

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 10/ 2009.

this the 21st day of July, 2009

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Divyadas P D/o late P.K. Dasan
Pachampully House PLO
Kandassankadavu, Mampilly
Trissur District.

..Applicant

By Advocate M/s N.J. Johnson and C.M. Abraham

Vs.

- 1 The Principal General Manager, Telecom
Bharat Sanchar Nigam Limited
Thrissur.
- 2 Chief General Manager
Bharat Sanchar Nigam Limited
Trivandrum.
- 3 The Circle High Power Committee
Corporate Office,
Bharat Sanchar Nigam Limited
New Delhi.

..Respondents.

By Advocate Mr. Sunil Jose, ACGSSC

The Application having been heard on 15.7.2009 the Tribunal delivered
the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-3 communication dated 23.10.2008 by which her application for compassionate appointment was rejected.

2 The applicant's father expired on 29.2.2004 while working in the BSNL. The income of the family of the deceased employee consisting of the widow and three daughters was abruptly stopped and they were struggling. The applicant applied for compassionate appointment under the **dying in harness scheme** but the same was kept pending without passing any orders. According to the applicant, appointments have been granted to those who submitted applications subsequent to her and who were in better financial position. She belongs to SC community. Had there been proper consideration of the claims on merits, she would have got employment. Hence she approached the High Court of Keala through WP(C)No. 31070 Of 2008 which was disposed of with a direction to serve a copy of the decision taken on the matter to the applicant with liberty to the applicant to challenge the same. Consequently, Annexure A-3 was served on her. But the actual order was not communicated to her. The employment opportunity has been denied to her on the basis of a new scheme which has come into force only in 2007 according to which married daughters are not entitled to be considerd for appointment on compassionate grounds. Hence, aggrieved by the action of the respondents she filed this O.A. for setting aside Annexure A-3 and for appropriate direction to the respondents on the grounds that she

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submitted her application in 2004 the respondents ought to have considered it within three years, the present scheme has only prospective operation, she belongs to SC community and she has to maintain her aged mother suffering from cancer and two younger sisters, appointments have been granted to those having better income and that the rejection of her claim is in violation of the principles of natural justice.

3 The respondents in their reply statement submitted that the scheme of compassionate appointment is governed by a set of rules and regulations issued based on various judgments and recommendations of the Pay Commissions from time to time. As per the extant rules provision of appointment under compassionate grounds is limited to 5% of vacancies falling under direct recruitment quota in group-D and C posts and as such a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities. The Hon'ble Apex Court has ruled that granting of appointment on compassionate grounds without assessing the financial position of the family is impermissible. They have also produced Annexure R-1(c) policy guidelines according to which the powers rested with High Power Committee were withdrawn and made the Corporate office the authority in such matters. They submitted that at the time of death of the employee, the family consisted of three daughters aged 23, 19 and 17 and the widow. The eldest daughter was the applicant for compassionate appointment. The family has 5 cents of land and a small house, getting a monthly family pension of Rs. 3250/- and received a total of Rs. 3,28, 127/- as benefits like DCRG etc. The application of the applicant for employment was received on

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13.9.2004, the High Powered Committee found the applicant eligible for appointment on compassionate grounds and decided to grant her a Group-D post according to her turn. Accordingly she was placed in the list of applicants which was prepared based on the date of death of the employee. As the waiting list was very lengthy and the number of posts that can be filled under the scheme was very meagre, the applicant could not be provided appointment earlier. Out of the 124 applicants 19 were females. A report regarding the marital status was called for on 17.6.2008 and it was found that 5 applicants including the applicant were married. Hence the appointment in respect of the five candidates were rejected and the remaining applicants were offered appointment under the scheme. They further submitted that the respondents acted in accordance with the extant rules and there is no provision to grant appointment to SC/ST on priority basis, the married daughters will not come under the purview of the scheme. They relied on the judgment of the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others (JT 1994(3)SC 525), Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Maberkar and Other (JT 1994(2) SC 183) and Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319).

4 The applicant filed rejoinder stating that she was wholly dependent on the Govt. Servant at the time of death of the govt. servant. The Committee has come to the conclusion that the family was in indigent condition and approved the appointment of the applicant. Hence she should have been appointed at least in her turn when a vacancy arose.

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5 I have heard the learned counsel appearing on both sides and perused the records.

6 I find that the employee died on 29.2.2004 and that the applicant submitted application for appointment under compassionate grounds on 13.9.2004, the High Power Committee of BSNL in its meeting held on 3.2.2005 found that the family was in indigent condition and the applicant was eligible and suitable for compassionate appointment under the rules. As appointment under this scheme can be made only upto a maximum of 5% of vacancies falling under direct recruitment quota, due to shortage of vacancies she was placed in the waiting list of the Kerala Circle. The applicant was at Sl. No. 42. Had there been vacancy the applicant would have been appointed by the time the new guidelines were issued on 27.6.2007 (Annexure R-1(b)). After the death of the sole male member in the family, as the widow was ailing and as there was no male member in the house, the marriage of the applicant was held and that the husband of the applicant is staying in the house of the applicant and running a petty tea shop. In the circumstance, the marriage of the applicant was necessary in the overall welfare of the family.

7 The OM dated 9th October, 1998 at Annexure R-1(a)(i) governs compassionate appointment under Central Government. According to Annexure R-1(a)(i) "a daughter" (including adopted daughter) who was wholly dependent on the Government servant at the time of his death in harness or retirement on medical grounds is eligible for compassionate appointment. Due to the time lag between the approval by the High Power Committee and the issuance of the

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order of appointment by the administration, the applicant lost opportunity to get a job on account of her father dying in harness. Now being a married daughter, she cannot be treated as wholly dependant on the mother for her welfare. Still, the widow who is suffering from cancer which needs expensive and prolonged medical treatment, cannot look after herself and the two remaining unmarried daughters, on her meagre pension. Under such circumstances, administration does come forward to offer the job to another eligible member of the family. Taking cognisance of the fact that the family was found in financial straits, needing some economic assistance, the High Power Committee which met in 2005, decided to lend a helping hand to the family as permitted by the rules and regulations framed by the Government of India. To an extent, the High Power Committee is expected to ensure representation of SC/ST candidates in the approved list. It is stated that all the approved candidates barring married female candidates have since been appointed.

8 In view of the above facts, in my view, ends of justice will be met if another eligible daughter from the family is approved, in the place of the applicant retaining her position as 42, in the waiting list with prospective effect. This may be done within a time line of two months.

9 The O.A. is allowed as above. No costs.

Dated 21st July, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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