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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.946 of 2013
Cuttack, this the 15th day of June, 2015

B.K. Prusty

.....Applicant

-Versus-

Union of India & Others

.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*


(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 946 OF 2013

Cuttack the 15th day of June, 2013

CORAM

HON'BLE MR. R.C. MISRA, MEMBER (A)

Bishok Kumar Prusty,
aged about 36 years,
S/o. Late Sridhar Prusty,
At-Sarapada, P.O.-Bodhagan,
Via-Nishchintakoili, Dist-Cuttack.

...Applicants

(Advocate: M/s. J.K. Lenka, P.K. Behera)

VERSUS

Union of India Represented through

1. Secretary,
(Department of Telecommunication),
Sanchar Bhavan,
20, Ashok road,
New Delhi-110001.
2. Chief General Manager of
Telecommunication(C.G.M.T.),
Odisha Circle, Bhubaneswar,
Dist-Khurda.
3. General Manager (H.R. & Admn.),
Office of the C.G.M.T. BSNL,
Odisha Circle, Bhubaneswar,
Dist-Khurda.

... Respondents

(Advocate: Mr. S. Behera, SCGPC)
Mr. K. C. Kanungo (An. 2 & 3)

ORDER

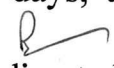
R.C. MISRA, MEMBER (A)

One Bishok Kumar Prusty has filed this Original Application under Section 19 of the Administrative Tribunal's Act, 1986 making a prayer to the Tribunal that orders of the respondents dated 24.08.2012 and dated 18.11.2013 communicating rejection of his application for compassionate appointment may be quashed. Additionally, direction may be issued to the respondents to appoint the

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applicant to a Class-IV post on compassionate grounds. A further prayer has been made to declare the guidelines dated 27.06.2007 as prospective.

2. In short, the facts of this O.A are that the father of the applicant expired on 31.8.2002, when he was working as Junior Technical Officer in the Bharat Sanchar Nigam Ltd, Bhubaneswar. The applicant submitted his application for compassionate appointment in prescribed format on 14.10.2003 to the concerned authorities. As per the legal heir certificate, applicant is the second son of his late father, and other legal heirs had recorded their no objection to the appointment of applicant on compassionate ground. Although the BSNL authorities gave instructions for conducting inquiry into the alleged indigent condition of applicant in the year 2004, many years thereafter, by a letter dated 24.08.2012, applicant was informed that the Circle High Power Committee did not find him fit for appointment on compassionate ground. Challenging this order, the applicant approached the Tribunal by filing O.A. No.534/2013, and the Tribunal vide an order dated 08.08.2013 disposed of the O.A. by granting liberty to the applicant to make a comprehensive representation to the next higher authority within a period of fifteen days, and upon receiving such a representation, the respondent authority ^{was}  directed to dispose of the same by a reasoned and speaking order, communicating the same to the applicant within a period of thirty days. Accordingly, applicant made a representation on 26.08.2013 which was considered by the respondents who by a communication dated 29.11.2013 rejected the claim of the applicant. The grievance of the applicant arises from out of this order of rejection.

3. The respondents, BSNL in their counter affidavit have admitted that applicant made an application for compassionate appointment in the year 2003.



On the direction from Office of CGM, BSNL, the SDE (HRD and Legal), O/O the GMTD, BSNL conducted inquiry into the facts relating to the claim made by applicant. The inquiry report was submitted on 12.03.2004. The report of inquiry was placed before the Circle High Power Committee of BSNL on 24.03.2010, ^{on} completion of all departmental formalities along with other applications. The CHPC considered the case of the applicant on the basis of the inquiry report in terms of DOP&T guidelines contained in O.M. No.14014/94/6/Estt.(D) dated 09.10.1998 and BSNL guidelines in the letter dated 27.06.2007. In the counter affidavit it is submitted that the whole object of the compassionate appointment scheme is to enable a family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution. Therefore, compassionate appointment should be conferred only within a reasonable period of time. In this respect in the counter affidavit, the judgment of the Apex Court in the matter ^{of} Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambedkar & Ors. (JT 1994 (2) SC 183) has been cited. The Hon'ble Supreme Court in this judgment has laid down that the Courts and Tribunals cannot give direction for appointment of a person on compassionate ground but can merely direct consideration of the claim for such an appointment.

