

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 188 of 2012

FRIDAY this the 10th day of July, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

E.K. Sanoj, aged 27,
S/o. (late) K.V. Sasidharan,
Kaiprath House,
Korom, Chalacode (Post),
Kannur District.

..... **Applicant**

(By Advocate – Mr. P.V. Mohanan)

V e r s u s

1. The BSNL represented by
The Chairman Cum Managing Director,
BSNL, New Delhi.
2. The Deputy General Manager (HR),
Office of Chief General Manager Telecom,
Kerala Circle, Thiruvananthapuram.
3. The General Manager, Telecom, BSNL,
Kannur.

..... **Respondents**

(By Advocate – Mr. Pradeep Krishna)

This application having been heard on 29.6.2015, the Tribunal on

10.07.2015 delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

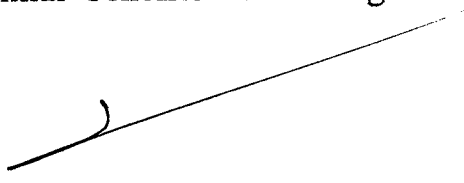
This application is filed by the applicant seeking compassionate appointment. His father while working as Telephone Mechanic died on 5.9.2008 leaving behind his wife Soudhamini, aged 46 years and two

children including the applicant and his sister Sarika. The applicant's father had rendered 27 years of qualified service and terminal benefits amounting to Rs. 7,13,568/- was paid to the applicant's mother. She is also granted a family pension of Rs. 5,115/- plus DA. The outstanding loan of Rs. 1,60,000/- was remitted. The family of deceased Soudhamini is indigent. The applicant's mother met with an accident and suffered head injury and she had to undergo skull operation for which Rs. 1,10,000/- was incurred. She is still undergoing treatment.

2. An application was submitted by the applicant seeking compassionate appointment on 25.10.2009 vide Annexure A1. It was rejected as per Annexure A2 dated 24.7.2010. The applicant is entitled to get higher positive weightage point in the matter of dependent weightage, left out service etc., but these aspects were not considered by the Committee. No proper assessment was made by the Committee in terms of Annexure A6 [R1(b)] guidelines. Annexure A6 is contrary to Annexure R1(a) dated 9.10.1998. The weightage point system considered in R1(b) [Annexure A6 dated 27.6.2007] is unscientific. Hence, the applicant contends that he is entitled to get appointment on compassionate grounds.

3. Respondents resisted the claim contention as follows:-


3.1. It is admitted that Shri K.V. Sasidharan the father of the applicant died on 5.9.2008 and that he was survived by his wife, the applicant and his sister. His sister (the daughter of the deceased) was married and she is living separately. All terminal benefits amounting to Rs. 7,13,568/- was



paid to the family of the deceased in addition to the monthly family pension of Rs. 5,115/- plus DA. The car accident mentioned in the OA had occurred long after 26.5.2011. She is covered under the BSNL medical reimbursement scheme and hence she can claim medical expenses incurred for treatment. The family owns 16 cents of land and a house thereon and the liability is to the tune of Rs. 1,70,666/- whereas they had received Rs. 7,13,568/-. The applicant's case was considered as per the guidelines and found that the net point obtained was only 21 and hence the claim was rejected as can be seen from Annexure R1(d). Consequent to the introduction of new policy guidelines by BSNL Corporate Office [Annexure R1(b)] provision for appointment under compassionate grounds is limited to only dependent members of the family leaving in indigent condition. In order to bring uniformity for assessment of indigent condition, the family weightage point system has been introduced. Hence, the respondents contended that the applicant is not entitled to get any relief as sought for.

4. In the rejoinder filed by the applicant it is contended that the mode of fixing marks is arbitrary. There is no scientific basis for treating persons as not indigent who secured points below 55.

5. It was replied by the respondents contending that compassionate appointment is a discretionary process whereby a person not going through the normal selection process is being granted Government employment. It emerges out as a permanent employment granted to persons who are not

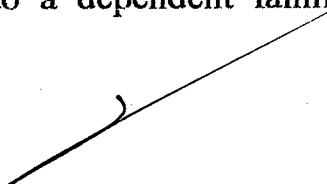


meritorious and in discrimination to others. The contention that the weightage system is arbitrary is without any basis. Weightage system brings in yardstick for measurement of indigency. All factors are given due weightage in the new system. There are cases with more than 75 points in which the left over service is more and the family lives in rented accommodation with a meager family pension and terminal benefits and in such situation the dependent weightage is also very high.

