

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No 391 2010

Reserved on 1.5.2015

Pronounced on 08.05.2015

Hon'ble Ms. Jayati Chandra, Member-A

Shashi Srivastava, aged about 46 years, W/o late B.B.L. Srivastava, R/o 631/101 Surendra Nagar, Faizabad Road, Lucknow.

.....Applicant

By Advocate : Ms. Ranjana Agnihotri

Versus.

1. Bhartiya Sanchar Nigam Limited through its Chief General Manager.
2. The Chief General Manager, Telecom (East), U.P. Circle, Lucknow.
3. The General Manager, Telecom Department, District Lakhimpur Kheri.

.....Respondents.

By Advocate : Sri G.S. Sikarwar.

ORDER

The applicant has filed this O.A. under Section 19 of A.T. Act, 1985 seeking the following relief(s):-

- (i) quash the impugned order dated 31.7.2010 and 5.9.2009 contained in Annexure nos. 1 & 2 to this Writ petition.
- (ii) direct the Opposite parties to consider the lawful claim of the petitioner for compassionate appointment and accommodate her at any suitable post.
- (iii) Pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- (iv) Award the cost of the Writ petition to the applicant."

2. The facts of the case, as averred by the applicant are that she is the widow of Sri Vipin Behari Srivastava, who died in harness on 16.1.2007 leaving behind three unmarried daughters, one of whom was minor and a minor son. Additionally, he left behind the liability of a housing loan taken from the ICICI Bank and a residence still under construction.

3. The applicant had applied for being appointed on compassionate ground on 27.9.2007/1.10.2007, but she was

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informed by letter dated 5.9.2009 (Annexure no.1) that her case was rejected in the committee meeting dated 3.1.2009 and 9.1.2009. The said rejection letter is enclosed with a copy of the minutes of the meeting and the rejection list. Her name is at sl. No. 49 and the reason given is "non-indigent". She gave representation dated 2.11.2009 in which she challenged the ground of considering her "non-indigent" as the respondents failed to give due weightage to the fact that she was to pay EMI of Rs. 5000/- for the loan taken by her late husband to construct the house. She was given 'O' point on the ground of having her own house whereas till the repayment of the loan, the house was assigned to the Bank. Further, as her husband was ailing for three years and had taken repeated advances from GPF etc. she received Rs. 2,59,000/- in actuality. The weight point system had been calculated against Rs. 5.50 lacs.

4. The respondents have denied the averments made by the applicant through their Counter Reply and Supplementary Counter Reply. Their case is that the applicant's husband had only 2 ½ years balance service left. He had four children including three daughters unmarried, one of whom was a minor, a minor son. She was given a Family pension of Rs. 5250 + DR and terminal benefits of Rs. 4,73,387. The family had its own house. The deceased had been given house loan from the department. Additionally, he had taken a loan of Rs. 2.5 lacs from ICICI Bank without knowledge/permission of the respondents. The loan taken was beyond the payment capacity of the deceased. Be that as it may, the case was considered alongwith 92 other applications received in accordance with DoP&T circular dated 9.10.1998 and in accordance with the departmental scheme dated 27.6.2007. All cases were considered on the uniform scheme of awarding points on the basis of (a) balance of service left, (b) no. of dependent children; (c) special weightage to unmarried daughter, minor/handicapped children and other assets such as any other alternate source of income & ownership of residence, post retiral dues paid etc. All cases which were awarded 55 points were considered indigent and the cases were referred to the appointment on compassionate ground. The case of the applicant

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was not included in the list not having been awarded minimum 55 points.

5. The applicant has filed her Rejoinder & Supplementary Rejoinder through which she has reiterated the same grounds as earlier taken and further placing reliance upon the order dated 29.9.2011 passed in O.A. no. 156 of 2010, which was upheld by the Hon'ble High Court of Allahabad, Lucknow Bench.

6. During the course of hearing, learned counsel for the respondents stated that the order cited by the applicant is irrelevant inasmuch as the said order relates to the issue of date of applicability of the point system introduced by the department in the year 2007 to determine the relative merits of the claims for compassionate appointment. The applicant's claim relates to the month of September, 2007 and the scheme was introduced prior to that. The learned counsel for the applicant made a verbal submission that the point system was considered only from 2009.

7. I have heard the learned counsel for the parties and have also examined all records available on the file.

8. The Hon'ble Supreme Court in a catena of judgments has held that the appointment on compassionate ground is fundamentally violative of rights of countless others who are eligible for consideration for public employment on equal eligibility criteria. Consideration for compassionate appointment is a special dispensation provided to families in a crisis due to death of the sole bread earner. Through their various judgments viz.

- (i) I.G.(Karmik) and others vs. Prahalad Mani Tripathi (2007) 6 SCC 162
- (ii) National Institute of Technology Vs. Niraj Kumar Singh (2007) 2 SCC 481.
- (iii) Umesh Kumar Nagpal Vs. State of Haryana (1994 (2) SLR 677.
- (iv) V. Sivamurthy Vs. State of A.P. (2009) 13 SCC 730.
- (v) Biswajit Sarkar Vs. State of West Bengal 1995 Lab IC 2158

The Hon'ble Supreme Court had laid down a few common parameters for considering all claims for compassionate appointment. These are :-

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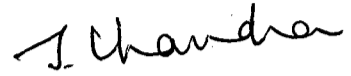
- (a) the appointment so made must be in accordance with a valid scheme;
- (b) to be given to only one dependent member who undertakes to look after the entire family;
- (c) to be given only against Group 'C' or Group 'D' post as per qualification of the applicant; and
- (d) appointment must be made to the extent of vacancies earmarked for being filled up through compassionate appointment.

9. The respondents have acted in accordance with the departmental scheme circulated on 27.6.2007. The applicant had applied for compassionate appointment on 27.9.2007. She has made a statement, but has not advanced any circular/order etc. wherein the scheme of 27.6.2007 was held in abeyance till 2009. Her case was considered alongwith 92 others. This has not been denied. The minutes of meeting shows that in the rejection list there were cases of applicants where the death of the employee occurred as early as 3rd June, 1995 and as recent as 25.5.2007. She has not advanced any argument that she was discriminated against those persons who were awarded more than 55 marks following the same system of awarding marks. Her only argument in favour of her case is that she had a loan liability from a private Bank against the house under construction which is within the city of Lucknow. But it is a point of fact that even in its unfinished form with a loan liability, the house represents some assets, which can be monetized. Against such a case, there could be others who, if they have, no loan liability also have no asset, which can be similarly monetized. She has further advanced no argument to show that any other applicant who also had similar debt burden against permanent assets were given favourable consideration and she was denied the same.

10. Infact the point system has introduced an element of impartibility to the ranking of the cases for compassion, which would otherwise become very subjective. The case cited by her refers to an incident where the death of the employee occurred in 2004 and the application dated 12.7.2004 was considered as per the scheme of 27.6.2007. In this case, the death of her husband occurred on 16.1.2007 and the application for appointment was made on 27.9.2007. Hence, the same ratio cannot be applied in the present case.

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11. In view of the discussions made above, the O.A. has no merit and the same is accordingly dismissed. No costs.



(Ms. Jayati Chandra)
Member-A

Girish/-