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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.255/2011

Jodhpur this the 1st day of January, 2013

CORAM :

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Mohisin Khan S/o Late Shri Shokat Ali
aged about 20 years, resident of Ward No. 16,
Behind Makdinath School, Village and PO
Ratangarh District Churu - 331022
his late father Shri Shokat Ali
was last employed as Telephone Mechanic
in Telephone Exchange, BSNL,
Bigga District Churu.

.....Applicant

[Through Mr. J.K.Mishra]

Versus

1. Bharat Sanchar Nigam Limited through its Chairman & Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi - 110 001.
2. Chief General Manager Telecom, BSNL, Rajasthan Telecom Circle, Jaipur.
3. General Manager Telecom District, Churu, BSNL, District Churu.

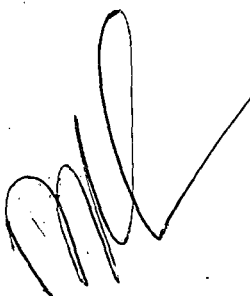
.....Respondents

[By Mr. S.K.Mathur, Advocate]

ORDER

The applicant has in this application filed under Section 19 of the Administrative Tribunals Act, has prayed for the following relief(s):-

"(1) The impugned order dt. 19.2.2011 (Annexure A-1) may be declared illegal and the same may be quashed. The respondents may be directed to award due marks for residing in rented house and consider the candidature of

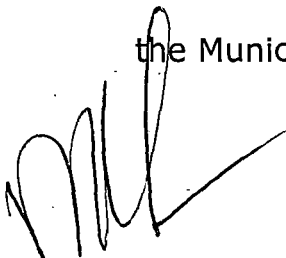


the applicant for appointment on compassionate grounds as per rules and allow all consequential benefits.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

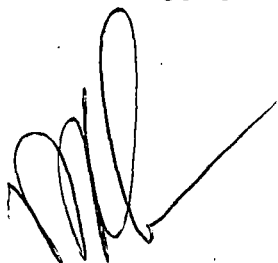
(iii) That the costs of this application may be awarded."

2. The case of the applicant is that he happens to be the eldest son of the deceased employee Shokat Ali, who was in employment of the BSNL as Telephone Mechanic at Bigga in District Churu, and who expired while in service on 6.5.2007 having been stricken with Cancer. The applicant who attained the majority on 20.6.2009 and has studied up to Class VIII submitted an application along with the requisite documents for his appointment on compassionate grounds on 22.08.2009. His application was rejected vide the letter dated 7.4.2011 on the ground that he had obtained only 51 marks which are less than the minimum requirement of 55 marks. The communication, under reference at Annexure [A/1], also indicates the full details of the deceased employee and mentions inter alia that the applicant is residing in a house of his own and further that the family has been provided terminal benefits amounting to Rs. 7,33,820/- besides a family pension of Rs. 3368/- per month. This has been challenged by the applicant on the ground that the house under consideration belongs to one Shri Baboo Khan who has rented it out on a monthly rent to the mother of the applicant's mother Firoza Bano wife of deceased employee Shokat Ali. The claim the applicant has also been supported by a certificate from one Yusuf Ali, a Member of the Municipality.



3. The applicant contends that he has been awarded Nil points as he is living in his own accommodation. In the case it is admitted that he is living in rented accommodation he stands to secure another 10 points which would entitle him for appointment as then he would have scored 61, well above the cut off points of 55.

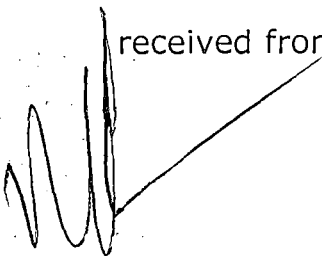
4. The respondents have strongly denied the contentions of the applicant and have submitted that the due procedures prescribed have been observed. It has been further submitted in their counter reply that the family pension of the mother of the applicant has since been enhanced to Rs. 7390/- per month, above Rs. 4250/- and as such, no marks could be awarded on this point. As regards the ownership of the house the respondents have relied upon the electricity bill, the municipal tax receipts and the telephone bills to indicate that the deceased employee had been residing in his own house. It has been further submitted that at the time of death, the deceased employee has resided in his ancestral house and this has nowhere been controverted by the applicant. The applicant has filed a rejoinder wherein he has submitted that the deceased employee has not paid any tax like Urban Development Tax and that there is no document to prove that the house under consideration belong to the deceased employee. It has been further submitted that the owners of the house are only having a Kachha Patta as proof of possession. Electricity and water bills are no indication of the ownership of the house.



