

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 482 of 2010

with

Original Application No. 485 of 2010

wednesday, this the 20th day of October, 2010.

CORAM:

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A 482 OF 2010

V.Vinod Kumar,
S/o. (late) M. Vasudeva Pillai,
Valiya Puthusseril,
Kadakkad, Pandalam. **Applicant**

(By Advocate Mr. Rinny Stephen Chamaparambil)

Versus

1. Bharat Sanchar Nigam Limited (BSNL),
Represented by its Chief General Manager,
Kerala Telecommunications,
Thiruvananthapuram – 695 033.
2. Union of India,
Represented by the Principal Secretary,
Ministry of Telecommunications,
Central Secretariat,
New Delhi. **Respondents**

(By Advocate Mr. Pradeep Krishna, ACGSC for R-1)

(By Advocate Mr. S. Jamal, ACGSC for R-2)

2. O.A 485 OF 2010

Sreekumar Mohan,
S/o. (late) T.M. Mohanan,
"Sree Chithira", Thoduvakkara House,
Vennala (P.O.), Kochi – 682 028. **Applicant**

(By Advocate Mr. P.N. Santhosh)

versus

1. The Chairman-cum-Managing Director,
Bharat Sanchar Nigam Limited,
New Delhi.
2. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited,
Kerala Telecommunications,
Thiruvananthapuram – 695 033.
3. The Deputy General Manager (HRD),
Office of the Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Telecommunications,
Thiruvananthapuram – 695 033.

(By Advocate Mr. Pradeep Krishna, ACGSC for R1)

The applications having been heard on 05.10.10, the Tribunal on
20.10.10 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Being identical, both these O.As were heard together and are being disposed of by this common order. Both the applicants seek reconsideration of their claim for appointment on compassionate ground.

2. **O.A. No. 482/2010 :** Applicant's father who was working as T.M. under GMT, Thiruvalla, died while in service on 15.05.2006. The terminal benefits of the deceased employee amounting to Rs. 2,55,407 were adjusted by the department towards a departmental loan taken by him. A meagre amount of Rs. 2960/- as family pension is not sufficient to meet the basic needs of the family members. The application dated 06.03.2007 submitted by the applicant seeking compassionate

appointment was rejected by the respondents after evaluating his case in accordance with the policy guidelines dated 27.06.2007. Under the said policy guidelines, the applicant scored 34 net points, which is less than the eligibility point of 55. Hence his request for appointment on compassionate ground was rejected.

3. **O.A. No. 485/2010 :** The father of the applicant died while in service as Telecom Technical Assistant in the office of the SDE, BSNL, Edappally, on 10.03.2007. The applicant submitted an application for compassionate appointment on 28.01.2008 which was rejected in view of the point system introduced on 27.06.2007 and on finding that the applicant has not scored 55 points as required as per the new scheme to become eligible for compassionate appointment.

4. The applicants submit that they live in penurious condition. The applicants are jobless. As per the applicant in O.A. No. 482/10, the finding arrived at by the Circle High Power Committee Meeting that the family of the deceased employee has not been found to be living in indigent condition, is erroneous. It is not stated as to on what basis such a finding had been arrived at. The finding of the the said Committee that the net point based on the guidelines dated 27.06.2007 comes to less than 55, is not correct. It does not give the details regarding the exact net points awarded to the applicants. Apart from the above, the applicant in O.A. No. 485/2010 submits that the respondents are not justified in rejecting his case on the basis of the scheme, which came into force on 27.06.2007. The applicant is entitled to be

considered for appointment on compassionate ground as per the scheme which was in force prior to 27.06.2007, i.e. as on the date of demise of the applicant's father.

5. The respondents contested the O.As. They submitted that the object of the compassionate appointment scheme is to grant appointment to a dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penurious condition and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and help to get over the emergency. The appointment under the said Scheme is limited to 5% of vacancies falling under Direct Recruitment quota in Group 'C' or Group 'D' post. Hon'ble Supreme Court has held that granting of appointment on compassionate ground without assessing the financial position of the family is impermissible. The respondents have introduced weightage point system to bring uniformity in assessing indigent condition of the family for offering appointment on compassionate ground. The cases with net points of 55 or more are considered to be *prima facie* eligible for compassionate appointment subject to final approval of the High Power Committee to be held at BSNL Corporate Office, New Delhi. The Circle High Power Committee awarded 34 net points [Annexure R1(d)] only in the case of the applicant in O.A. No. 482/10 and 01 net point [Annexure R1(c)] in respect of the applicant in O.A. No. 485/10 respectively and rejected their cases. The indigent condition of the applicants was assessed after thorough investigation. The finding of the Circle High Power Committee

is absolutely based on the facts and circumstances of the case and according to the Scheme.

6. Arguments were heard and documents perused.

7. The short question to be decided in these O.As is whether the applicants are eligible for reconsideration of their claim for appointment on compassionate ground as prayed for. Both the applicants have been considered under the new policy guidelines which came into force on 27.06.2007. The death of the father of the applicant in O.A. No. 482/10 and that of the father of the applicant in O.A. No. 485/10 occurred on 15.05.2006 and 10.03.2007 respectively, well before the new policy guidelines came into existence. The law on the subject is laid down by Hon'ble Apex Court in the case of *SBI v. Jaspal Kaur, (2007) 2 SCC (L&S) 578*, wherein the Apex Court held as under:-

"26. Finally in the fact situation of this case, Shri Sukhbir Inder Singh (late), Record Assistant (Cash & Accounts) on 1-8-1999, in the Dhāb Wasti Ram, Amritsar Branch, passed away. The respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 5-2-2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4-8-2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of the deceased is Rs. 5855 only, which is less than 40% of the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water."

(emphasis supplied)

The claim for compassionate appointment arose in the year of the death of the concerned employees. In OA No. 128/2008, this Tribunal held

that the case of the applicant therein ought to have been considered against the Scheme which was in force at the time of death of the employee. This decision was upheld by Hon'ble High Court of Kerala in Writ Petition (C) No. 03/2009, the relevant extract of the judgement is reproduced below:

“ Though it was contented that the latter scheme is only the continuation of the earlier scheme and that it is more transparent and beneficial, the Tribunal rightly held that all that is required to be considered is as to what is the rule prevalent as on the date of demise of the employee and whether it is beneficial or not is not relevant in that regard. The right to apply under the Dying-in-harness scheme arose because of the death of the father of the applicant and when he made an application, if there was suitable post, then necessarily, the benefit would have been worked out based on the scheme. The fact that available post was not there at that time and in the meantime another scheme has came into force by itself is not a reason to hold that the latter scheme is applicable irrespective of the death of the employee and the application of the applicant, especially on the basis of the decision of the Apex Court.

3. We find, in such circumstances, no ground to interfere with the finding of the Tribunal. There is no error of law committed by the Tribunal. We find no merits in the writ petition. Dismissed.”

(emphasis supplied)

8. The decision of the Ahmedabad Bench of C.A.T. in O.A. No. 377/2008 was cited by the respondents in support of their contentions. However, that decision is not relevant in as much as the issue being addressed in this O.A. is the applicability of the Scheme in force at the time of the death of an employee in service.

9. In view of the settled law as above, the impugned orders in O.A. Nos. 482/10 and 485/10 are set aside. The respondents are directed to reconsider the cases of the applicants in accordance with the Scheme

which was in force at the time of the death of the concerned employees and pass suitable orders within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated, the 20th October, 2010)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

CVR.