

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 18 of 2010

...F.R.D.R... this the 22nd day of October, 2010

CORAM :

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Syam Kumar B, aged 20 Years,
S/o. (late) K. Babu,
"Syam Nivas",
Kodanthuruth, Kuthiathode P.O.,
CHERTHALA

.... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. The Chairman-Cum-Managing Director,
Bharat Sanchar Nigam Limited,
NEW DELHI.
2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Telecommunications,
THIRUVANANTHAPURAM : 695 033
3. The Deputy General Manager (Admn.),
Office of the Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Telecommunications,
THIRUVANANTHAPURAM : 695 033 Respondents.

(By Advocate Mr. T.C. Krishna)

This application having been heard on 05.10.10, the Tribunal
on 22.10.10.... delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant praying for the following
main reliefs :



(i) Call for the records leading to the issue of Annexure A1 and quash the same;

(ii) Declare that the applicant is entitled to be considered for an appointment on compassionate ground as per the Scheme which was in force as on the date of demise of the applicant's father, i.e., 17.09.05 and direct the respondents to consider the case of the applicant accordingly and direct further to grant all consequential benefits thereof forthwith;

(iii) Award costs of and incidental to this application;

2. To state briefly the facts of the case, the applicant's father died in harness on 17.09.2005 after putting in 11 years of regular service in the BSNL. The applicant was minor on the date of demise of his father. The applicant's mother submitted a representation for appointment to the applicant on compassionate ground. She was informed that an application could be submitted once the applicant attains the age of majority. The applicant submitted a representation on 20.01.2009 on his attaining the age of majority. The said representation was rejected on the ground that as per the new policy guidelines of the BSNL Corporate conveyed under letter dated 27.06.2007, the applicant's case was not found fit for granting appointment on compassionate ground.

3. The applicant submits that the rejection of his representation for appointment on compassionate ground is arbitrary as it has not been considered in terms of the Scheme which was in force at the time of demise of his father. In the light of the law declared by this Tribunal in T.A. No. 128/2008, the applicant is entitled to be considered for appointment on compassionate ground in terms of the Scheme which was in force prior to 17.09.2005, i.e. as on the date of applicant's

A handwritten signature in black ink, appearing to be a stylized 'M' or a similar character, is located at the bottom of the page.

father. The applicant continues to be unemployed and the family continues to be in deep misery and hardship. The question of comparative merit of indigence comes only when the number of vacancies are very few and the candidates are more. In the instant case, there are number of vacancies still remaining unfilled for the purpose of appointment on compassionate ground. Therefore, the denial of consideration for appointment to the applicant is arbitrary and illegal. Hence the O.A.

4. The respondents resisted the O.A. on the following grounds. The object of the compassionate appointment scheme is to grant appointment to the dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without any means of livelihood so as to revive the family of the Government servant concerned from financial destitution and help to get over the emergency. Keeping in view the guidelines issued by the Government of India, the BSNL formulated policy guidelines and introduced weightage point system to bring uniformity in assessing the indigent condition of the family for offering appointment on compassionate ground vide letter No. 273-18/2005-Pers.IV dated 27.06.2007. As per this guideline, cases with 55 or more net points shall be *prima facie* treated as eligible for consideration by the High Power Committee of BSNL Corporate Office for appointment on compassionate ground. The applicant's father passed away on 17.09.2005. But the application for appointment on compassionate ground was received only on 20.01.2009. The application is highly belated. As per the Apex Court judgement, a balanced and objective assessment of the financial condition of the family

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom center of the page.

has to be made taking into account the assets and liabilities and all other relevant factors of the case while considering the request for compassionate appointment. The decision of the competent authority in rejecting the request of the applicant seeking appointment on compassionate ground was strictly in accordance with the rules and regulations on the subject. The stand taken by the respondents has been upheld by the Ahmedabad Bench of C.A.T. in O.A. No. 377/2008, decided on 28.08.2009. The order of this Tribunal in T.A. No. 128/2008 has not become final as the matter is pending before the Apex Court. The family of the deceased was paid all terminal benefits amounting to Rs. 5,88,408/-.

