

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 370/2012

Reserved on 7.5.2014

Pronounced on 26/05/2014

Hon'ble Sri Navneet Kumar, Member (J)

Vinod Kumar Nigam aged about 40 years son of late Sri Shiv Baldev Prasad at present resident of Surya Nagar, Manak Nagar, Lucknow.

Applicant

By advocate: Sri Praveen Kumar

Versus

1. The Chief General Manager, Bharat Sanchar Nigam Limited, U.P. East Telecom Circle, Lucknow.
2. The General Manager Telecom, Bharat Sanchar Nigam Limited, Kanpur.

Respondents

By Advocate; Sri G.S.Sikarwar

ORDER

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:-

i. to quash the impugned order dated 8.8.2012 annexed as Annexure No. A-1 to this O.A. with all consequential benefits.

ii. to consider the case of the applicant for compassionate appointment on the basis of the fact existing as on the date of death as held by the Ht in the matter of Pavitra Kumar

iii. any other relief which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

iv. cost of the present case.

2. The brief facts of the case are that the applicant is the son of the Govt. employee who died while working on the post of Wireman on 4.9.1996. The applicant submitted his application for grant of compassionate appointment in 1998. In 1999, the respondents called the relevant papers and certificates from the applicant for consideration. Subsequently, vide letter dated 27.11.2002, it was

informed to the applicant that his case for compassionate appointment was considered and rejected by the authorities. The applicant filed O.A. No. 121/2003. The said O.A. was disposed of by the Tribunal wherein a direction was issued to the respondents to consider the claim of the applicant and pass a reasoned and speaking order within 3 months from the date of receipt of certified copy of this order. In pursuance thereof, the respondents have passed an order in 2012 which is impugned in the present O.A. and rejected the claim of the applicant.

3. Learned counsel for the respondents have filed counter reply and through counter reply, it was indicated by the respondents that the case of the applicant was considered by the authorities and it was not found feasible to grant him an offer of appointment on compassionate ground, as such it was rejected in 2002. But after the direction of the Tribunal, the case of the applicant for appointment under compassionate ground was re-examined and it is observed that since the case of the applicant is more than 15 years old from the date of death of deceased employee ,hence it did not find any merit, as such it was rejected. Not only this, the respondents have also indicated the O.M. dated 9.10.1998 regarding consideration of the case of the applicant for grant of compassionate appointment. The learned counsel for respondents has also categorically pointed out that the compassionate appointment cannot be claimed as a matter of right. The case of the applicant was considered and when it was not found feasible, it was rejected.

4. Learned counsel for applicant has also filed rejoinder reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated.

5. Learned counsel for respondents has also filed Supple. Counter reply and through Supple. Counter reply, the contents of the O.A. are denied whereas contents of counter reply are reiterated and it is once

again indicated by the respondents that the case of the applicant was considered by the High Power Committee of BSNL Corporate office and the same was rejected vide letter dated 3.9.2002 and finally after the direction of the Tribunal passed in O.A.No.121/2003, it was again considered and rejected by the authorities.

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

7. Undisputed facts are that the applicant is the son of deceased employee who died in harness while he was working in the respondents organization. The applicant submitted his application for grant of compassionate appointment which was rejected by means of order dated 3.9.2002 which was communicated to the applicant vide letter dated 27.11.2002. Undisputedly, the applicant vide O.A.No. 121/2003 which was allowed by the Tribunal and direction were issued to the respondents to consider the claim of the applicant wherein it has been further observed by the Tribunal that there is no indication as to on what basis and on what material, the respondents arrived at the conclusion that the family was not in the indigent condition. As such, the respondents were directed to reconsider the case of the applicant. This order was passed by the Tribunal on 9.12.2011. Thereafter, the respondents again considered the case of the applicant and decided the same vide order dated 8.8.2012.