6. Heard the learned counsel for the applicant and the respondents and perused the pleadings and records.

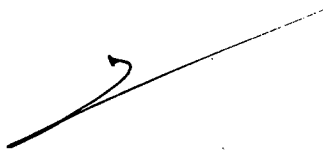
7. The point for consideration is whether Annexure R1(b) is arbitrary and unscientific and liable to be quashed or varied and whether the applicant is entitled to get appointment on compassionate grounds ?

8. Annexure R1(b) is the guidelines for compassionate appointment issued on 27.6.2007. Going by the same it can be seen that it was to bring uniformity in assessment of indigent condition of the family for offering compassionate grounds appointment, the guidelines were issued. A High Power Committee of the Corporate Office of the BSNL was constituted for considering the compassionate grounds appointment cases headed by the Director, HRD. It was that Committee which recommended for introduction of a weightage point system to bring uniformity in assessment of indigent condition of the family. The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of an employee



dying in harness, leaving his family in penury and without any livelihood and to relieve the family of the deceased employee from financial destitution and to help it to tide over the sudden crises. The procedure is prescribed in Annexure R1(b). It shows that check list in the format of Annexure II mentioned therein, in proforma Part 'A' and Part 'B' complete in all respects along with supporting details shall be sent to the concerned territorial circle for further process. It is the Circle High Power Committee consisting of circle head and two other officers of SAG/JAG level nominated by circle head, to consider applications for appointment on compassionate grounds as per weightage point system. It was specified that in respect of cases with net points 55 or more the minutes of the Circle High Power Committee will be sent to BSNL Corporate Office along with supporting documents including the check list for consideration and decision by the Corporate Office.


9. It is vehemently argued by the learned counsel for the applicant that the weightage point system contained in Annexure R1(b) is unscientific. It is argued that there no point is given for the medical treatment undergone by the dependents. The main thrust of the argument advanced by the learned counsel for the applicant is that a sum of Rs. 1,10,000/- had to be spent for the applicant's mother (widow of the deceased employee), for treatment of the injury sustained in an accident and that still she is undergoing treatment which requires further amount to be spent. This according to the learned counsel for the applicant is not a criteria for weightage point, seen reflected in the scheme and so the scheme to that extent has to be held illegal.



10. This argument is countered by the learned counsel for the respondents pointing out that the widow of the deceased employee is covered by BSNL medical reimbursement scheme and so whatever amount is spent for treatment, the applicant's mother can certainly get it reimbursed. It is also pointed out by the learned counsel for the respondents that the accident mentioned therein took place long after their retirement and not only that it was a motor vehicle accident and so the victim/injured would certainly get compensation from the Motor Accidents Claim Tribunal (MACT).

11. It is stated that a sum of Rs. 1,60,000/- is outstanding as loan. The terminal benefit paid to the applicant's mother is Rs. 7,13,568/- and still there is a balance of more than Rs. 5,00,000/- and as such the respondents were perfectly justified in rejecting the case of the applicant.

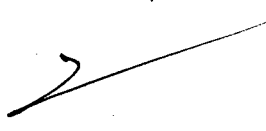
12. Exhibit R1(d) is the check list with reference to the weightage point. Since the daughter was already married the number of dependents was only the widow and the applicant and so the points secured for dependents is shown to be 10. Clause-II of Annexure R1(b) specifies that if the basic family pension is Rs. 4,250/- and above no weightage point is eligible. Here admittedly the monthly family pension which the applicant's mother gets is Rs. 5,115/- plus DA and as such on that count the applicant does not get any point. Since the left out service of the deceased was more than 7 years and odd which was rounded as 8, the point given on that count in Annexure R1(d) is 8. Further, since the terminal benefits obtained was Rs. 7,13,568/-



the applicant got only 3 points.

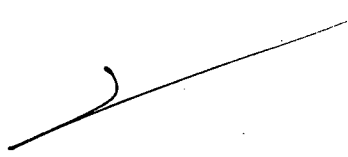
13. As stated earlier the serious contention raised by the applicant is that his mother had sustained serious injury and an operation had to be conducted upon and so huge amount was spent and therefore, that amount should have been deducted. We find no merit in that contention. It was pointed out that the widow was entitled to get BSNL medical reimbursement as per scheme. No only that she may be entitled to get compensation from MACT as well. If such liabilities are also taken in to account similar cases with liabilities will be brought by other applicants claiming appointment under the scheme. If such criterias are to be added it would be some times unending. This Tribunal can not step in to make additions or deletions. There is no illegality in R1(b) - scheme. As the family of the deceased was having 16 cents of land and a house thereon, on that count also the applicant does not get any point. The total points thus secured by the applicant is only 21.

