

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

Original Application No. 318 of 2013

TUESDAY, this the 22nd day of October, 2013

C O R A M :

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

Susan David C,
W/o. Late A.J. Jose,
Syam Nivas, Resselpuram P.O.,
Balaramapuram, Thiruvananthapuram

.... **Applicant.**

(By Advocate Mr. D Kishore)

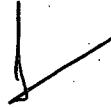
v e r s u s

1. The Bharat Sanchar Nigam Limited,
Represented by its Chief General Manager,
Kerala Telecommunications,
Thiruvananthapuram : 695 033
2. The Deputy General Manager (Administration),
The Bharat Sanchar Nigam Limited,
Thiruvananthapuram Telecom District,
BSNL Bhavan, Uppalam Road,
Thiruvananthapuram : 695 001
3. The Principal General Manager,
The Bharat Sanchar Nigam Limited,
Thiruvananthapuram Telecom District,
BSNL Bhavan, Uppalam Road,
Thiruvananthapuram : 695 001
4. The Assistant General Manager,
Personnel Section – IV,
The Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
New Delhi : 110 001

.... **Respondents.**

(By Advocate Mr. Johnson Gomez)

This application having been heard on 04.10.13, the Tribunal on 22.10.13
delivered the following :-



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

The applicant's husband died on 14.11.2005 while in the service of the Bharat Sanchar Nigam Limited (BSNL). The request of the eldest son of the deceased for appointment under the compassionate appointment scheme was rejected on 30.09.2008. The applicant applied for compassionate appointment on 08.07.2011, which was rejected by Annexure A-III order dated 12.03.2013. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) Call for the records leading to the passing of Annexure A-III order and quash the same;
- (ii) To direct the respondents to reconsider the claim of the applicant for appointment on compassionate grounds and to appoint her in any of the posts under the respondents, if she is otherwise eligible;
- (iii) Grant such other reliefs this Hon'ble Tribunal may deem fit and proper to meet the interest of justice.
- (iv) Award costs to the applicant.

2. The applicant contended that the order at Annexure A-III rejecting her application for appointment on compassionate ground is a non-speaking order. There is no indication in Annexure A-III as to what were the materials based on which it was concluded by the High Power Committee that she is not in penury. She relied upon the decision of the Hon'ble Supreme Court in ***Mukesh Kumar vs. Union of India and Others***, 2007 (8) SCC 398. The respondent department did not make any enquiry with reference to the financial condition of the applicant. They have not considered the financial



condition of the family of the deceased while rejecting his request. Annexure A-III order is against the spirit of the Scheme formulated for giving appointment on compassionate ground.

3. The respondents contested the O.A on the following grounds.

4. Since the applicant had scored 58 points, her case was recommended by the Circle High Power Committee and forwarded to the BSNL Corporate Office. But the Corporate Office High Power Committee concluded that in view of the assets, liabilities of the family, support arrangement, involved time period, long term commitments/responsibility and overall assessment of the condition of the family, she is not in penury and recommended rejection of her request. The very purpose and object of the compassionate appointment scheme is to provide immediate succour to the family of an employee on his death while in service. The Corporate Office duly considered the case of the applicant strictly adhering to Annexure R-2 policy and rejected her application with valid reasons. It is seen that it took almost 03 years for the widow to reapply for the post since the rejection of the application submitted by the elder son. She has 02sons aged 27 years and 24 years who can earn for the family. The contention that the respondents have not considered the factual situation and financial condition of the family is absolutely baseless. Merely because the applicant has obtained 58 points, she cannot be treated as eligible for appointment on compassionate ground. The financial liabilities left behind by the deceased employee are not a criterion for weightage point allotment. The appointment under compassionate appointment scheme can be made upto a maximum of 5% of vacancies falling under direct recruitment

quota in any Group-C or Group-D posts. The number of posts that can be filled under the compassionate appointment scheme is very small and there is a lengthy waiting list of eligible candidates. The respondents relied on the judgements of Hon'ble Supreme Court in (1994) 1 SCC 192, JT 1994 (3) SC 525, (1996) 1 SCC 301, (1996) 4 SCC 560, (1996) 6 SCC 394, JT 1997 (8) SC 332, (1998) 5 SCC 192 and so on.

