

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 97 of 2009

Thursday, this the 24th day of September, 2009

CORAM:

Hon'ble Mr. George Parackal, Judicial Member

Reshmi K.R., Keecheril House,
 Malakunnam P.O., Changanassery,
 Kottayam.

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Applicant

(By Advocate – Mr. P. Santhosh Kumar)

V e r s u s

1. Union of India, represented by Secretary,
 Ministry of Communication, New Delhi.
2. Chief General Manager, Telecom,
 BSNL Kerala Circle, Thiruvananthapuram.
3. Principal General Manager (A&E),
 BSNL, Kottayam.
4. Assistant General Manager (Admn.),
 BSNL, Kottayam.
5. Sub Divisional Engineer, Phones,
 BSNL, Changanassery.
6. Sindhu K.P., Group D, OP Section,
 Office of the PGM T (O), Kottayam.
7. Shailaja G. Nair, Group-D,
 Office of the SD Engineer (Indoor),
 Gandhi Nagar, Thiruvananthapuram.

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Respondents

**[By Advocate – Mr. Sunil Jose (R1-5) & M/s. Shaji Thomas &
 T.V. Vinu (R-6) - Not present]**


The application having been heard on 24.9.2009, the Tribunal on the
 same day delivered the following:

ORDER

The grievance of the applicant is against the denial of appointment on compassionate ground on the death of her father while in service.

2. The brief facts of the case are that the applicant's father Shri M.T. Radhakrishnan, Driver, Telephone Exchange, Thuruthy died while in service on 9.11.2004. The applicant applied for compassionate appointment to the 5th respondent, namely, the Sub Divisional Engineer, Phones, BSNL, Changanassery on 16.12.2004. It was forwarded to the 3rd respondent, namely, the Principal General (A&E), BSNL, Kottayam, vide Annexure A-1 letter dated 23.12.2004. Before the request for compassionate ground appointment could be considered by the competent authority, she was allowed to work as a Group-D employee on daily wages in the office of the PMG, Kottayam for the period from 15.1.2005 to 24.7.2007. The applicant got married on 24.8.2007 and she informed about her martial status to the 4th respondent, namely the Assistant General Manager, BSNL, Kottayam on 2.7.2008.


3. The respondents have drawn up Annexure A-3 waiting list of candidates for compassionate appointment. Under the Kottayam SSA the applicant's name was wait listed at serial No. 7. Another person junior to her was one Sindu K.P. who was wait listed at serial No. 8. When the respondents issued the Annexure A-5 letter of appointment dated 18.8.2008 to all the six of the wait listed candidates including her junior Sindu K.P., the applicant inquired the reasons as to why she was not appointed from



among the said wait listed candidates. The applicant has also made Annexure A-2 representation dated 11.8.2008 to second respondent namely, the Chief General Manager. In reply to the said representation, vide the Annexure A-6 impugned letter dated 30.8.2008, the Office of the Chief General Manager, Telephone, informed her that the competent authority has decided to reject her request for the reason that the married daughters are not considered as wholly dependent on the deceased government servant. The said letter reads as under:-

"As per the scheme, compassionate ground appointment can be granted only to the dependent family member that means Spouse/Son/Daughter who is wholly dependent on the ex-official. A married daughter cannot be considered as wholly dependent member on the ex-official, as such, your request for appointment under CGA scheme cannot be acceded to."

4. The respondents in their reply has submitted that considering all the aspects of the case of the applicant, the Circle High Power Committee on compassionate appointment at its meeting held on 6.8.2005 came to the conclusion that there exists indigent condition in the family and approved appointment of the applicant in Kottayam SSA. They have also submitted that 124 candidates including the applicant were wait listed for compassionate appointments and the applicant's position was 77 in the waiting list. Out of the said 124 candidates, 19 cases were female candidates i.e. daughters of the deceased officials. Before offering appointment, the martial status of the said female candidates were inquired into and it was reported that five candidates including the applicant were married. The applicant is married to one Shri Anish C. Janan on 24.9.2007. They have therefore, submitted that according to the rules governing to compassionate



appointment, married daughters of a deceased government servant cannot be treated as wholly dependent on the ex-official.

