

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 119 of 2010

Wednesday, this the 3rd day of August, 2011

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

1. K.G. Parvathy, W/o. Late K.K. Vasu, Ex. JTO,
Kolor House, Vadakkumuri Post, Thrichur-680 570.
2. K.V. Sandeep, S/o. Late K.K. Vasu, Ex. JTO, Kolor House,
Vadakkumuri Post, Thrichur-680 570. **Applicants**

(By Advocate – Mr. Sreekumar G. Chelur)

V e r s u s

1. The Chief General Manager, Bharath Sanchar
Nigam Ltd. (BSNL), Kerala Tele Communications,
Thiruvananthauram-695 033.
2. The General Manager, Office of the PGM Telecom,
BSNL, Trichur.680001. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 03.08.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The second applicant in this OA is the son of late K.K. Vasu who expired on 29.9.2005 while working as JTO under the respondents. He left behind his wife and two sons in dire penury. With the consent of the elder son the first applicant the widow sought employment for the younger son under compassionate appointment scheme on 2.9.2006. The request was rejected on the ground that the net points based on the guidelines dated



27.6.2007 come to less than 55.

2. Aggrieved the applicants have filed this OA for the following relief:-

"a. To declare that Annexure-A3 letter is bad in law and therefore requires to be quashed in the interest of justice.

b. To declare that the 2nd applicant is entitled for employment under the dying in harness scheme.

c. To call for the records leading to Annexure A2 and may be pleased to quash the same finding that it is illegal.

d. To direct the respondents to consider Annexure A1 Application within such time as this Hon'ble Tribunal may be pleased to fix."

3. The applicant submitted that the object of the compassionate appointment scheme is to support the family in penury, on the sudden demise of the only earning member. Therefore, there should be a balanced and objective assessment of the financial position of the family before making a summary rejection. The dependency and the financial status of the family should be considered. The new policy guidelines introduced with effect from 27.6.2007 as at Annexure A-3 is too technical and will not help the needy. The weightage point assessment under the guidelines does not indicate the indigent status of the deceased family correctly. The assessment of the financial situation of the family should not have been made based on the terminal benefits of the deceased employee.

4. The respondents submitted that the object of the compassionate appointment scheme is to grant appointment on compassionate grounds to a dependent family member of the government servant dying in harness or



who retired on medical grounds thereby leaving his family in penury and without any means of livelihood, to relieve the family of the government servant from financial destitution and to help the family to get over the emergency. The BSNL has formulated policy guidelines and introduced weightage point system to bring uniformity in assessing the indigent condition of a family for offering appointment on compassionate ground vide letter No. 273-18/2005-Pers IV dated 27.6.2007. As per the provisions of the scheme cases with 55 or more net points shall be prima facie treated as eligible for consideration by the BSNL Corporate office High Power Committee for compassionate ground appointments. There is no fundamental change in the policy guidelines on compassionate ground appointments issued by DOP&T vide OM dated 9.10.21998. The application of the second applicant for appointment under compassionate ground appointment scheme was considered by the circle high power committee on 5.2.2008 in accordance with the guidelines issued by the BSNL corporate office vide letter dated 27.6.2007. It was further submitted by the respondents that the Ahmedabad Bench of Central Administrative Tribunal had considered an identical case in OA No. 377 of 2008. The contention of the applicant therein was that he was entitled for consideration of his request for appointment under compassionate appointment scheme in terms of earlier assessment instead of the new scheme based on weightage system. The Ahmedabad Bench did not think it would be appropriate to interfere in the matter especially since the weightage system has proven itself to be valid and will eliminate the element of corruption and nepotism. The respondents also relied on the judgment of the Hon'ble Supreme Court



in Umesh Kumar Nagpal Vs. State of Harayana & Ors. JT 1994 (3) SCC 525. The respondents further submitted that the decision of the competent authority in rejecting the request of the applicant is strictly in accordance with the rules and the regulations issued by the Government of India and orders contained in various judgments pronounced by the Hon'ble Supreme Court prevailing at the time of convening the high power committee meeting.

5. We have heard the learned counsel for the parties and perused the records.

6. The father of the applicant No. 2 had expired on 29.9.2005. The applicant No. 2 had applied for a job under the compassionate appointment scheme on 2.9.2006. The new compassionate appointment scheme at Annexure A-3 came into effect on 27.6.2007. The request of the applicant No. 2 was considered by the competent authority on 5.2.2008 as per the new scheme. The prayer of the applicants is that the new compassionate appointment scheme should be quashed as it is bad in law and that the request of applicant No. 2 should be re-considered by the respondents implying thereby that his request should be considered under the earlier scheme. The applicants have not succeeded in proving any illegality in the new compassionate appointment scheme. However, the question considering the request for appointment under the earlier scheme is taken up for consideration. In TA No. 128 of 2008 this Tribunal had considered the contention of the applicant therein as his father expired prior to the



introduction of the new scheme and the respondents ought to have considered his case as per the old scheme. The OA was allowed. It was challenged before the Hon'ble High Court of Kerala in WP(C) No. 36025 of 2009. The WP(C) was dismissed as under:-