4. An important contention in the counter affidavit is that in order to bring uniformity in assessment of indigent condition of the family, weightage point system was ^{introduced} ~~issued~~ by BSNL as per letter No. 272-18/2005-Pers-IV dated 27.06.2007. As per the laid down criteria, the Circle High Power Committee considers those cases as prima facie eligible, where 55 or more net points are scored by an applicant for compassionate appointment. In the case of the present applicant, the financial condition, landed property and other related situation could

fetch him a score of 38 points against the bench mark of 55 points. The family of the deceased employee was getting monthly basic pension of Rs. 3,850 + DA, and death terminal benefits amounting to Rs. 5, 45,528/- were also paid to the family. At the time of inquiry, the overall financial condition of the family was good, since the elder brother of the applicant was already employed. In view of these facts, the Circle High Power Committee did not consider the case of the applicant as a fit case of compassionate appointment. The fact of rejection of the application was intimated to the applicant vide a letter dated 24.08.2012.

5. The counter affidavit contains an elaborate defence of the weightage point system. It cites that the Ahmedabad Bench of the Tribunal in OA. No. 377 of 2008, came to the finding that the new point system of evaluation of 2007 adopted by BSNL is more appropriate. The Respondents in their counter affidavit have also cited the judgment of the Hon'ble Apex Court in C.A.No. 6348 of 2013 in MGB Gramin Bank Vs Chakrawarti Singh, in defence of their stand. Other important judgments mentioned in the counter affidavit are pertaining to State of Gujrat and Ors. Vs Arvind Kumar Tiwari and another (CA No. 6468 of 2012), and State Bank of India Vs. Raj Kumar, (2010), 11 SCC 661. The respondents have finally asserted in the counter affidavit that rejection of the applicant's case has been just and proper without any arbitrariness, whatsoever. The guidelines adopted for assessing eligibility of the applicant for compassionate appointment are justified and therefore, this O.A. having no legs to stand upon should be dismissed; so contend the Respondents.

6. Having heard the Ld. Counsel for both sides, I have perused the records. The matter under adjudication relates to appointment on compassionate ground, and the specific issue being agitated by the applicant is that the guidelines



issued in 2007 ^{on} application of weightage point are prospective in nature, and should not have been invoked in the case of the applicant whose father expired in the year 2002. The respondents have stated that applicant scored 38 points as against the minimum required 55 points in order to be eligible for consideration for compassionate appointment by the CHPC. On the other hand, the applicant's case ^{is that} ^{he} should not have been considered under the yardstick of weightage point which came into force in the year 2007, whereas the cause of action for the applicant arose in the year 2002. This specific issue is for adjudication in the Tribunal.

7. On this issue, the Ld. Counsel for the applicant in his written note of submission argues that the decision of the Circle High Power Committee not to give compassionate appointment to the applicant relying upon the 27.06.2007 guidelines is discriminatory, since in similar cases, compassionate appointment was awarded on the basis of earlier guidelines. The applicant sought for information about other cases under the RTI, but such information was not supplied. The argument is that rejection of the case of the applicant, relying on the new guidelines dated 27.06.2007 is illegal, arbitrary and discriminatory. However, the details of alleged appointment in other similar cases are not available before this Tribunal for adjudication. If the information was denied under RTI, opportunity was available before the applicant to approach the appellate forum in the RTI. Since the appointments given in other cases are not the subject matter of adjudication in the Tribunal, I will confine my focus to the issue in consideration insofar as the present applicant is considered.

8. In the present case, applicant's father expired in 2002, enquiry into the application for compassionate appointment was conducted in 2004, and the case was considered in the Circle High Power Committee in the year 2010. The new

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guidelines about weightage system came into force in 2007. Therefore, the contention of the Ld. Counsel for the applicant is that there cannot be retrospective application of 2007 guidelines.

9. Before dealing with the points raised by the Ld. Counsel for the respondents, an observation is called for on the facts of this case. The application for compassionate appointment was given in 2003, and inquiry was conducted in 2014. But Circle High Power Committee considered the matter in the year 2010. The fact of the rejection of the application was communicated in 2012. There has been, therefore, an unconscionable delay in considering the application. The respondents cannot satisfactorily explain this delay. It is well known that compassionate appointment is awarded as an immediate succor^{u p} to the family in distress. Therefore, applications in this regard are to be urgently considered. However, in the instance that has come to light, the delay has been unusual, and has defeated the objective of the scheme. There has been either carelessness or callousness in this regard. I am constraint^{ed p} to observe that the respondents authorities must set their house in order and in future take prompt steps for consideration of compassionate appointment cases by following the true spirit of the scheme.

