

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos. 546 of 2010 & 298 of 2011

Thursday, this the 01st day of June, 2012

CORAM:

Hon'ble Ms.K.Noorjehan, Administrative Member

O.A 546 of 2010

Praveen S Kurup, aged 28 years
 S/o (late) B Parameswara Kurup
 "Preetha Nivas"
 Madappalli P.O
 Changanassery – 686 546
 Kottayam District

Applicant

(By Advocate – Mr. T.C Govindaswamy)

V e r s u s

1. The Chairman-cum-Managing Director
 Bharat Sanchar Nigam Ltd
 New Delhi
2. The Chief General Manager
 Bharat Sanchar Nigam Limited
 Kerala Telecommunications
 Thiruvananthapuram – 695 033
3. The Assistant General Manager
 Office of the Principal General Manager
 Bharat Sanchar Nigam Limited
 Telecom District, Kottayam – 686 001

Respondents

(By Advocate – Mr.Thomas Mathew Nellimoottil)

O.A 298 of 2011

Manju P George, aged 21 years
 D/o (Late) George Philip
 (Ex-Telecom Mechanic, Manarcadu Exchange
 Kottayam District)
 Residing at: Chirakkaparambil House

Velloor P.O, Pampady, Kottayam Applicant

(By Advocate – Mr.T.C.Govindaswamy)
Vs

1. The Chairman-cum-Managing Director
 Bharat Sanchar Nigam Ltd
 New Delhi
2. The Chief General Manager
 Bharat Sanchar Nigam Limited
 Kerala Telecommunications
 Thiruvananthapuram – 695 033
3. The Assistant General Manager
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 Bharat Sanchar Nigam Limited
 Telecom District, Kottayam – 686 001 **Respondents**

(By advocate – Mr.Thomas Mathew Nellimoottil)

These applications having been heard on 29.5.2012, the Tribunal on 07.6.12 day delivered the following:

O R D E R

By Hon'ble Ms. K.Noorjehan, Administrative Member -

1. As the facts in these two Original Applications are similar and the legal issue raised is same, these Original Applications were heard together and are being disposed of by this common order. For the sake of convenience, O.A 546/10 is being taken as the lead case.
2. The applicants are aggrieved by the refusal on the part of the respondents to consider them for appointment on compassionate grounds.

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O.A 546/10

3. The applicant's father Late B Parameswara Kurup passed away on 15.09.2005, leaving behind the applicant's mother, sister and the applicant. He submitted his representation for appointment on compassionate grounds to the third respondent on 10.09.2006. However, vide Annexure A-1, he was intimated that his case is rejected as his family is not found to be living in indigent condition. The applicant again sent another representation vide Annexure A-2 in March 2008. This was responded to by Annexure A-3 communication, once again rejecting the applicant's case for compassionate appointment. The applicant therefore, submitted a detailed appeal against the decision of the respondents vide Annexure A-4. The applicant avers that his case was rejected since new guidelines came into effect from 27.6.2007. The All India BSNL Executives' Association, Kerala Circle took up the matter with the respondents to consider the case of the wards of those who expired prior to the implementation of the new guidelines dated 27.06.2007 on the basis of the prevalent scheme prior to the introduction of new guidelines on 27.06.2007. The applicant was waiting in good faith for positive action on the part of the respondents, from Aug 2008 onwards. The applicant has filed this Original Application on 25.06.2010 with a prayer to direct the respondents to consider his case for appointment on compassionate ground as per the scheme which was in force at the time of demise of his father on 15.09.2005.

4. The respondents contested the Original Application and filed reply statement. They submitted that the objective of the scheme is to grant

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appointment on compassionate grounds to a dependent family member of a government servant dying in harness and leaving his family in penury and without any means of livelihood to help the family to tide over the financial destitution. In this case the family of the late government servant consists of his wife, the applicant and a daughter. The family received terminal benefits to the tune of Rs.4,33,285/. Besides this the widow is in receipt of basic family pension of Rs.3250/- with 50% DA. The approval for compassionate appointment is done only at the level of R-1 the Chairman-cum-M.D, BSNL who is the only competent authority. The Circle High Power Committee headed by R2 the Chief General Manager, Telecom. BSNL Kerala circle scrutinised all the applications and recommended those cases where the family is in financial straits. A weightage point system is evolved w.e.f 27.06.2007 whereby only those who get 55 points and above will be recommended for further scrutiny by the BSNL Corporate Office. The respondents produced Annexure R1(b) which is the weightage point system for assessment of indigent condition of the family. The applicant scored 54 points against the minimum requirement of 55 and hence his case was not recommended by the Circle High Power Committee which met on 05.02.2008. The applicant was given an intimation vide Annexure A-1 showing clearly the reasons for rejection of his case. The respondents relied on the judgment of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and others (JT 1994 (3) SC 525) which laid down the following important principles in this regard:

"Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the

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deceased from financial destitution and to help it get over the emergency".

