

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No: 404/2009

This the 6th day of May, 2011

HON'BLE JUSTICE SHRI ALOK KUMAR SINGH, MEMBER (J)

Amit Kumar Singh, aged about 26 years, son of late Shri Vijay Bahadur Singh, permanent resident of Village and Post Office Masora, District Ambedkar Nagar.

Applicant

By Advocate Shri R. C. Singh.

Versus

1. Bharat Sanchar Nigam Limited, having its Corporate Office at 4th floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001, through its Chairman-cum Managing Director.
2. Chief General Manager Telecom, U.P. (East) Circle, Lucknow.
3. General Manager Telecom, Bharat Sanchar Nigam Limited, District Faizabad.

Respondents

By Advocate Shri G.S. Sikarwar.

Order (Dictated in Open Court)

By Hon'ble Justice Shri Alok Kumar Singh, Member (J)

This O.A. has been filed for setting aside the impugned order dated 21.01.2008 issued by respondent No. 3 (Annexure-1) and for directing the respondents to consider the case of the applicant for appointment on compassionate ground.

2. The case of the applicant as contained in the pleadings is that his died on 15.7.2005, while in service as Phone Mechanic in the Bharat Sanchar Nigam Limited and posted under the General Manager Telecom, District Faizabad. Upon death of his father, he submitted an application in the month of April 2006 for giving compassionate appointment. His case was forwarded by the respondent No. 3 to the office of Chief General Manager

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Telecom, U.P. (East), Circle, Lucknow (Respondent No.2) for consideration. A meeting of High Power Committee is said to have been held on 11.12.2007 wherein, the large number of cases including the case of the applicant were considered and finally, the claim of the applicant was rejected vide letter dated 21.1.2008 (Annexure-1). Consequently, the applicant filed a Writ Petition No. 18738 of 2009 before the Hon'ble High Court of Judicature at Allahabad, which was dismissed on 7.4.2009 on the ground of availability of alternative remedy. Hence this O.A.

3. The respondents refuted the claim of the applicant in their counter affidavit saying that the Circle High Power Committee considered the case of the applicant with reference to weightage point system introduced vide BSNL HQ letter dated 27.6.2007 (Annexure R-2). This system stipulates that cases with 55 or net points shall be prima-facie treated as eligible for consideration. The weightage points are allotted on the basis of number of wholly dependents family members of the ex-official, minor members of the family, unmarried daughters, special weightage to the widow if seeking compassionate appointment for herself, left out service of the ex-official, financial aspects of the family based on amount of family pension and belated requests etc. The applicant could score^{A^} only 37 points which was much below the qualifying weightage points i.e. 55 and accordingly, the claim of the applicant was therefore rejected.

4. In the rejoinder affidavit, besides other points it has been emphasized that the death of the father of the applicant took place on 15.7.2005 and the applicant sought

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appointment on compassionate ground in April 2006. As such, his case cannot be regulated by the circular dated 27.6.2007. It has been further said that neither the department can take the benefit of its own omission or delay in taking decision in the matter nor the aforesaid circular can be given retrospective effect so as to govern the previous case. It has been also said that the weightage of defendant as worked out by the respondents is also wrong and misleading because, neither aged and ailing mother of the deceased has been included in the family nor any marks have been awarded for her dependency.

5. Heard the learned counsel for the parties at length and perused the material on record.

6. The matter in question mainly hinges on the point as to whether or not the subsequent amendment in the policy for compassionate appointment can have a retrospective effect. Before we enter into merit of this, it is worthwhile to mention that there does not appear to be any quarrel on the point that claim of the applicant has been rejected mainly on the ground that he could score only 37 points against the minimum required 55 points in view of the aforesaid circular dated 27.6.2007. Though according to the respondents, earlier OM dated 9.10.98 and C. L dated 10.2.99 and other circular/OM were also taken into consideration at the time of consideration of the claim of the applicant but at the same time. Concededly, latest circular dated 27.6.2007 was also taken into consideration and mainly on the basis of the new criteria of weightage point laid down in the aforesaid latest circular, the claim of the applicant has been rejected. In the case in hand, the applicant's father died on 15.7.2005. The applicant

submitted his application for compassionate appointment in the month of April 2006 itself i.e. within 8 months of the death of his father. The new policy dated 27.6.2007 came into effect after a gap of about one year two months which for the first time laid down a working formula for earning points as detailed in the counter affidavit, a brief mention about which has also been made hereinbefore. The learned counsel for the respondents may be right in saying that by introducing this formula, the process has been made more transparent to rule out favoritism etc. But, the question before this Tribunal is as to whether this amended provision envisaged in the aforesaid circular dated 27.6.2007 may have any retrospective effect and whether the respondents were justified in applying this formula in the case of the applicant whose case pertains to the year 2005. It is settled preposition of law that no retrospective effect can be given to any statutory provision so as to impair or to take away an existing right of a person unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. Concededly, there is no such direction for having retrospective effect in the aforesaid circular. The above preposition of law has been reiterated in the case of **A.A. Calton Vs. Director of Education (1983) 3 SCC Page-33** and **Sharad Chandra Chandra Singh Vs. State Bank of India reported in 2010(28) LCD Page 277** upon which reliance has been placed from the side of the applicant.

7. From the other side, however, attention has been drawn towards an order of Division Bench of the Central Administrative Tribunal, Ahmadabad Bench dated 28.8.2009 in O.A. No. 377/2008. I have carefully gone through this

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order/judgment. Firstly, the aforesaid two case laws were not considered by the CAT Ahmadabad Bench in its order dated 28.8.2009. Secondly, in the face of the aforesaid preposition of law laid down by none other than the Hon'ble Apex Court and also followed in by the Hon'ble High court Judicature at Allahabad, there is no occasion to follow the aforesaid order passed by a Division Bench of Central Administrative Tribunal, Ahmadabad.

8. Earlier, similar question arose in O.A. No. 156/2010, which has been decided by this Tribunal on 29.4.2011 in favour of the applicant. There is no reason before me to now take a different view.

9. Finally, therefore, in view of the aforesaid facts and circumstances, this O.A. deserves to be and is accordingly allowed. The impugned order dated 21.1.2008(Annexure-1) along with minutes of the High Power Committee dated 11.12.2007 passed by the respondent authorities, so far it relates to the applicant, are hereby set aside. The respondents are directed to consider the case of the applicant afresh in view of the relevant O.M./ circulars which were inforce at the relevant time, ignoring the subsequent circular letter dated 27.6.2007 which cannot have retrospective effect. As the matter is already become quite old , it is desirable that this matter is finalized within a reasonable period say within 6 months from the date a certified copy of this order is produced by the applicant to the respondents. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) C. S. II
Member (J)