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## **CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH**

**ORIGINAL APPLICATION NO.73/2010**

**Date of Decision: 15/03/2011**

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

Mahendra Kumar Sahel S/o Late Shri Virendra Kumar Sahel, aged 31 years, R/o near Songiri Well, Bikaner. Applicant's father was working on the post of TTA, GMTD (O), B.S.N.L., Bikaner.

**.... Applicant**

**For Applicant: Mr. B.L. Purohit, Advocate.**

### **VERSUS**

1. Bharat Sanchar Nigam Limited, a Government of India Enterprises, Corporate Office-102-B, Statesman House, New Delhi, through General Manager.
2. The Chief General Manager, Telecommunication Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.
3. General Manager, Telecom District Bikaner.
4. Divisional Engineer (Admn.), O/o G.M.T.D., Bikaner.
5. Circle High Power Committee, Headed by Director (HRD), Bharat Sanchar Nigam Limited, Corporate Office-102-B, Statesman House, New Delhi.

**.... Respondents.**

**For Respondents: Mr. Vijay Bishnoi, Advocate.**

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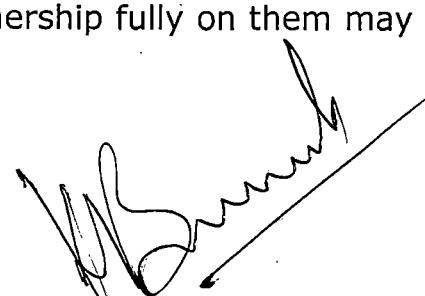
### **ORDER [ PER Dr. K.B. SURESH, MEMBER (J) ]**

The applicant is claiming compassionate appointment following the demise of his father, Shri Virendra Kumar, who was discharged from Air Force Service and after discharge joined the civil service of Bharat Sanchar Nigam Limited. The applicant's father passed away on 16.11.2005 and left behind his widow Urmila Devi, sons Mahendra Kumar and Yogendra Kumar and daughter Kumari



Hemlata. Yogendra Kumar is mentally retarded. The applicant applied for compassionate appointment on 06.07.2006. On 09.10.1998, the DoPT issued instructions on compassionate appointment detailing object, eligibility, procedure and vacancies. Apparently, the case of the applicant was recommended by the Divisional Engineer, but apparently, it was rejected on the ground that on 27.06.2007, a new system was brought in being the weightage point system, which stipulates that candidates who obtained marks less than 55 shall only be treated as *prima facie* eligible for consideration.

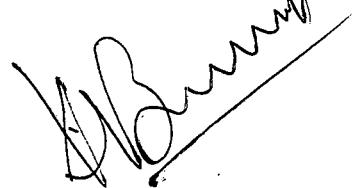
2. Vide Annexure-A/1, the respondents have rejected the application of the applicant for compassionate appointment on the ground that the applicant could secure only 37 marks for the reason that his family is residing in his own house having three rooms at ground floor and three rooms at first floor at Bikaner and the terminal benefits paid was Rs.7,47,593/-, and family pension at the rate of Rs.4150+D.A. is being paid to the family. The applicant would contend that the house is a family house, wherein civil disputes relating to its exclusive ownership is pending and, therefore, in spite of fact that the grand-father of the deceased had acquired the 20x40 plot, and constructed a house which for the purpose of reconstruction was changed into the name of the applicant's father but following which there was pending a dispute between them and other legal heirs of the grand-father and in the circumstances attributing effect on ownership fully on them may not be justified.



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3. The respondents have filed detailed reply and have produced for inspection the methodology of weightage point system, which apparently is a rational and logical way for determining the interse merit of competing candidates with the only exception of not providing for negative aspects. They would say that the Committee vide letter dated 03.04.2008 (Annexure-A/1) found that the applicant is getting only 37 marks. They would also say that they had taken the status of the family as it was on the date of death of the ex-employee and, therefore, the contention of the applicant that consideration was without nexus in time is not correct. The applicant would point out that the respondents have not elaborated on the status of the applicant at the time of his father's demise, as also the yardstick they had applied for determining the same. But the respondent would say that the recommendation of the Divisional Engineer even though may have been timely is not binding on the Circle High Power Committee and of the facts required had been taken into consideration which the applicant contests.

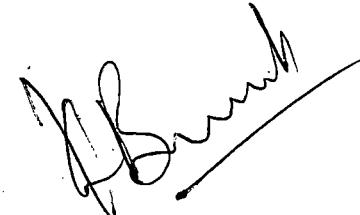
4. The applicant filed a detailed rejoinder wherein he explained that his application was on 06.07.2006 following the demise of his father on 06.11.2005 and, therefore, consideration ought to have been made on application on the basis of instructions contained in the DoPT letter dated 09.10.1998. But the weightage point system was introduced on the basis of letter dated 27.06.2007, much later, therefore, the application of the applicant for compassionate appointment was illegally rejected on the point of weightage point system which was newly introduced.



5. The applicant had also filed an application for condonation of the delay on the ground that the rejection order was challenged by him in a Writ Petition No.10162/2009 but later on at the time of hearing it was withdrawn with liberty to avail alternate remedy. Therefore, the question of condonation of delay does not arise at all and it cannot be said to be a delay as he was pursuing a legal remedy which was withdrawn with liberty to approach the appropriate forum. On 16.12.2010, this Tribunal had allowed this Misc. Application No.58/2010 and condoned the delay in filing of the O.A.