5. They also cited the Apex Court judgment dated 28.2.1995 in the case of Life Insurance Corporation of India Vs. Mrs.Asha Ramachandran Ambedkar and Others (JT 1994 (2) S.C. 183) which held that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such appointment. The respondents also produced R1(c), an order by CAT Ahmedabad Bench on the issue of new guidelines being framed for weightage point system. In the aforesaid order it is mentioned that the weightage point system brings in only a qualitative change in implementation of the existing DOPT Scheme which is objective and a more appropriate method to assess comparative indigence. It takes away arbitrary power of concerned official. It brings in a yardstick for measurement of indigency.

6. The respondents filed an additional reply statement giving details of assessment of points under the weightage point system vide Annexure R-1 (f). They also produced a copy of the minutes of the High Power Committee vide Annexure A-1(g). They submitted that out of 90 requests scrutinised 25 scored 55 points or more and only such cases were recommended and forwarded to the BSNL Headquarters.

7. The applicant filed rejoinder and averred that out of the terminal benefit of Rs.4,33,285/- certain dues were deducted by the respondents and the family got only Rs.2,27,412/-. He alleged that the respondents failed to take into account the liabilities his father had incurred and which

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had to be deducted from the terminal benefits. Hence the respondents ought to have awarded 8 points in stead of 6 under the weightage point system to the applicant. In that case he would have got 56 points and his case might have been considered favourably by the first respondent.

8. The respondents filed reply to the rejoinder and submitted that the family possessed 175 cents of land. Moreover the applicant had given his residential address as "Preetha Nivas", Madappalli P.O, Changanassery in the application for compassionate ground appointment. However, the Welfare Officer while making verification reported that his family is residing in rented accommodation and based on his report 10 points were awarded for accommodation factor. However, it is seen that the address given by the applicant is only "Preeta Nivas", Madappalli P.O, Changanassery which is the house owned by them and the name of the applicant's sister is Preetha. Therefore, the contention of the applicant that they do not have their own a house and land needs to be further verified. They rebutted the contention of the applicant in his rejoinder that certain others like Smt.Shailaja G Nair and Smt.Sindhu K.P were approved for appointment and their cases were considered along with him. The respondents submitted that Mrs.Shailaja G Nair has scored 85 points and the case of Sindhu K.P was considered by the High Power Committee meeting held on 04.10.2006, while his case was before the Committee which met on 05.02.2008.

O.A 298/11

9. The applicant's father passed away on 31.01.2007 leaving behind her mother and her brother. The applicant submitted a representation to the third respondent requesting for appointment on compassionate grounds. As there was no response, she submitted

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one more representation in April 2009 (Annexure A-2). Vide Annexure A-1(2) she was informed that her case stands rejected. It was mentioned that she scored less than 55 points as per the new guidelines issued by the BSNL Corporate Office which came into force with effect from 27.06.2007. Therefore, the second respondent could not recommend her case for further disposal. While so, the applicant came across an order of this Tribunal in O.A 896/09 and connected cases declaring that the applicants therein are entitled to have their cases considered in the light of the scheme which was in force prior to 27.06.2007 (Annexure A-5). The applicant contended that the failure to consider her case as per the 1998 scheme has caused substantial prejudice, irreparable loss and monthly recurring losses.

10. The respondents in their reply statement submitted that the family had received terminal benefits amounting to Rs.4,29,935/- in addition to monthly family pension of Rs.3110/- +DA. The family is living in their own house. The respondents stated that based on the weightage point system she scored only 45 points which shows that the family is not in indigent condition. They relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.409 of 2007. "A major criterion while appointing a person on compassionate grounds should be the financial condition of the family of the deceased person left behind. Unless the financial condition is entirely penury, such appointments cannot be made", said the Bench, comprising of



Hon'ble Justice A.R Lakshmanan and Hon'ble Justice Altamas Kabir.

In the instant case such a condition of Government servant dying in harness, thereby leaving his family in penury and without any means of livelihood cannot be made out as is evidenced under Annexure R1 (g), an objective evaluation carried out as per the scheme of compassionate grounds appointment.

11. Arguments were heard and documents perused.

12. The main relief sought by the applicants is to consider them for appointment on compassionate grounds, as per the scheme which was in force, at the time of demise of his father in August 2005. In other words, their contention is that the weightage point system which was introduced in July 2007 was prejudicial to their interests, as it does not take into account the financial liabilities, which depleted to terminal benefits released by the family. They also relied heavily on the order of this Tribunal in O.A 874/2011 which was confirmed by the Hon'ble High Court in its judgment in O.P(CAT) No.832/2012(z). The aforementioned O.A was allowed on the ground that points were not properly awarded for the number of years of service left for the late employee i.e; for 13 years 10 months and the liabilities incurred by him which were deducted from the terminal benefits. However, the Hon'ble High Court while disposing of a bunch of original petitions (CAT) Nos.458, 828, 841, 855 & 883 of 2010 and 325 & 360 of 2011 disagreed with the findings in WP(C) No.36025/2009 wherein this Tribunal's direction in O.A No.896/2009 and 4 other OAs to BSNL to consider the case of the applicants as per the 1998 scheme in force, at the time of death of the employees, was upheld, by referring the case to the full bench. The relevant paras are extracted below.

