

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 252 of 2000

Jabalpur, this the 30th day of September, 2003.

Hon'ble Mr. G. Shanthappa, Judicial Member

Shri Bhupesh Sharan, Son of Late Shri
Durga Sharan Prasad, aged about 27
years, C/o Shri Shanti Prasad, N-201,
Rajkumari Bhawan, Opposite : Sai
Mandir, South Civil Lines, Jabalpur - 482
001 (M.P.)

APPLICANT

(By Advocate - Shri S.P. Rai holding brief of Smt. S.Menon)

VERSUS

1. Union of India, Through : Secretary,
Ministry of Communications, Sanchar
Bhawan, 20, Ashoka Road, New Delhi.
2. The Chief General Manager,
Telecommunications, M.P. Telecom
Circle, Hoshangabad Road, Bhopal
462016

RESPONDENTS

(By Advocate - Shri S.C. Sharma)

O R D E R

The applicant has filed this application for seeking
reliefs:-

- (1) This Hon'ble Tribunal may be pleased to direct the respondents, in Particular Respondent No. 2 to give effect to the order dated 11.3.2000 and permit the applicant to function on the post of Junior Telecom Officer.
It is further prayed that the order of 17.12.99 resulting in the cancellation of the order of appointment dated 11.3.99 be declared as illegal, in as much as, it has been passed behind his back, without communicating the contents thereof.
- (ii) This Hon'ble Tribunal may be pleased to direct the Respondents to pay the applicant all the service benefits which accrued to the applicant after the issuance of the order of appointment dated 11.3.99
- (ii) Any other relief/direction/order be passed in favor of the applicant and against the respondents, which this Hon'ble Tribunal may deem just and proper under the circumstances of the case and to which the applicant may be found entitled to at the time of final disposal of this application.

: 2 :

2. The learned counsel for the applicant submits that the applicant is the son of late Shri Durga Sharan Prasad. His father died in harness. He was working as Assistant General Manager in the Office of Chief General Manager, Telecom, (Technical Development Circle) Jabalpur. The applicant had submitted his application for appointment on compassionate ground.

3. The applicant was technically qualified and fulfills all the requisite qualifications for appointment to the post of Jr. Telecom Officer. It is submitted, on his application, the second respondent has issued the letter dated 26.2.99 by relaxing the norms of normal recruitment, ~~and as such case~~ as per Annexure-A-1 and Annexure-A-2. But the applicant was not sent for training as mentioned in the said letters. The applicant had furnished the ^{form} (Attestation form) as per Annexure-A-3.

4. Earlier the applicant had approached this Tribunal in OA No. 35/2000, seeking relief for direction to the respondents to give an appointment order on the applicant ^{on} dated 11.3.99 and permit the applicant to function on the post of Jr. Technical Officer. The said OA was disposed of by this Tribunal on 13.1.2000. The operative part of the order is extracted below :-

2. In the circumstances we feel that the applicant should first make a representation to respondent No. 2 giving full details within five days from this date by speed post to avoid delay, praying therein for issuance of order regarding training. If the applicant sends a representation alongwith copy of this order within five days from this date in that event the respondent No. 2 shall have to decide the same by a speaking order within five weeks from the date of receipt of the same and communicate the decision promptly to the applicant. If the applicant is still aggrieved by the decision he will be at liberty to agitate his grievance afresh provided it is within limitation.

3. With the above direction OA is disposed at the admission stage itself. CC be made available.

ef

As per direction of this Tribunal the applicant submitted his representation dated 14.1.2000 (Annexure-A-5).

5. The case of the applicant is that the respondents have not considered the representation submitted earlier and also representation dated 14.1.2000. Though the impugned orders dated 19.1.2000 (Annexure-A-6) and dated 8.2.2000 (Annexure-A-7) respectively are passed by the respondents which are not in confirmity with the direction of this Tribunal. Hence the said impugned orders are liable to be quashed and the reliefs as prayed in the application shall be granted.

6. The learned counsel for the applicant further argued that, since the applicant is appointed as JTO as per Annexure-A-1 and Annexure-A-2, he is eligible and entitle to the post of JTO, since the JTO post was Group-C as on the date of issuing the letter dated 11.3.99. As on the date of impugned orders the post of JTO is a gazetted post. It is further contended that the applicant has legal right to ask for the post of JTO under Annexure-A-1 and Annexure-A-2. The respondents have not considered the case of the applicant, and also as per direction of this Tribunal. The prayer in the present OA shall be granted. The learned counsel for the applicant has admitted that the scheme for appointment on compassionate ground has no legal force which are issued for administrative purpose.

