

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 11.12.2003

OA No.571/2003

Mohammad Ashfaq s/o late Shri Abdul Shakoor r/o Inside the Tail Ghar, Behind Chakki, Nehru Nagar, Kota.

.. Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Telecom, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.
2. The Assistant Director General (Pers.IV), A Government of India Enterprise, E-102, Stateman House, New Delhi- 110001.
3. The Chief General Manager, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Jaipur.
4. The General Manager, Telecommunication District, Kota.
5. The Sub Divisional Engineer, Bharat Sanchar Nigam, Office of General Manager Telecommunication, District Kota, Rajasthan.

.. Respondents

None present on behalf of the applicant

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

ORDER (ORAL)

The applicant is son of late Shri Abdul Shakoor, who was employed as Lineman in Telecommunication Department and died on 14.9.39. At the relevant time, the applicant was minor. He moved an application for appointment on compassionate grounds for the first time vide application dated 21.6.2000 before the Bharat Sanchar

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Nigam Ltd. (BSNL) authorities followed by notice for demand of justice dated 20.6.2002. Since the application of the applicant for compassionate appointment was not disposed of, he filed OA in this Tribunal which was registered as OA No. 146/2003 with the prayer that direction be issued to the respondents to consider the case of the applicant for compassionate appointment and if found eligible respondents may be directed to give appointment to the applicant on a suitable post on compassionate grounds with all consequential benefits. The said case was listed for admission on 2.4.2003 and on that date on the prayer of the proxy counsel for the applicant, the matter was adjourned and listed for admission on 6.5.2003. On 6.5.2003, on the request of the proxy counsel appearing for the learned counsel for the applicant, the OA was finally dismissed as withdrawn with the following observations:-

"Ms. Shalini Sheoran appearing on behalf of Mr. Vikram Vasistha states that the deceased employee Abdul Shakoor had died in the year 1989 and at that time Department of Telecommunication was the employer and this OA has been filed against the Bharat Sanchar Nigam Limited. She points out that even the representation was made on B.S.N.L. but now she feels that the representation should have been made to the DOT as the deceased employee was employed on the DOT. She states that her client wants to withdraw this OA and he will make a fresh representation to the competent authority and in case his grievance is not redressed, he will approach the Tribunal again.

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Consequently, the application is dismissed as withdrawn."

1.1 Thereafter the counsel for the applicant made a representation on behalf of the applicant to the Secretary-cum-Chairman, Department of Telecommunication vide letter dated 21.5.2003. From the material placed on record, it appears that the case of the applicant for compassionate appointment was considered by the BSNL authorities and the matter was placed before the High Power Committee which decided to reject the request of the applicant on compassionate grounds in relaxation of the recruitment rules. The following reasons are given, which has been indicated in the letter dated 9.7.2003. Relevant part of which reads as under:-

"The case, not recommended by the Circle, is forwarded for relaxation of belated request as well as earning member in the family in accordance with Para 8 and 10 of DOPT OM No.14014/6/94-Estt (D) dated 9.10.1998 as the widow is employed in Govt. School. The son was minor at the time of death of the ex-employee and applied for CGA after becoming eligible. The ex-official, a lineman, expired on 14.09.1989 at the age of 34 years survived by his wife and 4 sons. Keeping in view that the widow's income is a source of support to the other members of the family, the committee did not agree to give the relaxation and rejected the request."

The case was not recommended by the said Committee and copy of this decision was endorsed to the applicant vide endorsement dated 1.8.2003. It is this order, which is under challenge in this OA.

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1.2 The main ground taken by the applicant in the OA is that the order dated 9.7.2003 is without jurisdiction since the application for compassionate appointment was made to respondent No.1 i.e. Union of India through Secretary to the Govt. of India, Ministry of Telecommunication, BSNL, Sanchar Bhawan, New Delhi, which is Department of Telecommunication whereas the representation has been disposed of by respondent No.3 on behalf of BSNL authorities. It is further submitted that since the deceased employee at the time of death in the year 1989 was a employee of Department of Telecommunication, as such the representation ought to have been decided by respondent No.1. On this ground the applicant has prayed for quashing the impugned order dated 9.7.2003 (Ann.A7) with further prayer that appropriate order or directions be issued to the respondents to consider the case of the applicant for compassionate appointment to a suitable post.

