

V/S

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.315/2012

Date of decision: 13.08.2012

CORAM:

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

Chetan Singh S/o Late Shri Lakhu Ram, by caste Rawat, aged about 23 years, R/o 293-Anand Nagar, Sardarsamand Road, Pali-Marwar, District Pali (Rajasthan).

: Applicant

Mr. Bharat Singh, counsel for applicant.

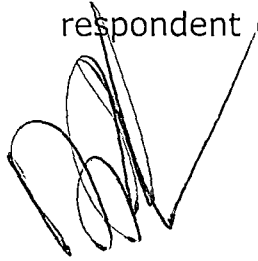
Versus

1. Union of India through Secretary, Ministry of Tele Communication, Sanchar Bhawan New Delhi.
2. Chief Managing Director, Bharat Sanchar Nigam Ltd., Rajasthan Tele Communication Division, Sarda Patel Marg, C-Scheme, Jaipur.
3. General Manager, Bharat Sanchar Nigam Ltd., Pali-Marwar.
4. Assistant General Manager, Bharat Sanchar Nigam Ltd., Pali-Marwar.

.....Respondents


ORDER (ORAL)

Heard the Learned Counsel for the applicant, Chetan Singh. The case of the applicant is that his father, late Lackhu Ram, expired in harness on 22.07.2006, while he was posted as Telecom Mechanic at BSNL Pali. The applicant applied for appointment on compassionate grounds on 12.01.2007. The officers of the respondent department visited his house in his home village, took



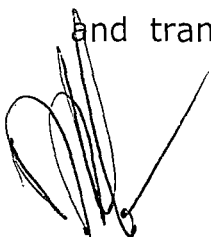
2/6
a stock of his movable in immovable property and recommended his appointment on 30.01.2008. The family of the applicant furnished the income certificate and other certificates required. The case of the applicant is that he was awarded 63 points on the scoring system and that it was recommended to the High Power Committee at Jaipur, which has rejected the application for appointment on compassionate grounds made by the applicant vide its order dated 29.05.2012. The applicant had been accordingly informed vide the communication dated 29.05.2012 [Annexure-A/2]. The Learned Counsel for the applicant argues that the recommendations of the respondents No.2 & 3 have been made on the basis of actual visit to the village by authority of the BSNL, and they have found that the applicant fit for recommendation. As such, it far outweighs the objection of the High Power Committee, which is not seized with the ground reality. The Lower Authority has also recommended a score of 63 for the applicant taking into account the various factors on which such decisions are made. As such, the Learned Counsel for the applicant argued for declaration of the impugned orders at Annexure-A/1 & A/2 as bad under law.

2. Having heard the Learned Counsel for the applicant and considered the pleadings of the applicant available on record, the key question that emerges is what is the scope of intervention in the cases of compassionate appointments and to what extent this Tribunal may/should go. It needs to clarify at the very beginning that compassionate appointment does not accrue as a right to the applicant following the death of the deceased employee. To the



contrary, it is a special dispensation given to the family of the applicant to survive the shock of death. In a country like ours, where the labour market is rather constricted and a job is definitely on the premium be it in the private/public sectors. This scheme puts a number of fetters on the applicant. In the first place, the appointment is limited to 5% of vacancies arises in the total cadre of strength of the category under question. In the second place, the applicant has to establish his indigence in a continued manner. In the third place, the degree of indigence required has to be competitive. A person may be indigent but there may be others who are more indigent than him. In the fourth place, the scheme is governed by the Doctrine of Immediacy i.e. it is a special dispensation made to enable the family of the deceased employee to tide over the crisis. Where the family of the deceased employee is able to survive without the appointment for a number of years, it shall be implied that it has no need for the employment, as it can survive without the same. Thus, a claim may be established and continue so for a period of 3 years while another family may get the appointment within months of the bereavement. It is normal for such appointments to be considered for a period of three years. Last though not the least, the applicant must be eligible for appointment subject to relaxations permitted by the Ministry.

3. In the instant case, one finds that the death of the deceased employee had occurred in the year 2007 and the case has been under consideration ever since. In order to introduce objectivity and transparency into the system, now almost all Departments



V/8

including the respondent's have introduced a self-yielding matrix, which indicates the final score of the applicant. The applicant here was scored 63 points but his claim was not considered, despite the recommendation, this means that the case of the applicant could not pass muster at the Regional level. Moreover, five years have elapsed and the claim of the applicant is also hit by the Doctrine of immediacy, as discussed earlier. Hence, no useful purpose will be served by prolonging the case further. The applicant has not been able to make out any case whatsoever to establish that the impugned orders of the respondents are bad under law. It will only leave to further harassment of the applicant from which he must be protected. In this regard, it is apt to quote from a decided case namely :

"The Hon'ble Supreme Court have clearly held in their judgment dated Feb 28 1995 in the case of *Life Insurance Corporation of India Vs. Ms. Asha Ramchandra Ambedkar and others in JT 1994(2) SC 183*, that the High Courts and Administrative Tribunals are precluded from giving directions for appointment of a person compassionate grounds but can merely direct consideration of the claim for such appointment. The Hon'ble Supreme Court has held in this regard:

"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.



2/3

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The Courts should endeavour to find out whether particular cases in which sympathetic consideration are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there the 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."

4. In sub and substance, the OA is disallowed without costs.


[B.K. Sinha]

Administrative Member

TSS