

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 050/00063/2021**

Order reserved on : 02nd March, 2021

Order Pronounced on : 05th March, 2021

C O R A M

HON'BLE MR. SUNIL KUMAR SINHA, MEMBER [A]



1. Smt. Raj Kumari Devi, Widow of Late Laxmi Rajak.
2. Chandan Kumar, Son of Late Laxmi Rajak.
Both residents of Moghalpura, P.S. Khaje-kalan, Patna City in the town and District – Patna.

..... Applicants.

By Advocate :- Shri G. Bose & Shri Vikash Jha.

-Versus-

1. The Union of India through the Chief General Manager (Telecom), Bharat Sanchar Nigam Limited (Government of India Enterprises), Bihar Circle, Patna – 800001.
2. The General Manager (Telecom), Bharat Sanchar Nigam Limited (Government of India Enterprises), Bihar Circle, Patna – 800001.
3. The Deputy General manager (Administration), Bharat Sanchar Nigam Limited (Government of India Enterprises), Bihar Circle, Patna – 800001.
4. The Assistant General Manager (Establishment), Bharat Sanchar Nigam Limited (Government of India Enterprises), Bihar Circle, Patna – 800001.
5. The Assistant Director, Telecom (Recruitment), Bharat Sanchar Nigam Limited (Government of India Enterprises), Bihar Circle, Patna – 800001.

..... Respondents.

By Advocate :- Shri Rohit Mishra.

O R D E R (O R A L)

Per Sunil Kr Sinha, M(A) :- The O.A. has been filed assailing the order of BSNL, Bihar Circle, dated 19.06.2019 (Annexure – A/1) directing the applicant to submit application for compassionate appointment in proper proforma and conveying that the case of applicant will be considered when the current ban on compassionate

appointment in BSNL for three years is withdrawn. The applicant had approached the respondents for reconsideration of his case for compassionate appointment in light of the Order passed by this Tribunal earlier on 23.04.2019 in O.A.323/2017. The operating portion of the Tribunal's order is reproduced as under:-



"I am, therefore, not inclined to interfere with the impugned order. Since no cap (on the number of times a person's case can be considered) is reported to be prescribed, and since there is also no time limit informed about the period upto which a person can apply for such appointment, the applicants will be at liberty to apply again with current details, if they are still living in indigent conditions. The respondent authorities will consider their case under the rules, against the vacancies available for such compassionate appointment in the year of application if, following their weightage point system, there are no other persons more eligible than the applicants."

2. The applicant, in pursuance of the above Order, had approached the respondent authorities with a fresh representation. However, the respondents have passed the impugned order which reads as under:-

“सेवा में,
श्री चंदन कुमार,
पुत्र स्व. लक्ष्मी रजक,
मोहल्ला—मोगलपुरा पुलिस चौकी,
पो—पटना सिटी, थाना—खाजेकला,
जिला— पटना—800008

जून 19, 2019

पत्रांक: रिक्रूटमेन्ट / रिलक्स—04 / 2011 / 28

विषय : माननीय न्यायाल कैट बैंच, पटना के केश संख्या—OA/050/00323/17 में पारित आदेश दिनांक 23.04.2019 के आदेश के आलोक में आपके आवेदन दिनांक 13.05.2019 के संबंध में।

उपरोक्त विषय संधित आपके आवेदन इस कार्यालय में दिनांक 13.05.2019 को प्राप्त माननीय न्यायालय, कैट, पटना के मुकदमा संख्या—OA/050/00323/17 में आदेश दिनांक 23.04.2019 के आलोक में जो आपके अनुकंपा पर विभाग (बीएसएनएल) में बहाली हेतु आपने जो पुनः केवल आवेदन के रूप में दिया गया है के संदर्भ में कहना है कि वह उचित प्रोफार्म में नहीं है तथा उचित माध्यम के द्वारा भी प्रेषित नहीं है। उचित प्रोफार्म में नये सिरे से वर्तमान परिस्थिति को दर्शाते हुए आप अपना अनुकंपा बहाली प्रपत्र तीन प्रति में उचित संलग्न के साथ उचित माध्यम के द्वारा जल्द से जल्द इस कार्यालय में प्रस्तुत करें।

साथ ही इस संधि में कहना है कि अभी एक आदेश बीएसएनएल मुख्यालय, नई दिल्ली के पत्र संख्या—273-18/2013/CGA/Estt. IV दिनांक 09.04.2019 के द्वारा प्राप्त हुई है जिसमें अनुकंपा के आधार पर नियुक्ति को तीन वर्षों तक रोक लगा दिया गया है। श्री चंदन कुमार के आवेदन पत्र पर बीएसएनएल मुख्यालय, नई दिल्ली के द्वारा जब अनुकंपा के आधार पर नियुक्ति के संबंध में रोक हटा लिया जाएगा तब उनके आवेदन पर उस समय जो बीएसएनएल विभाग का जो नियम होगा उसके अनुसार ही नियुक्ति की प्रक्रिया पर विचार किया जाएगा।

वर्तमान में आप अपना आवेदन उपर दिए निदेश के अनुरूप उचित माध्यम के द्वारा इस कार्यालय में प्रेषित कर सकते हैं।

यह पत्र सक्षम पदाधिकारी के द्वारा अनुमोदित है।

ह० /—

सहायक महाप्रबंधक (स्थापना)"

3. The background facts of the case were considered in detail in O.A.323/2017. Briefly, late Laxmi Rajak, husband of applicant No.1 and father of applicant No.2 in the instant O.A. was Group 'D' employee under BSNL, Bihar Circle, Patna and he died in harness on 05.06.2006. The applicants made several representations before the respondents for compassionate appointment between 2006 and 2016. The respondents rejected the applicant's case on 17.01.2017 on the ground that the applicant had secured only 41 points under the weightage point system whereas the minimum score required for consideration was 55 points. The applicants then approached the Tribunal with O.A.No.323/2017 assailing the order of the respondents. The Tribunal disposed of the O.A. with the order as mentioned above.