"11. For one thing, it is the settled position of law that



compassionate appointment is not a regular method of recruitment. There is no vested right in any person to claim compassionate appointment. Provision for compassionate appointment is a legitimate device founded on compassion and therefore on essentiality, whereby the employer extends a helping hand to provide succor to the unfortunate dependents of an employee who dies in harness. When such exercise relates to public employment governed by Articles 14 and 16 of the constitution, such extension of succor is essentially one that reduces the source of employment for the open market candidates legitimately meeting with expectation to enter public service. That is why, it has been laid as law that such a measure of help shall be extended only to the really needy.

14. In the case in hand, all that has been done as per the BSNL communication dated 27.06.2007 is to provide a weightage point system for assessment of indigent condition. This, in no manner, amounts to creation of a new scheme. In our view, it only amounts to providing clear and transparent guidelines, rather than leave it to the committee to consider the applications "in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject", as provided for in Clause 12(c) of the Scheme of 1998. What has been brought by BSNL through its communication dated 27.06.2007 is only an identifying method to determine the eligible persons on the basis of a weightage point system. This is, essentially, only clarificatory and supplementary to the Scheme of 1998 which still governs the field subject to such clarification. In this view of the matter, we do not find that the BSNL communication dated 27.06.2007 could be treated as a new Scheme to be excluded in considering applications which were received and pending consideration on the date of issuance of the said communication."

13. In these two OAs the main thrust of arguments of the counsel for the applicants is to consider the case of the applicants as per the 1998 scheme of DOPT which is only an amplification/clarification of the Scheme evolved right from the 1960s. Since only 5% of posts under the direct recruitment is earmarked for appointment under compassionate ground scheme only the cases of most needy who require immediate economic assistance can be considered favourably. When the applicant's father in O.A No.546/2010 passed away in August 2005, he, aged 24 years and sister aged 26 years

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were the dependents besides his mother. The applicant had by then finished his PDC and got his certificate in I.T.I. The family got reasonably good terminal benefits and family pension even taking into account, the liabilities. The respondents claim that they are living in 'Preetha Nivas" their own house and own 174 cents of land. In the argument notes, the applicant's counsel denied that the family possesses 174 cents of land. This may need further verification by the respondents. But the fact of the matter is that the size of the family is small, with two grown up children only dependents as his mother receives family pension. As the apex Court, has pointed out in a catena of cases, when normal recruitment rules are relaxed for appointment on compassionate grounds, only the cases of most deserving ones alone are to be entertained. The applicant duly educated by his father has to find a job for himself as is done by millions of youth in this country, and as was held by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal versus State of Haryana and others reported in JT 1994 (3) S.C 525. Held: It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. Xxxxxxxxx, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules.

14. Similary the applicant in O.A 298/11, also belongs to a small family. They live in their own house and the widow is in receipt of

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family pension, besides the terminal benefit of Rs.4.3 lakhs.

15. The respondents have submitted that the High Power Committee scrutinised 90 cases in total and recommended the cases of 25 dependents who were awarded 55 and more points, to first respondent. In other words 65 cases were not recommended as the dependents could score only below 55 points. Therefore, the applicant was not discriminated. A perusal of the 25 cases recommended shows that out of the 25 cases, 20 of the applicants are wives and the maximum points awarded is as high as 85. The late employees belong to Group D cadre excepting 2, who were Senior TOA and driver. The educational qualification of the wives, is uniformly SSLC failed. They could have been approved for appointment only as Group D as they are permitted relaxation of educational qualification. The surmise is that they may have minor children and families may be facing financial hardships. Taking into account the cap on the number of vacancies for such recruitment under relaxation of rules, the 2nd respondent cannot be faulted for recommending only the cases of dependents mostly wives of the lowest paid employees, in the respondent department. I am convinced that relative indigence is the only factor which merited, consideration at the level of the 2nd respondent, which is in consonance with the directive of the Apex Court. The weightage point system, to measure relative indigence in my opinion is a management tool devised, following the broad guidelines, issued by

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the DOPT. However, the issue is now before the full bench of the Hon'ble High Court for adjudication.

16. The norms laid down in the scheme of DOPT, instruct the respondents to consider only the cases of those families facing destitution within a reasonable period after the demise of the breadwinner. Going by the same, the applicants, cannot claim to be left in a penurious condition and demand consideration of their cases years after the demise of their fathers and receipt of impugned orders from the respondents. The O.As lack merit and are accordingly dismissed. No costs.

(Dated this the 07th day of June, 2012)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

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