

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.470/2013**

Friday, this the 16th day of January, 2015

C O R A M :

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

Vimala.R
W/o.(late) Johnson P
(Ex-Telecom Mechanic/
Bharat Sanchar Nigam Limited/
Kanjiramkulam Telephone Exchange
of Trivandrum Secondary Switching Area)
Residing at: "JV Niwas"
Venkulam, Nellimoodu P.O
Trivandrum District, Pin – 695 524

(By Advocate Mr.T.C.Govindaswamy)

- Applicant

Versus

1. The Chairman-cum-Managing Director
Bharat Sanchar Nigam Ltd
New Delhi – 110 001
2. The Chief General Manager (Telecom)
Bharat Sanchar Nigam Limited
Kerala Telecommunications
Thiruvananthapuram – 695 033
3. The Principal General Manager (Telecom)
Bharat Sanchar Nigam Limited
BSNL Bhavan, Uppalam Road
Thiruvananthapuram – 695 001

- Respondents

(By Advocate Mr.V Santharam)

This Original Application having been heard on 01st December, 2014
this Tribunal on 16.01.2015 delivered the following :-



ORDER**BY HON'BLE MR.U SARATHCHANDRAN, JUDICIAL MEMBER**

Applicant's husband Shri.Johnson P while working as a Telecom Mechanic under respondent no.3 passed away on 04.05.2006. Applicant's daughter Irine Soumya.J.V applied for appointment on compassionate grounds. But her request was rejected vide Annexure A-3 stating that on consideration of her request she could not obtain net 55 points. When a representation was made to the Minister for Communication and Information Technology, it was informed that the family of the ex-employee was not found to be living in indigent condition. It was further informed that if the widow wishes to apply for her own appointment on compassionate grounds, such request can be considered afresh. Accordingly, the applicant herself submitted an application for appointment on compassionate grounds on 16.02.2009 vide Annexure A-5 which was rejected vide Annexure A-1 communication dated 23.07.2012. Applicant again submitted Annexure A-6 request by herself and Annexure A-7 representation through the local Legislator. She had also approached the Member of Parliament vide Annexure A-8 for taking steps to appoint her on compassionate grounds. She states that initially when she applied for appointment on compassionate grounds for her daughter, there was no provision for assigning points for assessing the indigent circumstances of the family. At that time, only the general condition of the family was taken into consideration. But the applicant's daughter's request was turned down by invoking the weightage points. At the time when the applicant had applied for compassionate appointment for herself the weightage points were used in a mechanical manner without proper verification of the facts and circumstances. On account of the family situation her elder daughter had to be married to a boy of her own choice who is working on daily wages in the State Government and had consequently become a dependent of the applicant, adding misery to the applicant's family



expenses and leading to debts. The other daughter also is remaining unemployed and waiting to be married. According to applicant, she has only a small old house and has no means of income except the meager family pension. Therefore, she seeks the following reliefs:-

"(i) Call for the records leading to the issue of Annexure A1 and quash the same

(ii) Direct the respondents to consider the case of the applicant afresh as a widow of late Johnson P and direct further to grant her the consequential benefit of appointment on compassionate grounds and all other benefits appurtenant thereto forthwith."

2. This matter was strongly contested by the respondents. They contend that the applicant's daughter could score only 48 points whereas the minimum requirement for consideration by Circle High Power Committee was 55 points. If the widow had applied for appointment on compassionate grounds, she would have scored more than 55 points. Subsequently when applicant submitted fresh application on 05.11.2008 the Circle High Power Committee recommended her case to the Corporate Office since she had scored 62 points. However, her case was rejected by the Corporate office since it was felt that her family is not in penury keeping in view of the assets, liabilities of the family, support arrangement, the time period involved, long term commitments/responsibility and overall conditions of the family. By the time, the applicant applied for appointment on compassionate grounds the Welfare Officer appointed to report the status of the family reported that the elder daughter is already married thereby the family lost 10 points under the dependent factor. The Welfare Officer had also reported that the younger daughter is engaged on contract basis at Poovar Telephone Exchange on a consolidated wage of Rs.115/- per day. The financial liabilities left behind by the deceased employee are not a criterion for weightage point allotment. It was under the above circumstances that the

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corporate office of the BSNL came to a conclusion that applicant's family is not in a penurious condition. Besides, the family received a total sum of Rs.4,37,429/- towards terminal benefits in addition to a monthly family pension of Rs.3250 plus Dearness Allowance. Since the object of granting family pension is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to get over the emergency, compassionate appointment is not a vested right. Respondents contend that the applicant's family does not fit into the category of penurious situation and hence pray for rejecting the application.

3. Heard Mr.T.C.Govindaswamy, learned counsel for applicant and Mr.V Santharam, learned counsel for respondents.

4. Mr.T.C.Govindaswamy relied on *Bhupinder Batra v. Union of India and others* 2012 (3) SLR 12 (Pb & Hry.), a decision of this Tribunal in O.A No.1064/11 which was confirmed by the High Court in OP(CAT) 3629/13, another decision of this Bench in O.A 874/11 which was confirmed by the Hon'ble Kerala High court in OP(CAT) 832/12 and a decision of the Hon'ble Kerala High Court in Writ Appeal No.757/13. Mr.V Santharam relied on *General Manager D & PB) and others v. Kunti Tiwari and Another* (2004) 7 SCC 271, *Eastern Coal Fields Ltd v. Anil Badyakar and others* (2009) 13 SCC 112, *Union of India and Another v. Shashank Goswami and Another* AIR 2012 SC 2294, *Umesh Kumar Nagpal v. State of Haryana and others* (1994) 4 SCC 138, *State of Jammu and Kashmir and others v. Sajad Ahmed Mir* AIR (2006) SC 2743.