14. It is argued by the learned counsel that if the deceased has only one surviving son he gets only 5 marks out of the cut of marks fixed as 55 but if on the other hand, if there are six children they will get 30 marks i.e. more than 50% of the required marks which is actually against the small family concept and would actually undermine the policy of family planning. But that argument is countered pointing out that whatever may be the small family concept the paramount importance is to relieve the family of the deceased especially when the deceased has left behind one or two minor




children and when the deceased was the sole breadwinner of the family. The further argument is that if the family pension is above Rs. 4,250/-, no point is conferred. If the family pension is above Rs. 4,250/- the weightage marks would be nil. The argument is that because of the depreciation in money value it is not at all possible for a family to pull on with Rs. 4,250/- and DA. This argument is also unsound and untenable. When there would be so many applicants getting only meager pension far less than Rs. 4,250/- how can the applicant claim to have such a criteria or parameter to be adopted in his case alone. So far as this case is concerned family of the deceased has a property measuring 16 cents having a residential house therein and so it cannot be said that the hardship caused to the applicant is more when the claim of the dependent of other deceased persons were compared. We are not supposed to make a comparative study of all such claims.

15. The scheme of compassionate employment was conceived decades back. True, an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received benefits under various welfare scheme. But that question does not arise here, since the claim is not rejected solely on that ground. While considering the request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account the assets and liabilities including the benefits in the various welfare scheme and all other relevant factors. No doubt, the request for compassionate appointment has to be considered with greater sympathy. But the appointment is intended to be given only to



a son, daughter or widow of the employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event there being no other remaining member in the family to supplement the loss of income and relieve the economic distress of the members of the family. Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds as has been held by the Hon'ble Supreme court in *Umesh Kumar Nagpal v. State of Harayana & Ors.* - JT 1994 (3) SC 525. Offer of compassionate appointment as a matter of course is not permissible. It is not that there are umpteen number of vacancies intended to be provided on compassionate grounds. The vacancy is limited to 5%. The appointment on compassionate grounds can be made only if the vacancy is available for that purpose. Vide the Supreme Court decision in *Himachal Road Transport Corporation v. Dinesh Kumar* - JT 199 6 (5) SC 319 and *Hindustan Aeronautics Limited v. Smt. A. Radhika Tirumalai* - JT 1996 (9) SC 197. It is pointed by the learned counsel for the respondents that the compassionate appointment is a discriminatory process whereby a person not coming through the normal selection procedure is being granted the Government employment. It was to have a yardstick for measurement of indigency that scheme (weightage system) has been envisaged. Minor children, more number of dependents, unmarried daughters, handicapped dependents, rented accommodation and meager family pension are all factors which are to be given due weightage in the system introduced by Annexure R1(b). It is pointed out by the respondents that there are applicants having more than 75 points in which the left out

service of the deceased official was much more than that of the father of the applicant in this case. It is also pointed out that there are cases where the family of the deceased are staying in rented accommodation with a meager family pension and terminal benefits and that in such cases the dependent weightage would be more high. There are cases in which the applicants are seeking employment on compassionate grounds who secure more than 75%. If so the question of considering the claim of applicant, who could secure only 21 marks which is far below the cut off marks does not arise at all. It is also pointed out that there is a long waiting list of eligible candidates and therefore, no preference can be given to the applicant who could secure only 21 marks. When there are persons living in absolute penury and indigent condition eagerly waiting for a job, a person like the applicant cannot be given any compassionate appointment, the respondents contend, pointing out the negative factors in the case of the applicant. When the number of vacancy is only very few and when number of applicants are very high only the most suitable indigent, who secures more point can be considered for employment. For that purpose a comparison of cases is done by the Committee for which the new weightage point system is resorted to. By introducing this weightage system the possibility of giving appointment to undeserving applicant could be practically nil. It is to avoid appointment on the whims and fancies of the authorities that such a scheme has been introduced. The Tribunal cannot shut its eyes to the object behind introducing such a scheme. It is in order to bring uniformity in the consideration of indigent condition of the family, weightage point system has been introduced with items like dependent family members, terminal



benefits granted, number of left out years in service etc. It is to eliminate arbitrariness and irrationality in the matter of selection such a transparent scheme has been brought in. There is no arbitrariness or unreasonableness in the weightage system introduced as per Annexure R1(b). The argument attacking the validity of R1(b) is misplaced. When there is a lengthy waiting list with eligible candidates with more weightage point the contention to the contrary advanced by the learned counsel for the applicant is only to be discountenanced.

16. In view of what is stated above, we have no hesitation to hold that challenge made against Annexure R1(b) is only to be rejected. The claim made by the applicant that he is entitled to be appointed on compassionate grounds also is found to be unmerited. Hence, this OA is dismissed. No order as to costs.


(R. RAMANUJAM)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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