

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 14th day of October, 2010

O.A. No. 463/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Suraj Mal Degda,
s/o late Shri Tejulal Jat,
r/o Vill. Turkiya Bas,
Post Bhojpura Kalan,
Via Jobner, Distt. Jaipur.

.. Applicant

(By Advocate: Shri Neeraj Joshi)

Versus

1. Chief General Manager, Telecommunication, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur
2. Union of India through Secretary of B.S.N.L. Department, Ministry of Communication, New Delhi.
3. General Manager, Tele Communication, Distt. Jaipur.
4. Sub Divisional Engineer (Staff Office), General Manager Telecom, Distt. Jaipur
5. Sub-Divisional Officer, IIrd Office, T.G.M.T.D., Jaipur

.. Respondents

(By Advocate: Shri N.S.Yadav)

W.L.

ORDER (ORAL)

The applicant has filed this OA thereby praying for quashing the impugned order dated 31.3.2008 (Ann.A/1) whereby case of the applicant for compassionate appointment was rejected.

2. Briefly stated, facts of the case are that Shri Tejulal Jat who was working on the post of RM under the respondents expired on 16.6.1998. The mother of the applicant made request on 16.4.1999 for registration of appointment of her son, Suraj Mal Degda, who was minor at that time, but she did not apply for compassionate appointment to herself. In the request, date of birth of the applicant was shown as 15.4.1987 and thus he attained majority on 15.4.2005 but the application was made by the applicant on 28.7.2006, which is after more than one year. The case of the applicant for compassionate appointment was considered in the light of the policy decision dated 27.6.2007 which stipulates that cases getting 55 points or more are prima-facie eligible for giving compassionate appointment. It may be stated that these points are allotted based on various factors viz. number of wholly dependents of the ex-employee including special weightage to handicap, minor member of the family, unmarried daughters and further special weightage to the widow if seeking appointment to herself and left out service of the employee, having accommodation (rented or own house), financial aspect of the family based on grant of family pension and terminal benefits, presence of earning member in the family, if any and belated request etc. as applicable

in an individual case. Pursuant to such guidelines/policy decision, the applicant could secure only 50 points i.e. less than required 55 points. Therefore, his case for compassionate appointment was rejected. The Circle High Power Committee in its meeting held on 18.3.2008 made following observations, as can be seen from the impugned order dated 31.3.2007 (Ann.A/1), which thus reads:-

"The committee made the following observations in this case that the ex-employee expired on 16.06.1998 at the age 37 years 9 months 14 days with left out service 22 years 2 months 17 days survived by his wife, mother, two sons (minor, now one major) and two daughters (married), Shri Suraj Mal Degra, son applied for CGA on 28.07.2006 after attaining the age 18 years. Smt. Sundar Devi (widow) did not apply for CGA. As per report of the Visiting Officer, family is residing in parental house having two rooms at village, Turkiyawas, Distt., Jaipur. The amount of terminal benefits paid to the deceased family was Rs. 39917/- only and family pension being paid is Rs. 1913/- P.M. moreover, the case is belated more than 8 years."

It is this order, which is under challenge in this OA.

3. The challenge has been made mainly on the ground that respondents have not disclosed in the impugned order dated 31.3.2008 in which category the applicant secured how many marks and on which criteria the points were allotted. Another ground of challenge is that the decision of the committee that the applicant has not secured 55 points and it is not a fit case for giving appointment, is arbitrary and discriminatory.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have justified their action on the basis of the finding recorded by the Committee based upon policy guidelines issued by the BSNL vide

letter dated 27.6.2007 (Ann.R/1). Alongwith reply, the respondents have also annexed Ann.R/3 whereby result sheet of the applicant released by the Screening Committee has been annexed which shows the basis for awarding the points to the applicant under different heads.

