

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION NO: 384/10

This the 16th day of August, 2013.

HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

Munna Lal, aged about 44 years, S/o Late Sri Sunder Lal Yadav
R/o H. No. 5, Old Hyderabad, Near Kala Kankar House Lucknow.

Applicant

By Advocate: Sri U.B. Pandey holding brief for Sri H. K. Mishra.

Versus

1. Bharat Sanchar Nigam Limited, Circle UP (East), M.G. Marg Lucknow through the Chief General Manager (Telecom).
2. The Asstt. Director (Telecom) Office of the Chief General Manager (Telecom), Bharat Sanchar Nigam Limited Circle UP (East), M. G. Marg Lucknow.
3. The Superintendent Engineer Telecom Civil Circle Bharat Sanchar Nigam Ltd. Door Sanchar Sadar, La Place Rana Pratap Marg, Lucknow.
4. The Executive Engineer Telecom Civil Division-I, Bharat Sanchar Nigam Ltd. Bhopal House, Lalbagh Lucknow.

Respondents

By Advocate Sri G. S. Sikarwar.

(Reserved On 19.07.2013)

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section

19 of the AT Act with the following reliefs:-

- (a) This Hon'ble Tribunal may very graciously be pleased to direct the respondents to forthwith grant appointment on suitable Group 'D' post under the Scheme of Compassionate Appointment to the applicant in place of his deceased, who died in harness.
- (b) Any other order or direction that this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed, favoring the applicant.
- (c) Allow the present application in toto with costs."

2. The brief facts of the case are that the applicant is the son of the deceased employee, who died in harness on 11.10.1987,

and soon after the death of the applicant moved an application for grant of compassionate appointment. But the learned counsel for the applicant has submitted that the request of the applicant was neither rejected nor allowed by the respondents. As such, feeling aggrieved by the inaction of the respondents, the applicant preferred the present O.A. wherein, he has prayed for granting the compassionate appointment to the applicant forthwith.


3. The learned counsel for the respondents filed their reply and through their reply, it was categorically pointed out by the respondents that the case of the applicant was sympathetically considered for grant of compassionate appointment and the same was rejected vide order dated 3.4.1989 and the rejection order was annexed by the respondents in their reply as Annexure CA-2. In the copy of the said rejection order, the case of the applicant was duly considered by the respondents.

4. The respondents filed their reply on 27.10.10 and through their reply, it is also pointed out that after the death of ex-employee, the members of the deceased employee are getting family pension and also given the terminal benefits. It is also pointed out by the respondents that the elder son of the deceased employee is working as LDC in the treasury office and is getting regular salary as well. Not only this, the another son of the deceased employee is also working in the Treasury Office whereas, the third son is working as Group D and the forth son is having his own shop. As such, considering all the aspects, the High Power Committee decided that there is no need of immediate assistance to the family members. As such, the claim of the applicant was rejected by the authorities.

5. The learned counsel for the applicant filed their rejoinder affidavit on 6.5.11 and through rejoinder mostly the

averments made in the O.A. are reiterated. Apart from this, the learned counsel for the applicant also pointed out that the assessment made by the applicant is totally incorrect, and the said assessment is not available in the case of the applicant and it is also pointed out by the learned counsel for the applicant that the other brothers of the applicant are leaving separately and at the time of the death of the deceased employee, only the applicant was residing with his parents. The learned counsel for the applicant filed supplementary affidavit and the learned counsel for the respondents also filed the reply to the supplementary affidavit. Not only this, the respondents again filed a supplementary reply annexing the scheme for compassionate appointment dated 9th October 1998.

6. The applicant has also filed supplementary rejoinder in which, the contents of the original application are mostly reiterated. The applicant has also filed an amendment application on 21.12.12 stating therein that he was not aware of the order of 3.4.1989 rejecting the claim of the applicant as such, he may be allowed to challenge the same in the present O.A. The bare perusal of the first reply filed by the respondents shows that the order dated 3.4.1989 was filed by the respondents in their reply and the said reply was received by the applicant on 26.10.10 whereas, the learned counsel for the applicant waited for a period of two years for challenging the same. Apart from this, the bare perusal of the order dated 3.4.1989 shows a copy of the order duly communicated to the applicant as such, it cannot be accepted that the applicant was not aware of the said order, therefore, allowing any application at this stage would be unnecessarily lingering on the matter. Accordingly, the application for amendment is rejected.



7. Heard the learned counsel for the parties and perused the record.

8. Admittedly, the applicant is the son of the deceased employee, who died in harness in 1987 and soon after, the applicant moved an application for grant of compassionate appointment which was considered and rejected by the respondents in the year 1989 itself. The 4 sons of the deceased employee, who are the brother of the applicant are working and earning as well. Apart from this, the family of the applicant has also received terminal benefits as well as also getting family pension regularly. The applicant failed to indicate that his family is in indigent condition and is suffering a lot. It is also seen from the record that the applicant's father died in 1987, and since then, the family of the applicant is surviving. It is also seen from the record that in 2012, the age of the applicant is about 47 years.

As observed by the Hon'ble Apex Court in the case of **Haryana State Electricity Board Vs. Hakim Singh reported in (1997) 8 SCC 85**. The relevant portion of the said judgment is reproduced below:-

"12. We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crises befallen the dependants on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in *Haryana SEB v. Naresh Tanwar*. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on

compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in Umesh Kumar Nagpal v. State of Haryana, the other in Jagdish Prasad v. State of Bihar. In the former, a Bench of two Judges has pointed out that □ the whole object of granting compassionate employment is to enable the family to ride over the sudden crises. The object is not to give a member of such family a post much less a post for the post held by the deceased. In the latter decision, which also was rendered by a Bench of two Judges, it was observed that □ the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family □. The learned Judge pointed out that if the claim of the dependant which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased government servant □ which cannot be encouraged, de hors the recruitment rules □.

14. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. The respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

15. We, therefore, allow the appeal and set aside the impugned judgment of the High Court."

9. In another decision in the case of **Jagdish Prasad v. State of Bihar (1996) 1 SCC 301** the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules.

4. The appeal is accordingly dismissed."

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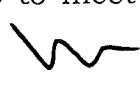
10. In the case of **Life Insurance Corporation of India v. Smt. Asha Ramchandra Ambekar(Mrs.) and Another reported in JT 1994(2)SC 183** the Hon'ble Supreme Court has been pleased to observe that the court and Tribunals cannot give direction for compassionate appointment on the ground of sympathy disregarding the instructions on the subject, but can merely direct consideration of the claims for such an appointment. Relevant portion of the judgment reads as under:-

"Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar v. M.P.S.R.T. Corpn.* it is stated as under :

"The provisions of the Motor Vehicles Act and in particular Selections 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorized trafficking in permits. Therefore the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his bus as nominee of the Corporation on the route in respect of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee."

11. In the case of **Umesh Kumar Nagpal v. State of Haryana and Ors. reported in JT 1994(3)SC 525** it has been observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Relevant portion of the said judgment is reproduced below:-

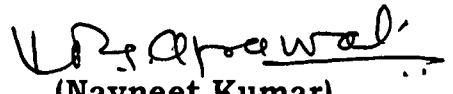
"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be



offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

12. Considering the submission made by the learned counsel for the applicant and after perusal of the record, I do not find any justified reason to interfere in the present O.A.. As such, O.A. is fit to be dismissed.

13. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)

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