10. The Ld. Counsel for respondents has contended in his written notes of submission that in the Circle High Power Committee, all pending applications were taken up for consideration in 2010, and that is why the guidelines of 2007 which were in force at that time were applied not only to the applicant's case, but also other cases considered. Therefore, the contention that guidelines are prospective in nature does not hold good at all. The applicant has failed to cite a single case that will prove the allegation of discrimination. The guidelines of the

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year 2007 are transparent since marking system has been introduced so as to avoid any arbitrariness and nepotism. The applicant's family condition and financial status were subjected to scrutiny and he could fetch only 38 marks, against minimum bench mark score of 55. The order of rejection was, therefore, issued on the basis of objective criteria.

11. A similar matter was decided by the Ahmedabad Bench of the Tribunal in O.A. No. 377/2008, in which it was viewed as follows:

“.....the present scheme only brings a qualitative change in the weightage system which is objective and more appropriate assessment. It takes away arbitrary power of concerned official. It brings in a yardstick for measurement of indigency.”

12. The Tribunal in this O.A. has gone further to observe that “the weightage system has proven itself to be valid and will eliminate the element of corruption and nepotism”.

13. In MBG Gramin Bank Vs Chakrawarti Singh, C.A.No. 6348 of 2013 the Hon'ble Apex Court held the following view:

“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. the death of the incumbent on the post. In State Bank of India and another Vs Raj Kumar, this Court held that in such a situation the case under the new Scheme has to be considered.”

13. While considering this issue, the Hon'ble Apex Court concluded that appointment on compassionate ground is not a matter of right of the applicant; he does not become automatically eligible for appointment. His case has to be considered in the light of provisions of the scheme, and in this view of the matter, the application has to be examined and evaluated in terms of the scheme that is

applicable at the time of such examination. In the case of State Bank of India and another Vs. Raj Kumar (CA No. 1641 of 2010) the Hon'ble Apex Court has given the following important observation:

“As none of the applicants under the scheme has a vested right, the scheme i.e. 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.....As compassionate appointment is a concession and not a right the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capability and availability of posts”.

14. In respect of this decision it is worthwhile to note that the Hon'ble Apex Court in various judgment laid down the law that compassionate appointment cannot be claimed as a matter of right. Such an application has to be considered in the light of provisions made in the scheme. In view of the judgment of the Hon'ble Apex Court the claim made by the applicant in this O.A. that his application should be considered in the light of the earlier scheme, and not the new scheme loses its force. If the guidelines of the year 2007 were in force when the CHPC considered the case in 2010, those are the yardsticks by which the application has to be judged. The guidelines dated 27.06.2007 of the BSNL introduced a weightage point system in order to bring about uniformity in assessment of the indigent condition of the applicant. The application of these guidelines to cases considered by CHPC in 2010 is justified and it cannot be faulted with on the ground that the cause of action in case of the applicant had arisen prior to 2007.

15. The applicant in this O.A. has not challenged the score awarded by CHPC; nor has he prayed for revaluation. On the other hand, he has contended that the guidelines of 2007 may not be applied in his case, since his father expired in



2002, and he submitted his application in 2003. In short, he has objected to retrospective application of the guidelines. However, such contention becomes unsustainable in view of the discussion on this issue, and the law laid down by the Hon'ble Apex Court.

16. It is however a fact that in this case the application filed in 2003 was considered by CHPC in 2010. This militates against the mandate that respondent authorities should consider the compassionate appointment cases with due promptitude. This aspect has been discussed earlier in this order and it is hoped that respondent authorities would consider such matters with expeditiousness. However, this does not alter the conclusion in this case, since I do not find anything wrong or irregular in the fact that respondents applied the 2007 guidelines while considering the application for compassionate appointment.

17. In the result, the O.A. being devoid of merit is dismissed, with no order as to costs.


(R.C. MISRA)
MEMBER(A)