The family is living in own house. Therefore, the O.A. deserves to be dismissed.

5. In the rejoinder filed by the applicant, it was submitted that the applicant's mother had submitted an application for appointment on compassionate ground well in time. But she was informed that the application could be considered only when the applicant attains the age of majority. The applicant's case cannot be assessed on the basis of new policy. The applicant's claim for appointment on compassionate ground was rejected solely relying on the weightage system introduced through the new Scheme. The above order of the C.A.T, Ahmedabad Bench has no application in the case of the applicant in the light of the decision of the Apex Court in **SBI Vs. Jaspal Kaur**, (2007) 2 SCC (L&S) 578. The applicant further submitted that this Tribunal in O.A. No. 896/2009 and connected cases upheld that the case of the applicants therein should be considered in accordance with the Scheme which was in existence at the

A handwritten signature in black ink, appearing to be a stylized 'B' or a similar character, is located at the bottom center of the page.

time of the death of the concerned employees. In Annexure R2(f) at serial No. 1, the dependent's weightage is left blank in detail No. (c) without giving the weightage of being a minor to the applicant. The application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under various welfare schemes. The applicant relied on the judgement of the Apex Court in **Govind Prakash Verma vs. LIC of India and Others**, 2005 SCC (L&S) 590, wherein it has been held that "*it was wholly irrelevant for Single Judge to take into consideration the amount which was paid as family pension to widow of the deceased and other amounts paid on account of terminal benefits under the rules. Hence, respondents are directed to consider claim of the appellant for compassionate appointment within 3 months of the order*".

6. Arguments were heard and documents perused.

7. The question whether the dependent of a Government employee who died in harness is to be considered for appointment on compassionate ground as per the Scheme which was in force as on the date of demise of the employee, has already been decided in a number of cases by this Tribunal. In T.A. No. 128/2008, O.A. No. 896/2009 and connected cases, O.A. No. 482/2010 and O.A. No. 485/2010, this Tribunal relying on the law laid down by Hon'ble Supreme Court in the case of **SBI Vs. Jaspal Kaur**, (2007) 2 SCC (L&S) 578 (supra) held that the claim for appointment on compassionate ground is to be considered in accordance with the Scheme which was in force at the time of the death of the concerned employee.

A handwritten signature in black ink, appearing to be a stylized 'J' or a similar character, followed by a horizontal line.

The relevant part of the judgement of the Apex Court is reproduced as under :

"26. Finally in the fact situation of this case, Shri Sukhbir 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. The decision of this Tribunal in T.A. No. 128/2008 was upheld by Hon'ble High Court of Kerala in Writ Petition (C) No. 03/2009, the relevant extract of the judgement is reproduced below:

" Though it was contented that 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 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 meantime another scheme has came 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)



9. In the light of the decision of the Apex Court in **SBI Vs. Jaspal Kaur**, (2007) 2 SCC (L&S) 578 (supra), the aforesaid order of the Ahmedabad Bench of C.A.T. has no application in the instant case. As stated by the respondents in para 10 of their reply statement, an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under various welfare schemes. While considering the request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family of the deceased employee has to be made taking into account the assets and liabilities and all other relevant factors such as the presence of an earning member, size of the family, age of the children and the essential needs of the family etc. In the instant case, the family owns a house. But its means of livelihood does not appear to have been considered. The check list with reference to the weightage point system does not appear to have given weightage on account of the applicant being minor at the time of demise of his father. As per the judgement of the Apex Court in **Govind Prakash Verma vs. LIC of India and Others**, 2005 SCC (L&S) 590, the amount paid as family pension to widow of the deceased and other amounts paid on account of terminal benefits under the rules are irrelevant for considering appointment on compassionate ground.

10. In the light of the settled law and the facts and circumstances of the case, the O.A. deserves to be allowed. Accordingly, it is ordered as under.



11. The order Annexure A-1 dated 09.10.2009 is quashed and set aside.

The respondents are directed to consider the claim of the applicant for appointment on compassionate ground as per the Scheme which was in force as on the date of demise of the applicant's father and pass suitable order within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated, the 22nd October, 2010)



**K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER**

cvr.