"Respondents in TA 128/2009 on the file of the Central Administrative Tribunal, Ernakulam Bench, are the petitioners herein. The challenge the order passed by the Tribunal in the said case. The facts in brief is as follows: For the purpose of convenience we shall refer the parties as arrayed before the Tribunal. The father of the applicant who was working as Jamedar died on 5.4.2006. The applicant filed an application for compassionate appointment on 11.9.2006. 62 cases were recommended for compassionate appointment as per information furnished by the official respondents out of 79 applicants. But the case of the applicant was not included therein. Subsequently, the scheme was revised on 6th July, 2007 as per which minimum points have to be scored for grant of compassionate appointment. That is to say, unless the candidate secures 55 points under various parameters such as status of the family, number of unmarried daughters, terminal benefits received etc. he will not be eligible. Actually, the respondents considered the case of the applicant on the basis of the latter scheme which came into force on 6th July, 2007 and found that the applicant could not secure the requisite point. Hence, his application was rejected. The short point that arose for consideration was as to whether the applicant's case should be considered with reference to the scheme which was in force at the time of the death of the employee (the father of the applicant) or it should be considered against the latter scheme which came into force on 6th July, 2007. Following the decision of the Apex Court in SBI v. Jaspal Kaur ((2007) 9 SCC 571)) and State Bank of India vs. Dubey ((2007) 9 SCC 579)) the Tribunal found that the case of the applicant ought to be considered as against the scheme which was in force at the time of the death of the employee.

2. Though it was contended that the the latter scheme is only the continuation of the earlier scheme and that it is more transparent and beneficial, the Tribunal rightly held that all that is required to be considered is as to what is the rule prevalent as on the date of the demise of the employee and whether it is beneficial or not is not relevant in that regard. The right to apply under the Dying-in-harness scheme arose because of the death of the father of the applicant and when he made an application, if there was suitable post, then necessarily, the benefit would have been worked out based on the scheme. The fact that available post was not there at that time and in the mean time another scheme has come into force by itself is not a reason to hold that the latter scheme is applicable irrespective of the



death of the employee and the application of the applicant, especially on the basis of the decision of the Apex Court.

3. We find, in such circumstances, no ground to interfere with the finding of the Tribunal. There is no error of law committed by the Tribunal. We find no merits in the writ petition. Dismissed."

(emphasis supplied)

7. The respondents have cited the decision of the Co-ordinate Bench of this Tribunal at Ahmedabad in OA No. 377 of 2008 dismissing the claim of the applicant therein that he was entitled for consideration of his request for appointment under the compassionate appointment scheme in terms of the earlier existing scheme. The Ahmedabad Bench has refused to interfere in the matter of rejection of the claim of the applicant in terms of the new policy especially since the weightage system has proven itself to be valid and will eliminate the element of corruption and nepotism. This decision of the Ahmedabad Bench can be distinguished by the decision of this Tribunal in TA/128 of 2008 and confirmed by the Hon'ble High Court of Kerala. The Ahmedabad Bench decided the validity of the new scheme. This Bench decided the issue whether the request for appointment under the compassionate appointment scheme is to be considered as per rule prevalent as on the date of demise of the employee. The law laid by the Apex Court in *State Bank of India & Ors. Vs. Jaspal Kaur* - 2007 (2) SCC (L&S) 578 is as under:

"26. Finally in the fact situation of this case, Shri Sukbir Inder Singh (late) Record Assistant (Cash & Accounts) on 1.8.1999, in the Dhab Wasti Ram, Amritsar Branch, passed away. The respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 5.2.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4.8.2005, when her application was made in 2000. A dispute arising



in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of the deceased is Rs. 5855 only, which is less than 40% of the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water."

(emphasis supplied)

8. In 2007 (9) SCC 579 - State Bank of India Vs. Vikas Dubey also the Hon'ble Supreme Court held an identical view. The applicant No. 2 in the instant OA is similarly placed as the applicant in TA No. 128 of 2008. Following the decision of this Tribunal in the aforesaid TA confirmed by the Hon'ble High Court of Kerala and as per the decision of the Hon'ble Apex Court in Jaspal Kaur (supra) the request of the applicant No. 2 in the instant case is to be considered by the respondents as per the scheme of compassionate appointment scheme that existed on the date of demise of the father of the applicant No. 2.

9. Accordingly, it is ordered that the respondents should consider the case of the applicant No. 2 as per the scheme existing on 29.9.2005 for appointment under the compassionate appointment scheme within a period of two months from the date of receipt of a copy of this order. The Original Application is allowed as above. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

Name of the 1st applicant shown in the cause title to the order dated 3rd August, 2011 in OA No. 119 of 2010 as K.G. Parvathy is corrected and substituted as K.G. Prabhavathy vide order dated 31.01.2014 in MA/180/00091/2014 in OA No. 119 of 2010.

"SA"

By order

(Registrar)