

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 577 of 2011

Thursday, this the 15th day of December, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Nipin P.N, Bunglavl Veedu
 Pallippuram, Kaniyapuram P.O
 Thiruvananthapuram.

Applicant

(By Advocate – Mr. Vishnu S Chempazhanthiyil)

V e r s u s

1. The Deputy General Manager (HR), Office of the Chief General Manager (Telecom), BSNL, Thiruvananthapuram – 33.	Respondents
2. The Chief General Manager, BSNL, Thiruvananthapuram – 33.

(By Advocate – Mr. Johnson Gomez)

This Original Application having been heard on 15.12.2011, the Tribunal on the same day delivered the following:

ORDER

The applicant seeks compassionate appointment owing to the death of his father who was an employee in Group-D post and died in harness on 3.10.1998. At that time he was only a minor. Subsequently his mother also died on 12.4.1999. He became major only in 2003. His compassionate appointment application was considered on merit by the respondents and he was awarded marks for various weightage points under the new scheme.

Annexure R1(e) is the weightage point obtained by him and as per which he has got 35 points but since he did not get the minimum required mark for



compassionate appointment his application was rejected. Hence, this OA.

2. The learned counsel Shri Johnson Gomez appearing on behalf of the respondents relied upon a decision of the Apex Court unreported in Civil Appeal No. 1641 of 2010 and contends for the position that the compassionate appointment application has to be considered based on the scheme as is available now and not based on the scheme at the time when the application was received.

3. Counsel appearing for the applicant on the other hand placed strong reliance on the decision of the Apex Court in State Bank of India & Ors. Vs. Jaspal Kaur – 2007 (2) SCC (L&S) 578 and contends that the matter should be decided within the parameters of the scheme prevailing on the date of application for compassionate appointment filed and not as prevailing on the date of decision of the consideration of the application. In that case the application was considered under the scheme prevailing in 2005 while deciding the application of the deceased's widow filed in 2000 and the High Court interfered with the decision of the competent authority.

4. Admittedly the application was not processed based on the provisions contained in the scheme as was available on the date on which the application was received but was considered based on the present scheme and marks were awarded.

5. Heard both sides.

6. The Hon'ble Apex Court in State Bank of India & Anr. Vs. Raj

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Kumar in Civil Appeal No. 1641 of 2010 had in fact referred to the decision of the Apex Court in State Bank of India Vs. Jaspal Kaur – 2007 (9) SCC 571 corresponding to 2007 (2) SCC (L&S) 578 and held that the observations made in the earlier judgment was with reference to a claim made by the applicant for enhancement of the ex-gratia payment based on the new scheme and the decision has been cited out of context. In the light of the latter decision of the Apex Court, it has to be held that the compassionate appointment application has to be considered based on the scheme as is available at the time of consideration and not at the time of making the application. If so the respondents cannot be found faulted for non-considering the application based on Annexure A-3. Admittedly the respondents have considered the application on merit and awarded the marks based on the attributes available as per the new scheme. The question then arises is as to whether the consideration and awarding of marks was done properly and whether any interference is called for. In this context the learned counsel appearing for the applicant relied on the scheme and submitted that there is a right to appeal to the applicant against the decision of the original authority and referred to clause 6 and the averments made in the reply affidavit. As per clause 6 of the scheme it provides that any appeal for re-consideration of the already rejected case will also be considered according to the weightage point system.

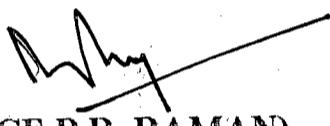
7. In these circumstances the fact that there is a right of appeal cannot be disputed. Since the clause 6 contemplates an appeal it is only appropriate that the applicant will be relegated to the right to appeal provision available

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to him rather than entering in to the merits of the case by this Tribunal.

8. Hence, the OA is disposed of with the observation that if the applicant prefers any appeal within a period of three weeks from the date of receipt of a copy of this order, then the appellate authority shall consider the same on merits and pass suitable orders under intimation to the applicant within one month of the receipt of such appeal from the applicant. No order as to costs.

(Dated this the 15th day of December, 2011)



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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