2. I have perused the material placed on record and submissions made by the applicant in this application.

2.1 As can be seen from the narration of the facts as above, the main challenge of the applicant is against the order dated 9.7.2003 (Ann.A7) whereby the BSNL authority has rejected the case of the applicant for compassionate appointment on the recommendations of the High Power Committee for the reason indicated hereinabove. ~~the~~ ^{Ann.} the order Ann.A7, which is a letter written by the Asstt. Director General (Pers.IV) to the Chief General Manager BSNL, Rajasthan Telecom circle, Jaipur ~~the~~ reference has been made to the letter dated 5.2.2003 of the Chief General Manager. Obviously, this letter dated ⁴²

5.2.2003 of the Chief General Manager is prior to disposal of the OA No.145,03 and the representation made by the applicant to the Secretary, Department of Telecommunication (respondent No.1) dated 21.5.2003. As such, it cannot be said that the case of the applicant was rejected on the basis of the letter dated 21.5.2003 (Ann.A8) written to the Secretary, Telecommunication Department for considering the case of the applicant for compassionate appointment in Telecommunication Department. As already stated above, from the perusal of Ann.A7 it is clear that the case of the applicant for compassionate appointment was considered by the BSNL authorities on the basis of the application made by the applicant and as such the contention of the applicant that the order has been passed by respondent No.3 (BSNL authority) on behalf of the Govt. of India not having jurisdiction, is without any basis. Thus, the present application is wholly misconceived and Ann.A7 cannot be quashed on the basis of the challenge made by the applicant in this OA.

2.2 Even on merit, the applicant has not made out any case for quashing and setting aside the order dated 9.7.2003 (Ann.A7). From the portion as quoted above, it is clear that the Committee has rejected the case of the applicant on the ground that the widow is employed in Govt. school and keeping in view that the widow's income as a source of support to the other members of the family, the committee did not agree to give relaxation and rejected the request. The applicant has not made even a single averment as to how this order is wrong and the widow is not a Govt. employee. The applicant has also not put in any material as to how the family is facing financial starvation and what is the income of the widow.

The applicant for the first time applied for compassionate appointment in the year 2000 after a lapse of twelve years from the date of death of the father of the applicant. The Hon'ble Apex Court in the cases of Sanjay Kumar vs. The State of Bihar and Ors., 2000 (5) SLR 265 and Haryana State Electricity Board and Anr. vs. Hakim Singh, 1997 (5) SLR 598 dealt the similar controversy. In the case of Sanjay Kumar (supra) the Hon'ble Apex Court has held that there cannot be reservation of a vacancy till such time, as the petitioner becomes major after a number of years unless there were some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

According to the Govt. instructions, the application for compassionate appointment has to be made immediately so as to enable the family to tide over the sudden crisis on the death of the sole bread winner. It is further provided that in the case where the death took place long ago say 5 years or so, the application for compassionate appointment on the said belated request has to be considered by the Ministry/Department. It is further provided that the fact that the family has managed somehow all these years normally prove that the family has some dependable means of subsistence. In the instant case the application has been made after a lapse of about 12 years from the date of death of the deceased father of the applicant. It has also come on record that the mother of the applicant is in Govt. service and as such ratio of the decision of the Apex Court in Sanjay Kumar's case (supra) is squarely applicable in this case.

Similarly, the Apex Court in the case of Haryana State Electricity Board (supra) while considering the

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scope of the circular of the board dated 26.9.85 and 1.10.85 which requires submission of application within 3 years of the death of the employee, in para 15 made the following observations while relying upon the decision in the case of Haryana State Electricity Board vs. Naresh Tanwar, 1996 (2) SLR 11 (SC) where the scope of such circulars were considered :-

"15. In that case 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 vs. State of Haryana and Ors. [1994 (4) SCC 138] : [1994 (2) SLR 677 (SC)], the other in Jagdish Prasad vs. State of Bihar and Anr. [1996 (1) SCC 301] : [1996 (1) SLR 7 (SC)]. 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 tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by 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 dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of

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the earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, de hors the recruitment rules."

The Apex Court set aside the decision of the High Court in that case by holding that the High Court has gone wrong in giving directions to the Board to consider the claim of the respondents as the request was made far beyond the period indicated in the circular date 1.10.86.

The respondent if he is interested in getting employment in the Board, has to pass through the normal route now.

2.3 In the instant case, the matter is squarely covered by the decisions of the Apex Court in Sanjay Kumar and Haryana State Electricity Board (supra). Accordingly, the OA is dismissed at the admission stage.


(M.L. CHAUDHAN)

Member (J)