.05.2003 (Annexure-A/13 to the rejoinder). Similarly, one Babaji Charan Padhi, who died in the year 1988, his son one Raghunath Padhi was appointed as a Peon on compassionate ground. In view of this, it has been submitted that the applicant has been discriminated against.

14. Applicant has pointed out in the Rejoinder that as per the settled principles of law, death and retiral benefits received by the family cannot be equated with the provision of compassionate appointment. As regards awarding of marks in the score card pursuant to W.P.S. guidelines dated 27.06.2007, it

has been contended by the applicant that his father's death having taken place on 31.03.1997, which was much prior to coming into force the aforesaid guidelines, the respondents could not have applied the provisions enshrined therein to his case to determine the level of indigent condition. Further, the applicant has pointed out that the judgments relied on by the respondents are not applicable to his case inasmuch as the facts and circumstances of those cases were different from the present OA. It has been submitted that the respondents have raised a technical objection to hide delay and laches on their part and to frustrate the objective of providing CGA, which does not stand the scrutiny of law.

15. Learned counsels for both the applicant and respondents were heard. They also filed written note of submissions on behalf of the applicant and Respondent No.2. In the written submissions filed by the applicant, besides reiterating the contentions made in the pleadings, it is stated that the claim of the applicant is a continuing cause of action. Besides, it has been pointed out that there being a number of laches on the part of the Respondents, the applicant has been discriminated. Applicant has relied on the decision of the Hon'ble High Court of Orissa reported in 2017 (2) ILR-CUT 386 (Dipti Ranjan Mishra vs. State of Orissa & Ors.) to fortify his submissions.

16. In the written note of submission filed on behalf of the Respondent No.2, it has been pointed out that the application for compassionate appointment was rejected by following the guidelines of DOPT and the BSNL. To the point urged by the applicant that cases of some persons have been considered for compassionate appointment, where in the employees had passed away after the death of his father, it is submitted that since those cases were more deserving cases, compassionate appointment was allowed to them. According to the Respondents, applicant's father having passed away since 23 years, the family has been able to manage till now and it would be against the ratio decided by the Hon'ble Apex Court in the case of. Sajad Ahmed Mir (supra) to consider his case for compassionate appointment after a more belated stage than what has been decided in State of J & K, cited supra.

17. I have considered the pleadings on record and submissions of the applicant as well as the respondents. The objection of the respondents that the OA is barred by limitation and it is a belated request for CGA, needs to be considered first. As stated in the Counter, after death of the applicant's father on 31.3.1997, his wife had applied for CGA on 8.10.1998, which was forwarded by respondent no.2 to respondent no.3 on 9.10.2003. Some additional documents were called for. But no decision was taken by the respondents till the wife of the deceased employee (applicant's mother) requested in 2006 to

consider the applicant for the CGA, which was forwarded by respondent no.2 to respondent no. 3 on 11.10.2006 for consideration. Then on 16.11.2009, some other documents alongwith the inquiry report were called for by respondent no.3 from Respondent No.2 and the proposal for applicant's CGA with all relevant documents reached the office of the respondent no.3 on 3.4.2010 (Annexure-R/3 of the Counter). The respondents took three more years thereafter to consider the case and rejected the case vide order dated 7.8.2013, which was communicated to Respondent no.2 for informing the applicant. But the applicant claims in para 4.4 and 5.4 of the OA that he was not given a copy of the order dated 7.8.2013 and this contention has not been contradicted by the respondents in their Counter. Finally, after the applicant's mother met respondent no.3 personally, she was informed by the order dated 12.3.2015 (Annexure-A/7 of the OA) that the case has been rejected by CHPC vide letter dated 7.8.2013, which was sent to the respondent no.2. The applicant sought for copy of the order dated 7.8.2013 as stated in para 4.4. of the OA. A representation dated 20.3.2015 to review the matter was rejected vide order dated 27.5.2015 (Annexure-A/8 of the OA). After receipt of the order dated 27.5.2015, the applicant has filed this OA on 6.11.2015.

18. From the chronology of the events as discussed above, it is clear that no decision was taken on the request of the applicant's mother till 2006 and when the applicant applied for CGA with all relevant documents on 1.10.2012, no decision was taken by the respondents till 7.8.2013. Further, rejection order dated 7.8.2013 (A/10) was not communicated to the applicant till he was informed by order dated 12.3.2015 (Annexure-A/7 of the OA). In the circumstances, for the purpose of delay under the Administrative Tribunals Act, 1985, the cause of action for the applicant would be considered to have arisen on 12.3.2015 and not from 7.8.2013 which was not communicated to the applicant as claimed by the applicant in the OA, which was not contradicted by respondents in their pleadings. Hence, the OA is not barred by limitation under the law.

