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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.402/Jodhpur/2011.

Date of decision: 10.10.2012

CORAM :

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

Naveen Gehlot S/o Late Shri Ghanshyam Gehlot aged about 24 years, resident of Moti Chowk, Khapta, Malio-Ki-Gali, Jodhpur, his late father was last employed on the post of Telephone Mechanic, BSNL, Manji-Ka-Hatha, Paota, Jodhpur.

Applicant

[By Mr. J.K.Mishra, Advocate]

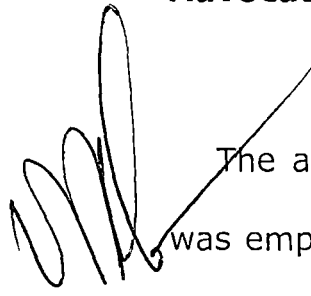
Versus

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. The Assistant Director (Pers.IV), BSNL, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janapth, New Delhi.
3. The Chief General Manager Telecommunication, Bharat Sanchar Nigam Limited (A Govt. of India Enterprises) Rajasthan Circle, Sardar Patel Marg, Jaipur-08.

Respondents

[By Mr. N.M.Lodha, Sr.Adv., alongwith Mr. Anil Bhandari, Advocate.]

ORDER

 The applicant is the elder son of Shri Ghanshyam Gehlot, who was employed on the post of Telephone Mechanic, Bharat Sanchar Nigam Limited, Manji-ka-Hatha, Paota, Jodhpur, and died in

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harness on 07.02.2007. The deceased employee has been survived by his widow, two sons, one daughter and dependant mother with the younger son and the daughter being minors. The elder son of the deceased employee, that being the applicant, applied for appointment on compassionate grounds before the respondents which has been rejected vide order dated 17.07.2009 (Annex.A/1) of the respondents on the ground that the applicant can self sustain in view of his age and education. Further, while rejecting consideration the Committee was also of the view that the widow, if so desired, may apply afresh for her own compassionate appointment as only the widow can look after the whole family in a better way and she is also the first preference with respect to provisions of the scheme for the purpose vide letter No. 268-300/2008-Pers-IV dated 05..06.2009. The applicant being aggrieved with the decision in his case has moved this O.A.

2. The learned counsel for the applicant has submitted that the applicant being the elder son is eligible for compassionate appointment under the Scheme vide Annex.A/5 bearing No. 14014/6/94-Estt(D) Dated 09.10.1998; it is the choice of the family as to who would apply for the same which cannot be dictated by the respondent-department. The case of the applicant has not been considered at all. The prayer of the applicant and has been dismissed with this directive in the alternative. It is imperative, therefore, that his case should be considered at the first instance. The only issue for consideration here is that whether the application of the applicant should be considered or whether

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the widow of the deceased employee should be made to apply for the post. The learned counsel for the respondents further submits that the directive of the Department that the mother may apply has been issued only because the widow seeking compassionate appointment has a weightage of 15 points whereas the son, daughter, brother, sister applying have none. Therefore, the widow has a better chance of qualifying and getting appointment as compared to the son. The learned counsel for the respondents was at pains to emphasize that the competent authority has taken this decision in the interest of the family and not on account of any mala fide or bias operating.

3. Having considered the pleadings of the parties and the arguments of the respective parties, it is an admitted fact that the son is also eligible for appointment under compassionate ground quota; however, the widow of the deceased employee has a weightage of 15 points which the son does not have. The relevant provision of the Scheme in this regard is as hereunder :-

"2. TO WHOM APPLICABLE:

To a Dependent family member -

(A) of a Government servant who -

(a) dies while in service (including death by suicide); or

(b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or



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(B) of a member of the Armed Forces who -

(a) dies during service; or

(b) is killed in action; or

(c) is medically boarded out and is unfit for civil employment

Note "Dependent Family Member" means:

(a) spouse; or

(b) son (including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or

--who was wholly dependent on the Government servant / member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be."

4. It is further transpires that where the widow of the deceased employee does not wish to apply for any reason and it is a considered decision of the family that the son may apply, then, what is exactly provided in the Scheme cannot be taken away by consideration of better probability of getting a job by the department. The application of the son of the deceased Government employee will be considered as per the eligibility criteria provided under Clauses 5 and 7. The Department has put in place an elaborate system of scoring and assigning of marks by the Circle Relaxation Committee of the Department. The applicant has to wait for a call on that. Hence, the Department may not insist on the widow of the deceased employee applying under the compassionate ground appointment.

5. In consideration of the above facts, the O.A. is allowed with the following directives :-

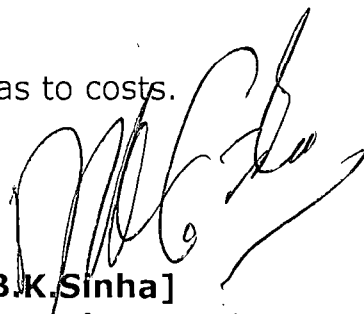
(i) The impugned order dated 17th July, 2009 at Annex.A/1 is quashed as being bad in law.

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(ii) The respondents are directed to consider the case of the applicant afresh as per the provisions of the Scheme and the Guidelines on the subject.

6. There shall be no order as to costs.



**[B.K. Sinha]
Administrative Member**

Jrm