7. The learned counsel for the respondents has argued for dismissal of the OA on the ground that the applicant has no legal right for grant of the reliefs as prayed in the OA. There is no financial distress in the family, this Tribunal shall not interfere in the administrative matter. The judicial interference is unwarranted. The advocate for the respondents has pointed out that, the respondents had come forward with an offer to the applicant, to accept the Group-C post as per Annexure-R-2. He further states in his argument, under the



: 4 :

scheme regarding appointment on compassionate ground, the applicant is eligible for Group-C or Group-D post against direct recruitment quota and the respondents have not considered the financial distress of the family. It is an admitted fact that the father of the applicant was holding the post of Assistant General Manager, which was gazetted post and they are financially well off. He further submitted that the applicant is not entitled for appointment on compassionate ground, in view of the law laid down by the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Ors. JT 1994 1994(3) S.C. 525 and in another decision it has been held that the judiciary cannot give direction for appointment on compassionate ground but can merely direct for consideration of the claim for such an appointment see LIC of India Vs. Mrs. Asha Ramchandra Ambekar and Ors JT 1994(2) SC 183. He further submitted that the said scheme is extended to all sort of Casual, ad-hoc including those who are working as apprentice and such scheme cannot be justified on constitutional grounds in view of the judgment reported in JT 1996(6) S.C. 646 State of Haryana Vs. Rani & Ors. Subsequent to the said judgments the Hon'ble Supreme Court has also rendered the judgment referring the earlier decisions, that the administrative instructions are not enforceable in the court of law and the judicial interference on such administration instruction is unwarranted. The said judgment is reported in (2002) 8 SCC 65-UOI Vs. Jogendra Sharma.

81. The learned counsel for the applicant has submitted the facts are admitted and he has no legal right, to challenge the administrative instructions and also in accordance with the submitted that the judgment of Hon'ble Supreme Court. It is further/ applicant

clgs

has not filed rejoinder to the reply in respect of the documents regarding offering the alternate post of any Group-C or Group-D post other than JTO post. Advocate for the respondents has admitted that the impugned orders are not passed in conformity with the direction of this Tribunal in OA No. 35/00 dated 13-1-2000 and the said impugned orders are not speaking orders.

9. After hearing the advocate for both the sides, after perusal the pleadings and the documents, I have taken the assistance of both advocates to know the subject matter of the impugned order Annexure-A-7. The said order is passed by the second respondent, it is not a speaking order. Hence, the impugned orders are liable to be quashed. There shall be a direction to the respondent No. 2 to consider the case of the applicant on the representation submitted by the applicant and also pass a speaking order within 8 weeks from the date of receipt of a copy of this order.

10. On the admitted facts, ~~and~~ the submissions of both the parties have been considered, I am of the opinion that the impugned orders ~~are~~ at Annexure-A-6 and Annexure-A-7 ^{are} not speaking orders, no reasons are assigned and the said orders are not in conformity with the direction of this Tribunal in OA No. 35/2000 and also on the facts supplied by the applicant in his representation dated 14.1.2000. Hence the impugned orders dated 19.1.2000 (Annexure-A-6) and order dated 8.2.2000(Annexure-A-7) are liable to be quashed.

11. Without going to the merits of the case, I allow the above application only on the ground that the impugned orders are not speaking orders. The second respondent is directed to pass a fresh order, considering the facts of the case by applying the guidelines, scheme for compassionate



appointment under Central Government revised/simplified and consolidated instructions dated 9.10.98 as per Annexure-R-3 and pass considered and appropriate order.

12. The observation made in this order will not have any binding effect on the respondents to take their own decision independently. The respondents are at liberty to consider the case of the applicant sympathetically and pass an appropriate and considered order. With this observation OA is allowed and impugned orders dated 19.1.2000(Annexure-A-6) and order dated 8.2.2000(Annexure-A-7) are set aside. It is further directed the respondents to pass an appropriate and considered order as directed by this Tribunal in earlier paras within a period of 8 weeks from the date of receipt of a copy of this order. No order as to costs.

G. Shanthappa (G. Shanthappa) 3/17
Judicial Member

SKM