19. Regarding the plea of the respondents that it was a belated request for CGA which was liable to be rejected as per the law laid by Hon'ble Apex Court in the judgments cited in the Counter, the admitted facts are that the wife of the deceased employee first applied for CGA in 1998 after death of her husband in 1997 and her application was forwarded by the Respondent No.2 to the Respondent No.3 after 5 years and no explanation has been furnished in the Counter for such delay. Further, at the time of death of the applicant's father, the applicant was a minor. Because of delay at the level of the respondents, mother of the applicant requested to consider the applicant for CGA in 2006,

when the applicant was a major. No decision could be taken on his application till 7.8.2013, which was not communicated to the applicant. The applicant was communicated the decision on 12.3.2015. **There is no document furnished by respondents in their pleadings to show that the applicant was communicated about rejection of his claim for CGA before 12.3.2015.** It is noticed that the matter was delayed due to exchange of letters between the Respondent No.2, under whose control the deceased employee was working and the Respondent No.3, under whose control the applicant sought for the benefit of CGA and no serious effort seems to have been made to avoid delay in the matter, considering the fact that the objective of the CGA is to provide urgent relief for the indigent conditions of the family of the deceased employee.

20. It is also noticed that the DOPT OM dated 9.10.1998 (Annexure-R/4 of the Counter) provides for careful consideration for belated requests for compassionate appointment. The said OM also provides that in such cases, the decision can be taken only at the level of the Secretary of the Department/Ministry concerned. There is no plea taken by the respondents that the applicant's case was sent to the Secretary of the Department as required by DOPT's OM dated 9.10.1998. Clearly, the case of the applicant was not dealt in the manner a case of belated request was required to be considered as per the said OM dated 9.10.1998 (R/4).

21. Further, in the impugned orders dated 7.8.2013 (Annexure-A/10), 12.3.2015 (Annexure-A/7) and 27.5.2015 (Annexure-A/8), the reason for rejecting the applicant's claim was mentioned to be on the basis of less weightage point and merit there is nothing in these orders to show that the claim was rejected as it was a belated request.

22. **For the reasons mentioned in paragraphs from 17 to 21 of this order and on consideration of the factual circumstances of the case, it is clear that the respondents' contention that the claim of the applicant deserves no consideration as it was a belated claim, does not have any force.**

23. The reason mentioned in the impugned orders and the Counter is that the applicant failed to secure minimum 55 marks or points as required under the BSNL circular dated 27.6.2007 (Annexure-R/5 of the Counter). From the points assessed for the applicant as stated in para 7 of the Counter and extracted at paragraph 9 of this order, 35 negative marks were awarded to the applicant considering it to be a belated request for more than 10 years. It is stated in the Counter that the applicant submitted his application for CGA on 1.10.2010 after 13 years of death of his father, for which it was considered to be delayed by more than 10 years as per the circular dated 27.6.2007 (R/5). But such

contention ignores the fact that applicant's mother had submitted her application for CGA in 1998 i.e. one year after death of applicant's father and no decision was taken on her application by the respondents till 2006, when she proposed the name of the applicant for the CGA. There has been a delay in submitting the application for the applicant from 2006 till 1.10.2010, which was mainly due to delay in correspondences between Respondent No.2 and Respondent No.3 to comply some defects in the application. It is not explained why the officer who was deputed by the authorities was not asked to guide the applicant for submission of the application in prescribed format with all relevant documents. However, even if the applicant is held responsible for delay from 2006 to 2010, but he cannot be held responsible for the delay from 1998 to 2006 and for the delay from 2010 till 12.3.2015 when the rejection order was finally communicated for the first time. As per the circular dated 27.6.2007 (Annexure-R/5), for delay up to 5 years from the date of death, no negative point is to be awarded. But the respondents have given 35 negative points by treating the case to be delayed by more than 10 years. **It is clear from the discussions above that treating the applicant's claim for CGA to be belated by more than 10 years is not sustainable in the eye of law. Hence, 35 negative marks were wrongly awarded to the applicant while assessing the merit point as per the BSNL circular dated 27.6.2007 (Annexure-R/5 of the Counter).**

24. The judgments cited by the respondents are factually distinguishable since the request for the claim for compassionate appointment in this OA cannot be considered to be belated for the reasons discussed above. It is obvious that the applicant's case has not received a fair consideration of the competent authority in terms of the approved scheme for compassionate appointment. There has been abnormal delay in consideration of the case by the respondents, for which, no explanation has been furnished by the respondents. Therefore, in the interest of justice, the applicant's case deserves reconsideration as per the approved scheme for compassionate appointment.

25. Accordingly, the impugned orders dated 12.3.2015 (Annexure-A/7), 27.5.2015 (Annexure-A/8) and 7.8.2013 (Annexure-A/10) are quashed and the respondents are directed to reconsider the applicant's claim for compassionate appointment in accordance with the law and keeping in mind the discussions in this order and communicate their decision in the matter to the applicant by a speaking and reasoned order within four months from the date of receipt of a copy of this order. The OA is accordingly allowed with no order as to the costs.

(Gokul Chandra Pati)
Member(A)