

Central Administrative Tribunal, Lucknow Bench, Lucknow

OA No. 156/2010

This the 29th day of April, 2011

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

Manish Kumar Srivastava aged about 26 years son of late Surendra Krishna Srivastava resident of Mohalla Naurangabad, Gangotri Nagar Colony, Lakhimpur Kheri.

Applicant

By Advocate: Sri Alok Tripathi

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- Lakhimpur Kheri.

Respondents

By Advocate: Sri G.S. Sikarwar

ORDER (Dictated in Open Court)

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

This O.A. has been filed for quashing the order dated 4/5.9.2009 along with the minutes of the meeting of the High Power Committee dated 9.1.2009 passed by the respondent authorities as contained in Annexure No.1 and also for directing the respondents to give suitable employment to the applicant under the Scheme for compassionate appointment.

2. The case of the applicant as contained in the pleadings is that her mother died in harness on 30.5.2004 while working on the post of Phone Mechanic. She was survived by four persons including two sons and two daughters aged between 20 to 29 years including the applicant.

3. An application for compassionate appointment was moved on 12.7.2004. The other survivors had given no objection in favour of

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the applicant who happen to be the youngest child. When no action was taken , reminder dated 10.8.2004 was given. It appears that for about 5 years, no action was taken . Ultimately, the impugned order dated 4/5.9.2009 was received by the applicant saying that the claim has been rejected. Hence this O.A.

4. From the other side, it is said that case of the applicant was considered keeping in view OM dated 9.10.98, C.L. dated 10.2.99 and C.L. dated 27.6.07 and thereafter, it was found that the applicant could score only 46 points against the required minimum 55 points and therefore, his claim was rejected.

5. In the Rejoinder Reply, it has been said that the aforesaid criteria of obtaining minimum 55 points has been laid down by a subsequent circular letter dated 27.6.2007 as pleaded by the respondents themselves and the claim of the applicant has been apparently rejected mainly on this ground. But, according to the applicant, this could not have been done because the subsequent amendment in the policy cannot have a retrospective effect.

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

7. The entire dispute in the case in hand, hinges on the point as to whether or not the subsequent amendment in the policy for compassionate appointment can have a retrospective effect. There does not appear to be any quarrel that the claim of the applicant has been rejected mainly on the ground that he could score only 46 points against the minimum required 55 points. Though according to the respondents earlier O.M. dated 9.10.98 and C.L. dated 10.2.99 were also taken into consideration at the time of consideration of the claim of the applicant but at the same time, latest circular dated 27.6.2007 was also taken into consideration at that time. As mentioned

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hereinabove, the applicant's mother died in harness in the year 2004 and the application/ representation for compassionate appointment was also made promptly in the same year i.e. on 12th July, 2004, followed by reminders dated 10.8.2004 (Annexure 8 and 9). It is true that in such matters, a reasonable time is required to decide. But even in that case, about 3 years were available to the respondents before the new policy dated 27.6.2007 came into effect, which for the first time laid down a working formula for earning points by the person seeking compassionate appointment. This formula is based on dependents weightage, basic family pension, left out service of deceased employee, applicant weightage, terminal benefits, accommodation. Concededly on the basis of this formula, the points have been worked out in the case of applicant as detailed in para 2 of CA.

8. 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 favouritism etc. but the question before this Tribunal is as to whether this amended provision contained in Circular letter dated 27.6.2007 may have retrospective effect and whether the respondents were justified in applying it in the case of the applicant whose case pertains to the year 2004. In my opinion, the answer is in negative. It is a settled proposition of law that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the aforesaid circular letter, there is no such direction for having retrospective effect. The aforesaid proposition of law has been reiterated in the case of **A.A. Calton Vs. Director of Education (1983) 3 Supreme Court Cases 33** and **Sharad Chandra Singh vs. State Bank of**

India reported in 2010(28) LCD 277, which have been relied upon by the learned counsel for applicant.

9. From the other side, the learned counsel for respondents places reliance on the order of Division Bench of the Central Administrative Tribunal, Ahmedabad Bench dated 28.8.2009 in OA. No. 377/08. Firstly, the aforesaid two case laws were not considered by the CAT, Ahmedabad Bench in its aforesaid order dated 28.8.2009 and secondly, in the face of the aforesaid law laid down by the Hon'ble Apex Court and also by the Hon'ble High Court Judicature at Allahabad, there is no occasion to follow an order passed by a bench of Central Administrative Tribunal, Ahmedabad.

10. Finally, therefore, in view of the aforesaid facts and circumstances, this O.A. is allowed. The order dated 4/5.9.2009 along with the minutes of the meeting of the High Power Committee dated 9.1.2009 passed by respondent authorities, so far as they relate to the applicant are hereby quashed. The respondents are directed to consider the case of the applicant afresh in view of the relevant O.M. /circulars which were in force at the relevant time, ignoring the subsequent circular letter dated 27.6.2007. As the matter is already quite old, it is desirable that this matter is finalized within a reasonable period preferably 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
- 29.4.11
(Justice Alok Kumar Singh)
Member (J)

HLS/-