

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

O.A.211/00286/2017

Dated this Thursday the 05th day of March, 2020.

Coram: Dr.Bhagwan Sahai, Member (Administrative).

Suraj Ravikumar Dubey,
R/o.Jagjivankumar Nagar,
Near Hanuman Mandir,
Kharap Road,
Akola - 444003.

.. Applicant.

(By Advocate Shri Prashant Gode).

Versus

1. Union of India, through
its Secretary,
Department of Telecommunication,
Opposite Janpath Hotel Bhawan,
Harish Chand Mathur Lane,
Connaught Place, New Delhi-110001.

2. General Manager,
Assistant General Manager,
Bharat Sanchar Nigam Limited (BSNL),
New Cotton Market, Tilak Road,
Akola - 440 001.
Tah. & Dist. Akola.

.. Respondents.

(By Advocate Ms.Anjali Joshi).

Order reserved on : 21.02.2020

Order delivered on : 05.03.2020.

O R D E R

This O.A. has been filed by Shri Suraj Ravikumar Dubey, resident of Jagjivanram Nagar, Kharap Road, Akola seeking quashing and setting aside of communications dated 30.05.2017 and 19.07.2016 issued by Respondent No.2 in the O.A. i.e. Assistant General Manager (A), office of General Manager, B.S.N.L., Akola (Annex-A-1 and A-

2) and direction to the respondents to provide him employment on compassionate grounds.

2. Summarized relevant facts:

2(a). The applicant has stated that late Shri Ravikumar Babulal Dubey while in service working as Telecom Mechanic with General Manager, B.S.N.L., Akola died on 25.05.2003, leaving behind his wife and two sons. The applicant's mother (i.e. wife of late Shri Dubey), Smt.Seema Ravikumar Dubey applied to the respondents for employment on compassionate grounds but her application was rejected as weightage points secured by her were below the benchmark and she was illiterate.

2(b). The respondents have notified changed procedure for compassionate appointments dated 01.10.2014. The applicant was minor at the time of death of his father and on attaining majority on 27.04.2012, he submitted his application on 29.10.2013 for employment on compassionate grounds (received by the respondents on 31.10.2013).

2(c). In April, 2014 officers from office of Respondent No.2 visited the applicant's family, recorded statements of his family members and carried out physical verification of their house, etc. As per letter dated 25.01.2016 Respondent No.2 informed the applicant about rejection of his application (Annex-A-5) stating that a High Power

Committee at BSNL Corporate Office in its meeting on 24.06.2015 had considered his case and in view of the assets and liabilities of family of the deceased late Shri Dubey, involved time period, long term commitments/responsibilities and overall assessment of condition of the family, did not agree to offer compassionate appointment and recommended for rejection of his case in accordance with new instructions of DOPT and the recommendation of the High Power Committee has been approved by the competent authority.

2(d). The applicant claims that in an identical case, wife of late Shri Balchandra Lonarkar has been provided employment on compassionate grounds in 2008 but his case has been rejected. Thereafter the applicant also submitted a legal notice to Respondent No.2 dated 06.04.2017 claiming that his case had not been considered properly by the respondents. However, as per letter dated 03.05.2017 from the Respondent No.2, the applicant has been informed about rejection of his case. Therefore, this O.A. has been filed.

3. Contentions of the parties:

The applicant and his counsel heard on 21.02.2020 contend that -

3(a). the weightage points secured by the applicant were 68 (more than benchmark score of

55), therefore, he ought to have been appointed on compassionate grounds but he has been discriminated against by reducing his score to 33 in an arbitrary manner and without application of mind;

3(b). as mentioned in reply of the respondent no.2 dated 03.05.2017, his score of 68 weightage points was reduced to 33 I.e. below the benchmark score because of which the High Power Committee in its meeting dated 24.06.2016 rejected his case and he was accordingly informed by letter dated 19.07.2016. Reduction of his score to 33 was illegal and discriminatory;

3(c). as per letter from AGM, BSNL, Akola to AGM (DE/RECTT.) office of CGM, Maharashtra Circle, Mumbai dated 20.04.2016, the request of the applicant was not treated as belated as per Circle Office instructions in letter dated 25.03.2016. Therefore, reduction of his score to 33 was illegal and discriminatory, hence it should be set aside by allowing this O.A.

In their reply and during arguments of their counsel on 21.02.2020, the respondents contend that -

3(d). late Shri Ravikumar Dubey expired on 25.05.2003. Then on 29.11.2003, his illiterate wife applied for employment on compassionate grounds as her two sons were minor but her

application was rejected on 17.01.2007 as the family of late Shri Ravikumar Dubey had received sufficient terminal benefits and she was also getting family pension;

3(e). after attaining majority, the present applicant submitted his request for employment on compassionate grounds but it was rejected by the High Power Committee on 24.06.2016 and accordingly he was replied on 19.07.2016;

3(f). the contention of the applicant that although his weightage points score was of 68 i.e. more than the benchmark score of 55 but even then his case has been rejected without mentioning any reason is not correct. He is under wrong impression that he is eligible for appointment. The Respondent No.2 is not appointing authority to decide eligibility of candidates for appointment on compassionate grounds and the applicant is also aware of this position as he himself has enclosed a copy of the BSNL guidelines on compassionate ground appointments (change of procedure) dated 01.10.2014;