5. In this case reply was filed on 3rd February, 2010. Despite repeated opportunities, the applicant has not filed rejoinder.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. I am of the view that the applicant is not entitled to any relief as the applicant has made application for compassionate appointment after a period of more than 8 years (especially when the widow was eligible for compassionate appointment but she did not choose to apply for the same) and also on merit. The Hon'ble Apex Court repeatedly held that compassionate appointment cannot be claimed or offered after a lapse of reasonable period, when the crisis is over. Law on this point is no longer res-integra. The Apex Court in the case of Haryana State Electricity Board vs. Naresh Tanwar and Anr., 1996 SCC (L&S) 816 in Para-9 has made the following observations:-

"9. It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who dies in harness is to relieve immediate hardship and distress

caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years." (emphasis supplied).

8. In State of U.P. vs. Paras Nath, 1998 SCC (L&S) 570, the effect of long delay in applying for compassionate appointment was considered. That was a case where the deceased employee left behind two years old son. The application for compassionate appointment was made after a period of 17 years. However, no application was made by other family members. The Apex Court while setting aside the judgment given by the High Court in para-5 has made the following observations:-

"5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased is made after a long period of time such as seventeen years in the present case."

9. In Sanjay Kumar vs. State of Bihar, 2000 SCC (L&S) 895 the Apex Court has observed that there cannot be reservation to a vacancy till such time as the petitioner becomes major after a number of years and the very basis of compassionate appointment is to see that the family gets immediate relief and in para 3 made following observations:-

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of lievelihood. In fact such a view has been

expressed in the very decision cited by the petitioner in Director of Education vs. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petition. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family get immediate relief (emphasis supplied).

10. In Haryana State Electricity Board vs. Krishna Devi, 2003 SCC (L&S) 248, the Apex Court in para 7 held as under:-

"7: As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of the law and allowed the writ petition relying on an earlier decision of the High Court."

11. In State of J&K vs. Sajad Ahmed Mir, 2006 SCC (L&S) 1195 in para-11 has made the following observations:-

"11..... Normally, an employment in the 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 from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

12. Thus, from the principle as laid down by the Apex Court as noticed above, it is evident that compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over. The very fact that family

has survived for a considerable long period apparently shows that family has pulled on without any difficulty. Thus, according to me, the applicant is not entitled to any relief also.

13. Even on merit, the applicant is not entitled to any relief. As per the policy decision Ann.R/1 cases of only those persons can be considered for compassionate appointment who have secured 55 or more points. The applicant has neither challenged validity of the said policy decision being discriminatory or arbitrary to the constitutional or statutory provisions nor the criteria for awarding points viz. (i) number of dependent family members of ex-employee including special weightage to handicap, minor dependent and unmarried daughter (ii) basic family pension, (iii) left out service (iv) special weightage to widow if apply for compassionate appointment, (v) terminal benefits and (vi) accommodation (rented or own house) vis-à-vis presence of monthly income of the family from other sources and belated request, has been challenged. In the absence of challenge to the policy decision and the criteria evolved by the respondents for awarding points on different heads as mentioned above, no relief can be granted to the applicant. As such, even on merit, the applicant has not made out any case for my interference. The respondents have annexed copy of the result sheet of the applicant as released by the Screening Committee as Ann.R/3 on the basis of which the applicant has secured 50 points. The applicant has not made any grievance regarding the result sheet so prepared by the Committee

whereby the applicant has been awarded 50 points based upon the criteria evolved vide Ann.I of the policy decision Ann.R/1.

14. Viewing the matter from any angle, I am of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.

15. In view of the fact that the present OA has been decided on merit, the MA No. 313/2009 moved by the applicant for condonation of delay whereby the OA was filed after expiry of the period of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985 is not required to be gone into, although the learned counsel for the applicant while drawing my attention to the medical certificates Ann.A/12 contended that these certificates pertain prior to 7.3.2008 whereas the reason for delay given by the applicant to challenge the order dated 31.3.2008 in the MA is that after receipt of copy of this order, mother of the applicant was admitted in the hospital due to rejection of his candidature for compassionate appointment, is palpably false and deserves out right rejection.


(M.L.CHAUHAN)
Judl. Member

R/