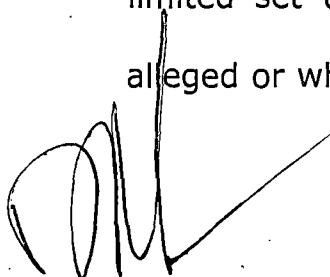
5. During the course of the arguments, the learned counsels for the parties followed their written submissions. The learned counsel for the respondents was at pains to emphasize that the difference between the revised amount and the amount paid has also been paid in the tune of Rs. 94,462/- to the wife of the deceased BSNL employee and the terminal benefits paid to the applicant thus works out to be Rs. 8, 28,282/- and not 7, 33,820/- as stated by the applicant. It is also wrong to say that the family of the deceased do not have their own house and it has not been controverted by the applicant anywhere in writing.

6. The sole issue in fact to be decided here is that whether the applicant resides in his own house or in a rented house. In this regard I find that the respondents have undertaken painstaking search and have submitted the electricity bill which bears-out the name of the deceased employee Shokat Ali S/o Feizu Khan behind Makdinath School, Ratangarh, and likewise the telephone bill which also supports the respondents in respect of customer ID 1014986698. The respondents have further made a query from the Municipal Office, Ratangarh in respect of which the reply dated 4.11.2011 was submitted wherein, the name of Shri Shokat Ali S/o Shri Feizu Khan as owner of the house is being mentioned.

7. On the other hand, the applicant has relied upon an affidavit filed by the so called house owner Shri Babu Khan and a letter received from the Councilor Yusuf Ali dated 12.8.2009. Here, I find that



the report of the Administrative Officer, Ratangarh Municipality is authoritative and reliable on the point of ownership while telephone and electricity bills can only be construed as a proof of residence. This indicates the possession in the Register of the Municipal Tax payers. On the other hand, the so called Babu Khan has not been able to produce even a receipt of evidence in support of his affidavit. It is too fair that he could have produced the sale-deed or the deed of participation or the copy of the Khatian whereby he has acquired the title of the land which he has not been able to produce. Hence, I am least inclined to give any credence to this claim of ownership by Babu Khan. I also find merit in the arguments of the learned counsel for the respondents that the pension of the mother of the applicant has been revised to Rs. 7,390/- and has been paid arrears amounting to Rs. 94,462/- . Therefore, the total amount paid come to Rs. 8, 28,282/- which would also detract the claim of the applicant. At the end, one cannot lose sight of the fact that compassionate appointment is not provided as a matter of right but only as a matter of special dispensation. It is subject to a host of limitations and is governed by the doctrine of competitive indigence where a less indigent case must yield place to a more indigent case. I entirely endorse the arguments of the learned counsel for the respondents that no procedural irregularities have been committed or alleged. In fact the Department has devised a system of judging comparative indigence by putting in place a fairly objective and robust system. Interference by the Courts can be made only under a limited set up of circumstances wherein some mala fide have been alleged or wherein there has been substantiate allegation of violation of



statutes. I find nothing of these taking place in the instant case. In fact, the Hon'ble Supreme Court has seriously constrained the hands of the Tribunal in interference or in passing directives to the effect of making appointments. The case of **Life Insurance Corporation of India Vs. Miss Asha R.L. Ambedkar** reported in JT 1994 (2) SC 183 is quite revealing :-

"10. Of late, this court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in Merchant of Venice:

"The quality of mercy is not strain'd'

It droppeth, as the gentle rain from heaven

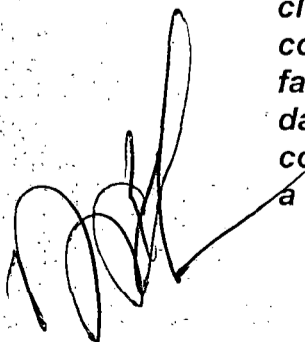
Upon the place beneath it is twice bless'd;

It blesseth him that gives, and him that takes;"

11. *These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.*

12. xxxxxxxxxxxx

13. *The Courts should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law. Disregardful of law, however, hard the case ay be, it should never be done. In the very case, itself, there re Regulations and Instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance*



Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered."

8. As such, the OA is disallowed leaving the parties to bear their own costs.



(B K Sinha)

Administrative Member

jrm