3(g). the application of Smt.Seema Dubey was examined by the Circle level High Power Committee in its meeting on 27.03.2006 and 30.09.2006 and was rejected on merit. No appeal was filed by Smt.Seema Dubey against the rejection of her

application. The application of the present applicant was received on 31.10.2013 and, therefore, his case was considered as fresh case by the Circle level High Power Committee in its meeting on 24.06.2015 and was rejected because of his weightage points being below 55. Therefore, the O.A. should be rejected;

3(h). there is no substance in reliance of the applicant on the letter dated 20.04.2016 from Respondent No.2 to AGM office of CGM, Telecom Maharashtra Circle, Mumbai enclosing therewith revised weightage points of the applicant by not treating his case as belated as per instructions of Circle Office dated 31.03.2016. As per letter dated 09.06.2016 from the Circle Office to Respondent No.2, it was informed that there is no change in the weightage points of the applicant i.e. 33 and letter of 24.03.2016 from the Circle Office should be ignored. In view of this, the earlier letter from Respondent No.2 to the Circle Office dated 23.03.2016 and the reply of Respondent No.2 dated 20.04.2016 are of no relevance and, therefore, the O.A. has no merit and it should be dismissed.

4. Analysis and conclusions:

4(a). I have considered the contents of the O.A., its annexes and rejoinder. I have also

considered the reply submitted by the respondents and the arguments advanced by both the counsels. Based on such consideration, the case is analysed as follows:

4(b). The undisputed facts in this case are these:

- (i). death of late Shri Ravikumar Babulal Dubey took place on 25.05.2003;
- (ii). then submission of application of his wife i.e. Smt.Seema Dubey for appointment on compassionate grounds and its rejection by the High Power Committee in its meetings on 27.03.2016 and 30.09.2006 because of her illiteracy and low weightage points scored by her;
- (iii). no appeal was filed against rejection of her application;
- (iv). inspite of rejection of his mother's application for compassionate appointment on 30.09.2006, the applicant again applied for his own appointment on compassionate grounds. This was second such application of a dependent of late Shri Ravikumar B. Dubey. Therefore, the application of the present applicant was treated as a fresh case by the respondents and after its due consideration, it was rejected by the High Power Committee on 24.06.2016 and he was accordingly informed by letter dated 19.07.2016; and

(v). in response to the legal notice sent by the applicant, the respondents again replied to him on 03.05.2017 stating that the High Power Committee had not recommended his case for appointment on compassionate grounds because his weightage points score was only 33 as against the benchmark requirement of 55 and the recommendation of the High Power Committee was approved by the competent authority of the respondents at the Corporate Office.

4(c). The main issue contested by the applicant is that while considering his case, his weightage points score of 68 points was wrongly reduced to 33. This contention is based on a communication from the Circle Office to General Manager, BSNL, Akola dated 23.03.2006, in response to which the General Manager, Akola recommended his case without factoring into the delay. However, the office of Chief General Manager, Maharashtra Telecom Circle, Mumbai dated 09.06.2016 asked to ignore that letter of 23.03.2006. Therefore, the basis of claim of the applicant about his score of 68 points has lost relevance.

4(d). The instructions of the respondents dated 27.06.2007 on assigning weightage average points to applicants for assessment of indigent condition included items for positive points and negative

points, clearly stipulating that for belated request, if the delay was 10 years and above, 35 negative points are to be given. Therefore, out of total score of 68 points of the applicant, the respondents deducted 35 points and thereby his score became only 33 points. This was correctly done by the respondents as per the instructions on the subject which are uniformly applied to all the candidates. Thus there is no discrimination against him done by the respondents.

4(e). Since death of late Shri Ravikumar B. Dubey took place on 25.05.2003 and the applicant submitted his application on 29.10.2013, there was also delay of more than 10 years.

4(f). Since appointment on compassionate grounds envisages providing such employment to only one dependent of a deceased employee, in the present case the respondents had already considered the request of Smt. Seema Dubey, whose case was rejected because of her illiteracy and low score on weightage points. But in spite of that the respondents again entertained the application of the present applicant, and the High Power Committee evaluated it as per instructions on weightage points system and because of his score being only 33, his case came to be rejected. This was done correctly.

4(g). In the caselaw of Bombay High Court cited by the applicant (Ritesh Vilasrao Gotmare Vs. State of Maharashtra in Writ Petition No.6322/2012 dated 01.07.2013), the view taken was that for appointment on compassionate grounds an applicant's case should be considered once he becomes major. In this case, as the applicant himself applied after becoming major and his case was duly considered by the respondents.

4(h). In the context of this case, it is appropriate to cite the Supreme Court decision in **Local Administration Department & Anr. Vs. M. Sevanayagam @ Kumaravelu, Civil Appeal No.2206/2006** holding that the objective of compassionate appointment is to provide immediate succor to the penurious condition of the deceased family as a result of death of the bread winner, an appointment made many years after the death of the employee or without due consideration of financial resources available to his / her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. Since death of the applicant's father was 2003, by now his case is totally stale, hence

deserves no consideration.

4(i). In view of these facts and analysis, the action taken by the respondents is fully justified so I find no merit in the present O.A. and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
06/03/2020