6. The respondents relies on the judgment of the Hon'ble Apex Court in Punjab National Bank and others vs. Ashwini Kumar Taneja reported in (2004) 7 SCC 265, which stipulates that retiral benefits received by the heirs had to be held to be considered in assessing financial hardship, and the Hon'ble Supreme Court, however, held that the order would not stand in the way of the party respondents' case being considered sympathetically under any scheme or by any administrative decision in accordance with law. They also relies on the judgment of the Hon'ble Apex Court in General Manager (D&PB) and others vs. Kunti Tiwari and another reported in (2004) 7 SCC 271, which provides that terminal benefits received, and other movable and immovable property possessed, can also be taken into account in the assessment of a candidate.

7. The applicant challenged this view of the respondents and contested that the said judgment may not be applicable in this case as the immovable property ascribed to him is not without other



claimants also and which as it is a civil claim will take decades to conclude. The property in question belonged to the grand-father of the deceased and, therefore, apparently a claim of multiple legal heirs of the deceased's grand-father's property and, therefore, the rights emanating for the applicant are now under a cloud. He laments that had an opportunity been given to him of hearing on the letter of 1998, they could have easily cleared this matter, but under the revised scheme which they feels have no nexus of his claim the Committee is to merely to consider after a prescribing points to each of the candidates.

8. The applicant would rely on the judgment of the Hon'ble Apex Court in Maharani Devi and another vs. Union of India and others reported in (2009) 7 SCC 295, which stipulates that rules and orders prevalent at the time of employee's death or the rules or orders provided at the time of making application for compassionate appointment is the one, which is to be applied for consideration of compassionate appointment. Thus, they would say that the weightage point system may not be relevant to their claim which have to relate to the time of his claim as death of applicant's father in the year 2005 and the application in the year 2006, and the revised scheme come into existence only on 2007. Therefore, on a similar case the Hon'ble Apex Court had remitted the matter back for an appropriate decision on the rule thus formulated by it. The applicant also relies on this judgment of the Hon'ble Apex Court in Chairman, Railway Board and others vs. C.R. Rangadhamaiyah and others reported in (1997) 6 SCC 623, wherein the Hon'ble Apex Court held that retrospective amendment affecting vested or

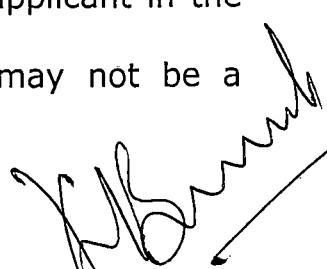


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accrued rights of government employee are invalid and the situation as is existence on the concerned dates are to be applied. Thus, Hon'ble Apex Court held that even though retrospective operation is specifically brought in; the vested right or accrued right cannot be diminished as it is unreasonable, arbitrary, discriminatory and violative of rights granted in Articles 14 & 16 of the Constitution of India.

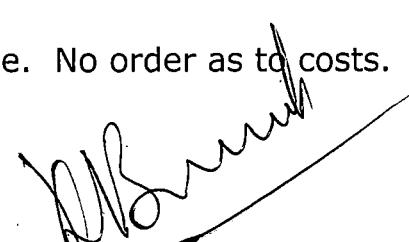
9. The applicant also relies on the judgment of the Hon'ble Apex Court in Mahabir Vegetable Oils (P) Ltd. vs. State of Harayana and others reported in (2006) 3 SCC 620, wherein the Hon'ble Apex Court held that a subordinate legislation can be given retrospective effect if the power on this behalf is contained in the main act itself but statute cannot be construed to have a retrospective operation, therefore, held that there cannot be any such retrospective operation. It further held that doctrine of promissory estoppel is applicable even in the field of legislative exercise. Thus, the applicant would claim that he is entitled to be considered under the 1998 rules which was prevalent at the time of the death of his father as also the application for compassionate appointment and the revised rule had not come into existence at all at that time.

10. Cumulatively, it means that even though weightage point system is a logical methodology to determine of merits interse but at the relevant time the rules that was applicable was 1998 instructions besides the Circle High Power Committee had not considered the fact of diminishment of right of the applicant in the immovable property is of same value. While it may not be a



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contrary point to decide at the present time, in view of the circumstances, the Committee ought to have granted a suitable diminishment of value of such property taken in cognizance that the apparent proof of rival claimants and the rightful proportion thereupon could have been arrived at by arithmeticale determination. The burden of a mentally retarded brother also ought to have been suitably compensated by an appropriate methodology in the consideration by the Circle High Power Committee even if the weightage system was to be used. The rules exits so as to provide justice but also to ensure that harmony is maintained in society. Since, the Hon'ble Apex Court has already decided that what is relevant is the rules which are in existence at the relevant time and not subsequent regulations brought in and also have enacted the methodology to be adopted in such Circumstances, therefore, Annexure-A/1 is hereby quashed and the respondents are directed to take a fresh look in the applicant's case within a period of three months next under the 1998 rules after giving an opportunity of being heard to the applicant. O.A. is allowed to the extent indicated as above. No order as to costs.



[Dr. K.B. SURESH]  
JUDICIAL MEMBER

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