4. The respondents contested the O.A. and filed written statement. The respondents in their written statement have stated that request of applicant for compassionate appointment has already been considered once in January, 2017. The respondents have pleaded that during the hearing in O.A.323/2017, they could not bring to the notice of Tribunal the circular of the Department dated 27.06.2007 (Annexure – R/1), which mentions at para-4 that Circle High Power Committee (CHPC) will consider the application for appointment on compassionate ground as per weightage point system. The minutes of the CHPC will be sent to corporate office along with supporting documents for consideration. In case, applicant gets less than 55 points, the family will be treated as not living in indigent condition and request for compassionate appointment will be rejected by the Circle. As a result, Tribunal gave liberty to the applicant to apply again and respondents were directed to consider the case of the applicant under the Rules against the available vacancies for compassionate appointment in the year of application. Meanwhile, the compassionate appointments have been kept in abeyance for three years vide order dated 09.04.2019. Since, the Tribunal has directed to consider the case of the applicant as per prevailing rules, the Department's Policy guidelines issued vide circular dated 27.06.2007 and the circular dated 09.04.2019 to keep compassionate appointment in abeyance for three years will have to be taken into consideration. The respondents also mentioned that the application submitted by the

applicant in pursuance of the Tribunal's direction was not in proper proforma and he was given reminder to do the needful in the matter.

5. After admission, the learned counsels of both the side were heard.

6. The learned counsel for applicant Shri G. Bose stressed that the father of applicant No.2 had died in harness in June, 2006 with twelve years of service left. Since 2006 till 2016, the applicants made several representations without any decision by the respondents. Finally they rejected the case of the applicant for compassionate appointment on 17.01.2017 on the grounds of less weightage point. The applicant moved to the Tribunal with O.A.323/2017 which was disposed of with direction to the respondents to consider the case of applicant if the applicant submits fresh application. Learned counsel submitted that the respondents were required to comply with the order of the Tribunal as they have not challenged it in any forum. The decision of the BSNL to keep the compassionate appointment in abeyance for three years and review the policy in accordance with the prevailing situation after three years creates uncertainty about the compliance of the order of Tribunal. He further submitted that the respondents could even now consider the case of the applicant and if on consideration, the applicant is found suitable for compassionate appointment, he could be appointed as and when the ban on compassionate appointment is withdrawn. Otherwise the case of applicant will hang in balance with complete uncertainty.

7. Learned counsel for respondents Shri Rohit Mishra mentioned that the Tribunal's order dated 23.04.2019 is that the



respondent authorities will consider the applicant's case under the Rules and against the vacancies available for such compassionate appointment in the year of application following their weightage point system and if there are no other persons more eligible than applicant. He submitted that as per the prevailing Rules, compassionate appointment cannot be ordered in light of the scheme for compassionate appointment having been kept in abeyance. He mentioned that financial condition of the BSNL was not very good and fresh compassionate appointment are likely to be taken up only after three years that too if it is found feasible after review. The applicants case cannot be considered in isolation as it may lead to complication with more person approaching the respondents with similar request.

8. Having heard the submission and gone through the pleadings of both sides and also material on record, I find that the main issue in this O.A. relates to the compliance of the Tribunal's order dated 23.04.2019.

9. The learned counsel for respondents has argued that BSNL Policy on compassionate appointment of June, 2007 was not brought to the notice of the Tribunal. Had that been done, the Tribunal may not have issued such direction. Respondents have not challenged the order in any forum. It is for the respondents to ensure compliance with the Tribunal's order and to consider the case of applicant under the Rules. The respondents are required to make fresh assessment of the applicant's case for Compassionate Appointment. Further, the BSNL has vide order dated 09.04.2019 decided to keep



compassionate appointment in abeyance for three years. The order does not prevent the respondents from considering the case of applicant. Also, the learned counsel for respondents has raised the issue of other candidates making example of the case of the applicant. Since the case of applicant will be considered by BSNL in compliance of the Order of the Tribunal, there can be no comparison with other cases. In view of the above discussion, it is felt appropriate that applicant's case be considered afresh in compliance of the order of Tribunal.



10. In view of above discussion, it is clear that while the BSNL order dated 09.04.2019 puts the compassionate ground appointment in abeyance, it does not restrain the respondents from considering a case. Also, an executive order cannot prevail over the Tribunal's decision. Hence, the respondents are directed to consider the applicant's case for compassionate appointment afresh in accordance with the existing rules within three months and if he meets requisite parameters issue appointment offer or defer the issuance of appointment offer till the conducive situation arises. The applicant will render all necessary assistance to the respondents in providing the application in prescribed proforma and related details.

11. O.A. is disposed of as ordered above. No costs.

Sd/-

[Sunil Kumar Sinha]
Member [A]

*sk*s/-