8. The O.M. dated 9.10.1998 provides for objects and guidelines in relation to appointment on compassionate ground. The main object of policy is to grant appointment on compassionate ground to a dependent family member of a Govt. servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Govt. servant concerned from financial destitution and to help it to get over the emergency. The respondents in their rejection order indicated that the case of the applicant is more than 15 years old, as his father

expired on 1.9.1996., It is further to be mentioned that the very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of substance and therefore, the slot of compassionate ground appointment to other more needy and deserving candidates can be utilized. The respondents also indicated in their order that the family pension of the deceased family is approximately Rs.8086/- per month and in 1997, the applicant has received a terminal benefit to the tune of Rs. 1,54,793/- and since the weightage point system was introduced by the respondents in 2007 and the applicant's case was examined and he has only scored 44 points hence he was not found eligible for consideration for appointment on compassionate ground by the High Power Committee of BSNL Corporate Office. The learned counsel for applicant has relied upon two decisions of coordinate bench of this Tribunal as well as one decision of this Bench, wherein the case of the applicant was considered and rejected , it was again directed for reconsideration. It is a settled proposition of law that the appointment on compassionate ground cannot be claimed as a matter of right as observed by the Hon'ble Apex court not only in one but in number of decisions.

9. Learned counsel for applicant has also relied upon a decision of this Tribunal passed in O.A. No. 2/2012, wherein the Tribunal considered the O.M. dated 5.5.2003 and also considered the decision in the case of **Hari Ram Vs. Food Corporation of India and others** reported in(2009) 3 UPLBEC 2212 and allowed the O.A.

10. The Hon'ble Apex Court not only in one but in number of cases has been pleased to observe that "**Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but**

merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. The object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/ group of post. The appointment on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

11. As observed by the Hon'ble Apex Court in the case of **State Bank of India and others Vs. Jaspal Kaur** reported in (2007) 9 Supreme Court Cases, 571, the Hon'ble Apex Court has been pleased to observe as under:-

“A major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made. The criteria of penury has to be applied and only in cases where the condition of the family is “without any means of livelihood” and “living hand to mouth” that compassionate appointment was required to be granted.”

12. In the case of **Umesh Kumar Nagpal v. State of Haryana &Ors.** (1994) Supreme Court Cases (L&S) 930,, the Hon'ble Apex Court has been pleased to observe that the “**whole object of granting compassionate appointment is to enable the family to get over sudden financial crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.**”

13. In the case of **Bhawani Prasad Sonkar Vs. Union of India and others** reported in (2011) 4 Supreme Court Cases 209, the Hon'ble Apex Court has been pleased to observe as under:-

"While considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

14. In the case of **State of Chhattisgarh Vs. Dhirjo Kumar Sengar** reported in (2009) 13 Supreme Court Cases 600, the Hon'ble Apex Court has been pleased to observe that the ***"Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Article 14 and 16 of the Constitution of India. No body can claim appointment by way of inheritance."***

15. In the case of **State of J&K and others Vs. Sajad Ahmed Mir** reported in (2006) 5 Supreme Court Cases 766, the Hon'ble Apex Court has been pleased to observe as under:-

"The compassionate appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling

circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

16. In the case of State Bank of India and another Vs. Raj Kumar reported in (2010) 11 Supreme Court Cases 661, the Hon'ble Apex Court further reiterated that "**Compassionate Appointment is not a source of recruitment. It is an exception to general rule, that recruitment to public services should be on the basis of merit, by open invitation providing equal opportunity to all eligible person to participate in the selection process.**"

17. The Hon'ble Apex Court once again in the case of Union of India and Another Vs. ShashankGoswami and another reported in AIR 2012 Supreme Court 2294 has been pleased to observe that "**Appointment on compassionate ground cannot be claimed as a matter of right and the same is based on the premises that the applicant was dependant on the deceased employee. Strictly such a claim cannot be upheld on the touch stone of Article 14 or 16 of Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service.**"

18. In the case of Umesh Kumar Nagpal (Supra) Hon'ble Apex Court laid down the following principles:

- (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- (ii) The posts in Group 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e., in the Group 'A' or Group 'B' category is expected or required to

be given for this purpose as it is legally impermissible.

- (iii) 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 get over the emergency.
- (iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
- (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.
- (vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- (vii) Compassionate appointment cannot be offered by an individual functionary on a ad hoc basis."

19. On the basis of observations made by the Hon'ble Apex Court as well as on the basis of facts of the case, the case of the applicant was considered and when it was not found feasible by the respondents to grant appointment on compassionate ground to the applicant, it was rejected. As such, I am not inclined to interfere in the impugned order passed by the respondents.

20. Accordingly, the O.A. is fit to be dismissed. Accordingly, it is dismissed. No orders as to cost.

VR. Agrawal
(Navneet Kumar)
Member (J)

HLS/-