5. Shri.T.C.Govindaswamy, learned counsel for applicant submitted that at the time when the applicant's daughter had applied for appointment on

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compassionate grounds there was no system of evaluation based on weightage points as per Annexure A-2 system which was introduced only on 27.06.2007. According to Mr.T.C.Govindaswamy applicant's daughter's request ought to have been considered based on the general condition of the family and her case ought not have been considered with reference to Annexure A-2 weightage point system. However, it has been held by the Apex Court in **State Bank of India v. Raj Kumar** (2010) 11 SCC 661 that when a scheme is abolished/withdrawn any pending application seeking appointment under such scheme will also be ceased to exist and that the pending applications will be considered only under the new scheme. It was further observed by the Apex Court in that case that the modification of that scheme is within the prerogative of the employer. This decision of the Apex Court has been subsequently followed by the Supreme Court in a later decision **MGB Gramin Bank v. Chakravarthi Singh** 2013 (3) All India Services Law Journal 328. Therefore, the contention that her daughter's application ought to have been considered on the basis of the overall assessment of the family conditions of the deceased does not carry any weight because when a modification of the scheme was introduced by the employer, such modification will be the basis on which the scheme had to be worked out in all future cases including those pending cases.

6. The next ground relied on by Mr.Swamy is that although the applicant's request for compassionate appointment was considered on the Weightage Point System introduced in 2007, the weightage points were assigned to her for evaluation in a mechanical manner without the application of mind. Shri.Swamy submitted that although the applicant had been awarded 15 merit points under the weightage point system for her status as a widow of the deceased employee, the subsisting liabilities of the family was not taken into consideration while assigning 62 points for the financial condition of the family.

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7. Shri.V Santharam, learned counsel for the respondents submitted that weightage point system under Annexure A-2 was introduced to bring about more transparency and uniformity for ascertaining the financial condition of the family of the deceased. He further submitted that to make sure the financial condition of the deceased family, a Welfare Officer is deputed for investigation. He pointed out that Annexure R-1(e) is the investigation report submitted by the Welfare Officer who has reported that one of the daughters of the applicant is married after the first request for appointment on compassionate grounds was made and that the second daughter Kum. Irine Soumya.J.V is now engaged in a piece work on a consolidated payment of Rs.115 per day at Poovar Telephone Exchange. Annexure R-1(e) further shows that the applicant is residing in her own house and her annual income from the property is Rs.500/- and the family pension is Rs.5200/- per month including dearness allowance. It is also reported in Annexure R-1(e) that a debt of about two lakhs was paid off with the amounts applicant received from the Department and from the LIC and that she has stated that Rs.36,000/- is still outstanding as debts to two persons. The Welfare Officer has concluded in the report that the applicant is living in extremely pathetic financial conditions and that with her family pension she can hardly maintain her family. According to Shri.V.Santharam all these aspects have been taken into consideration by the Corporate office and although she had secured 62 weightage points, the Corporate office of the respondents decided to reject her since there are more meritorious candidates than the applicant for consideration.

8. Shri.V.Santharam further referred to the negative marks obtained by the applicant due to the belated application. In this connection he referred to **Sajad Ahmed Mir's** case (*supra*) and submitted that delay in applying for compassionate appointment indicates that the family could survive even after a

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substantial period after the death of bread winner and hence appointment on compassionate grounds can be rejected. The Apex Court held that once it is proved that in spite of the death of bread winner, the family survived and that a substantial period is over, there is no necessity to say 'good bye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others, ignoring Article 14 of the Constitution of India.

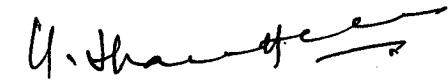
9. It has now become trite position on account of a series of pronouncements of the Apex Court that appointment on compassionate grounds is only an exception to the Constitutional Scheme of appointment as envisaged under Article 16 read with Article 14 & 15 of the Constitution. Appointment on compassionate grounds is resorted to as a welfare measure to prevent the family of a Government employee being pushed into vagrancy and penurious condition on account of the sudden stoppage of salary income from the deceased government servant. Therefore any appointment on compassionate grounds needs to be based on the financial condition of the dependent family and it is the duty of the employer to ensure that by departing from the normal rule of appointment compassionate appointment is not given to undeserving persons to the chagrin of genuine seekers of public appointment.

10. It is also now settled position that appointment on compassionate grounds can not be deteriorated to the level of a hereditary appointment. All these judicial pronouncements are based on the fundamental constitutional principle that all public appointments should be in accordance with the scheme envisaged under Article 16 of the Constitution. Any departure from it would consequently curtail the fundamental right of equality ensured under Article 14 of the Constitution also. As observed in *Sajad Ahmed Mir's case (supra)*, a delayed application (even though it was on account of the intervening

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applications made by the applicant's daughter) indicates that the family could survive this far. As one cannot simply turn a Nelson's eye to the reality that the family could survive this far, it cannot be said that on account of the death of the deceased employee, applicant and her family was pushed to a penurious condition and had to face vagrancy / destitution. True, the welfare officer's report indicate the financial difficulties. Not being blessed with a comfortable financial position does not mean that one is facing penurious condition or destitution. Nothing is in record to show that the applicant or her family members had in fact faced such a situation.

11. In the above circumstances, this Tribunal is of the view that the respondents were justified in rejecting the request of the applicant by way of Annexure A-1 order.
12. In the result, the Original Application is dismissed. No order as to costs.



U.SARATHCHANDRAN
JUDICIAL MEMBER

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