5. I have heard Mr. D. Kishore, learned counsel for the applicant and Mr. Johnson Gomez, learned counsel appearing for the respondents and perused the records.

6. The request of the applicant for appointment under compassionate appointment scheme was rejected by Annexure A-III order dated 12.03.2013. The relevant part of the order reads as under:

"... Keeping in view the assets, liabilities of the family of the deceased official, support arrangement, involved time period, long term commitments/ responsibility and overall assessment of the condition of the family of the ex-employee, the HPC felt that the party is not in penury and the Committee did not agree to offer compassionate ground appointment to you and recommend for rejection of the request under provisions of the scheme for the purpose. The recommendations of the HPC have been approved by the competent authority."

In Para 16(c) under the head "GENERAL" in the scheme for compassionate appointment at Annexure R-1, it is stated as under :

"(c) An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a 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 its assets and liabilities (including the benefits received under the various

welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential need of the family, etc."

(emphasis supplied)

7. The weightage point system was introduced for bringing uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment as per Annexure R-2. Accordingly, cases with 55 or more net points shall be *prima facie* treated as eligible for consideration by the Corporate High Power Committee for compassionate ground appointment. Having scored 58 points in the weightage point system, the Circle High Power Committee had found the applicant indigent and *prima facie* eligible for consideration by the Corporate High Power Committee for compassionate ground appointment. As per the averment in the reply statement of the respondents, the financial liabilities left behind by the deceased employee are not a criterion for weightage point allotment. In the form for assessing the indigent condition of a person who seeks appointment on compassionate ground, there is no provision for showing the financial liabilities of the family of the deceased. Even without considering the financial liabilities of the deceased family, the case of the applicant was found fit by the Circle High Power Committee for further consideration by the Corporate High Power Committee. The Circle High Power Committee has considered all relevant factors other than the liabilities of the family of the deceased and found that the applicant is in penury. Therefore, the judgements of the Apex Court relied upon by the respondents do not apply to the instant case. Had the Circle High Power Committee considered the financial liabilities of the family, the condition of the applicant would have been more penurious. The Corporate

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High Power Committee felt that the applicant is not in penury. The grounds for arriving at this conclusion, which is contrary to the finding of the Circle High Power Committee, are not clearly spelt out in the impugned order. The question arises as to the basis on which materials, the financial liabilities of the family was assessed by the Corporate High Power Committee when the liabilities of the family do not figure in the weightage point system by which the Circle High Power Committee assessed the financial condition of the applicant.

8. Once the Circle High Power Committee *prima facie* found that the applicant is in indigent condition, what remain for further consideration by the Corporate High Power Committee are (i) whether any relaxation in the eligibility conditions for appointment is called for; (ii) whether vacancy is available for appointing the applicant and (iii) if the vacancies are less than the number of candidates applied for appointment under compassionate appointment scheme, a comparative assessment of the penurious condition of the candidates under consideration for appointment to the limited number of vacancies available. It appears that Corporate High Power Committee has not done its real job, instead, it took a contrary view as to the penurious condition of the applicant found by the Circle High Power Committee, without due application of mind. Hence it is only fair and just that the Corporate High Power Committee should reconsider the case of the applicant under the compassionate appointment scheme strictly as per Annexures R-1 and R-2. Accordingly, the O.A is allowed as under.

9. Annexure A-III order dated 12.03.2013 is quashed. The respondents are directed to reconsider the claim of the applicant for appointment on

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compassionate ground and appoint her in any of the posts available under the respondents, if she is otherwise found eligible. No costs.

(Dated, the 22nd October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.