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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.499/09

Monday, this the 4th day of October, 2010

CORAM:

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

Praveen Kumar P.M.

Aged 38, S/o L.Maniappan,

Group D Employee,

Office of CAO(VAS),BSNL,

Catholic Centre, Broadway, Ernakulam, Cochin-31.

.. Applicant

By Advocate: Shri P.V.Mohanan

1. Chairman and Managing Director,
Bharat Sanchar Nigam Limited,(BSNL,New Delhi.)

2. The Chief General Manager,
BSNL,
Office of the Chief General Manager, Telecom,
Kerala Circle, Trivandrum.

3. The Asst. General Manager,
BSNL,
Office of PGM Telecom, BSNL Bhavan,
Kalathiparambil Road, Ernakulam.

..Respondents

By Advocate :Mr.N.Nagaresh

The Application having been heard on 28.09.2010, the Tribunal on 4.10.2010
delivered the following:

ORDER

HON 'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

The moot question in this Original Application is that whether the



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applicant once appointed as Group D under the dying in harness scheme, on subsequent acquiring of a higher qualification, is entitled to change his category to a higher post or not.

2. The applicant being the son of a deceased Sub Divisional Engineer who died on 1.9.2002, is appointed as a Group D employee as he was having a qualification of SSLC at the time of the consideration of the application. The application was filed on 28.02.2003 and the application was considered at the proceedings dated 6.1.2005 in which an offer of appointment to a Group D post has been considered and recommended by the High Power Committee and the applicant was appointed as such on 13.1.2005. Thereafter the applicant represented to the respondents that the applicant has acquired higher qualification of Master's Degree on 11.1.2003 and requested the respondents to consider his appointment in the Group C post. However the request was not considered. Hence the applicant filed an appeal on 18.10.2005. But that appeal was also not considered. He had sent reminders. Under the above circumstances, the applicant filed the present O.A.

3. The application has been admitted by this Tribunal and the notice ordered to the respondents. In pursuance to the receipt of the notice issued from this Tribunal, a reply statement has been filed for and on

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behalf of the respondents taking the stand that the Circle High Power Committee recommended the application of the applicant for appointment to the post of Group D and the minimum qualification for Group D was 8th standard pass. It is further stated in the reply statement that as the Committee recommended the application of the applicant for appointment to the post of Group D, the application of the applicant has been verified by the Chief General Manager of Telecom, Kerala Circle on 24th July, 2003 and on observing all formalities, recommended his appointment to the post of Group D. Hence the consideration of the application and appointment offered to the applicant on the basis of the qualification which he had at the time and even if the applicant had got higher qualification, it is not a ground for change of the category on the basis of the qualification fixed for any other posts as also as SSLC. The change in the qualification of recruitment to other posts namely for the post of TOA(G) made on the subsequent amendment is not a reason to consider the application for change of his category.

4. We have heard Mr.P.V.Mohanan, counsel for the applicant and Mr. N.Nagaresh, counsel for the respondents. The counsel for the applicant submits that as the applicant obtained a Post Graduate Degree in the examination held in May, 2004 and produced the same before the High Power Committee which recommended for the appointment of the applicant to



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Group C post, the Committee should have recommended the applicant to the Group C post instead of Group D. The counsel further submits that dependents of employees who died in harness and having qualification of Matriculation or SSLC were also appointed in the Group C post. The applicant alone is discriminated against by appointing him in the Group D cadre. The counsel submits that as per Annexure R1 (a) scheme for compassionate appointment it is stipulated that the committee will meet during the second week of every month and as the applicant's application has been not considered in time, the applicant was not given an appointment in Group C cadre. This is also against the principles laid down in Annexure R1(a). To the above contentions, the counsel appearing for the respondents Shri N.Nagaresh, relying on the reply statement submits that though the policy for appointment under compassionate grounds has been introduced as per Annexure R1(b) dated 27.06.2007 and as per the above guide lines it is stated that the Committee shall meet during the second week of every month, that provision was taken away by a subsequent amendment as per Annexure R1(c) dated 27.12.2006. Hence the contention of the counsel appearing for the applicant that the delay in meeting the High Power Committee caused loss to the applicant is not correct. Further the counsel submits that even as per Annexure R1(a) the scheme formulated by the BSNL for compassionate appointment it is specifically stated that the qualification of the candidate at the time of filing the



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application shall be the basis for offering appointment and the appointment earmarked for compassionate grounds is only a maximum of 5% of vacancies falling under direct recruitment quota in any Group C or Group D posts. If so, according to the counsel for the respondents, even if the educational qualification fixed for Group C and Group D posts is one and the same it is the discretion of the committee to offer appointment either to Group D or Group C on the basis of existence of vacancy. As the applicant was only possessing SSLC and the post available at that time was in Group D, an offer was given to the applicant which the applicant accepted without any resistance or objection. Even if the applicant wants to be appointed in the Group C post he should have waited till any vacancy comes in Group D. Hence the Original Application is devoid of any merit according to the counsel appearing for the respondents.

5. On an anxious consideration of the contentions raised by the counsel appearing for the parties and on perusing the relevant records produced in this O.A. this Tribunal has to take a decision whether the applicant is entitled for any relief as claimed or not. The father of the applicant died on 1.9.2002 and an application for compassionate appointment has been filed by the applicant on 28.02.2003. The application of the applicant has been considered by the High Power Committee as per the proceedings dated 6.1.2005 and offered an appointment on 10.1.2005.




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appointment on 10.1.2005. The High Power Committee as per the proceedings dated 13.1.2005 given an offer of appointment to Group D post to the applicant and directed to join duty within 10 days. Though the applicant filed a representation on 10.1.2005 requesting to appoint him in Group C post consistent with his qualification acquired subsequent to the filing of the application, the High Power Committee considered the applicant to be appointed in Group D post. The representation filed by the applicant has been rejected as per the order dated 16th September, 2005 stating that as per the provisions contained in the rules governing appointment under the compassionate ground appointment when a person has been appointed on compassionate ground to a particular post, the set of circumstances or the reason for consideration of such application led to the appointment of such applicant should be deemed to have been ceased to exist and any further request for any higher post or for change of post is not feasible and hence the representation was rejected. We are of the view that appointment under the compassionate appointment scheme is not a matter of right. It is only for relieving such family of the deceased employee from any penury and immediate recouping of the financial destitution and to help it to get over the emergency occurred due to the sudden demise of the Government employee. Considering the intention behind the introduction of such a scheme and as per the judgments of the Apex Court it is not conducive to

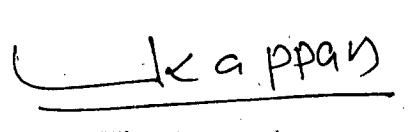


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give a right to such candidates who were appointed under the compassionate scheme for a change of the post. There are judgments of the Apex Court declaring that published post should be filled up only by proper appointment through the accepted method. An appointment under the compassionate appointment scheme is only an exception to such method. If so, the claim of the applicant that he is entitled for a change of category of his appointment is not justifiable and the Original Application is devoid of any merit. Accordingly, we are of the considered view that the application shall fail and it stands dismissed with no order as to costs.



(K. George Joseph)
Member(A)



(Justice K. Thankappan)
Member(J)

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