5. I have heard Shri K.P. Chandrasekhar for Mr. P. Santhosh Kumar and Mr. Sunil Jose for R1-5. The applicant's counsel has also brought the office memorandum No. 14014/6/94-Estt.(D), dated 9th October, 1998 regarding scheme for compassionate appointment issued by the Government of India, the Department of Personnel & Training, New Delhi, to my notice. The dependent family members according to the said memorandum is as under:


"Note I "Dependent Family Member" means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para.

who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness of retirement on medical grounds, as the case may be."

(emphasis given by the Court)

6. From the aforesaid definition it is very clear that the dependency of the family member relates to the time of death of the government servant and not later. Moreover, I do not find any rationality in the decision of the respondents' department in discriminating a female candidate on the ground of her marriage during the period awaiting for compassionate appointment. The contention of the respondents is that after the marriage the female dependent of the deceased government servant will no more remain a dependent and therefore, there is no need to give any appointment to her.



This contention has no basis because a female dependent who gets appointment before her marriage also may not remain a dependent upon the family of the deceased after her marriage. Therefore, there is no difference between the female dependent of the deceased government servant who gets the appointment before her marriage or after her marriage. Further, any discrimination on the ground of sex in the matter of appointment which includes compassionate appointment is discriminatory and therefore, unconstitutional.

7. The Hon'ble Apex Court in Savita Samvedi (Ms) & Anr. Vs. Union of India & Ors., 1996 (2) SCC 380 has considered the case of married daughters for regularization of government accommodation in their names on retirement of the government servants and held that the eligibility of the married daughter must be placed on par with the unmarried daughter. The relevant part of the said judgment reads as under:-

"4. The respondents in defence rely upon the Railway Board Circular dated 11.8.1992, whereunder regularization is permitted on terms. The operative part thereof reads as follows :

"Reference Railway Ministry's letters No. E(G) 82 or 1-23 dated 27.12.1982 and E (G) 85 OR 1-9 dated 15.1.1990 OR 1-11 dated 15.3.91 and 1.7.91, conveying instructions that when a Railway servant who is an allottee of Railway accommodation retires from service, his/her son, unmarried daughter, wife, husband or father as the case may be, may be allotted Railway accommodation on out of turn basis subject to fulfillment of prescribed condition.

The Ministry of Railways have reviewed the matter and in supersession of the instructions vide their letter NO. E(G) 82 OR dated 27-12-82 have decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not have any son or in case where the married daughter is that only person who is prepared to maintain the parent(s) and the sons are not in a position to do so (e.g. minor sons). This



will be subject to the conditions already prescribed which are applicable to the other eligible wards seeking such concessions.

The decision communicated above will also be equally applicable in the case of death/medical unfitness."

5. As is obvious from the plain reading of the Circular, the married daughter of a retiring official is eligible to obtain regularization if her retiring father has no son. She thus has a foothold, not to be dubbed as an outcaste outright. In case he has a son, she shall not be in a position to do so, unless he is unable to maintain the parents, e.g. like a minor son, but then she should be the only person who is prepared to maintain her parents. It is thus plain that a married daughter is not altogether debarred from obtaining regularization of a railway quarter, but her right is dependent on contingencies. The authorities concerned as also the Central Administrative Tribunal seemed to have overlooked the important and predominant factor that a married daughter would be entitled to regularization only if she is a railway employee as otherwise, she by mere relationship with the retiring official, is not entitled to regularization. Logically it would lead to the conclusion that the presence of a son or sons, able or unable to maintain the parents, would again have to be railway employees before they can oust the claim of the married daughter. We are not for the moment holding that they would be capable of doing so just because of being males in gender. Only on literal interpretation of the Circular, does such a result follow, undesirable though.

6. A common saying is worth pressing into service to blunt somewhat the Circular. It is -

"A son is a son untill he gets a wife. A daughter is a daughter throughout her life."

7. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he was only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularization of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the railways authorities irrespective of the gender of the child. There is no occasion for the railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender biased and

unreasonable, liable to be struck down under Article of the Constitution. The eligibility of a married daughter must be placed at par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, abovequoted."

8. In view of the above position I have no hesitation to allow this OA. As the applicant has already been considered for appointment and the same was approved by the competent authority, I hereby direct the 3rd respondent to appoint the applicant as a Group-D employee immediately. The respondents shall also treat her as senior to Sindu K.P. and she should be deemed to have been appointed as Group-D employee from the date the said Sindu K.P. was appointed for all purposes except for arrears of pay. The aforesaid direction shall be complied with, within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"