

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 23rd day of September, 2010

O.A. No. 37/2009

CORAM:

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

Mahaveer Singh
s/o Shri Bhanwar Singh
c/o Shri Vijay Singh, Post-Bhanpur Kala,
Via Amer, District Jaipur
r/o Village Sokra, Post-Perwa, Via
Falna, Tehsil-Bali,
District Pali (Rajasthan)

.. Applicant.

(By Advocate: None present)

Versus

1. Bharat Sanchar Nigam Limited
through its Assistant Director General (Personnel-IV),
102-B, Statesman House,
New Delhi.
2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Telecom Circle,
Sardar Patel Marg,
Jaipur.

.. Respondents

(By Advocate: Shri Neeraj Batra)

ORDER (ORAL)

The applicant is son of late Shri Bhanwar Singh Deora who died on 18.9.1987 while working on the post of Lineman under GMTD, Pali Marwar, has filed this OA thereby praying for quashing

and setting aside the order dated 11.8.2008 (Ann.A/1) with further prayer that respondents may be directed to consider case of the applicant for compassionate appointment.

2. Briefly stated, facts of the case are that father of the applicant while working in the aforesaid capacity died on 18.9.1987 leaving behind the following members:-

- | | | | |
|----|---------------------|---|----------|
| 1. | Smt. Pal Kanwar | - | Wife |
| 2. | Ku. Mamta Kanwar | - | Daughter |
| 3. | Shri Mahaveer Singh | - | Son |
| 4. | Kanchan Kanwar | - | Daughter |
| 5. | Poonam Kanwar | - | Daughter |

If may be stated that at the time of death of father of the applicant, the applicant was about 2 months' old (date of birth being 27.7.1987). Although, widow was entitled to apply for compassionate appointment at the time of death of ex-employee but no such application was made. Further, three elder daughters who have also become major in the year 1997, 1998 and 2003 did not apply for compassionate appointment. However, the application for compassionate appointment was made on behalf of the applicant after attaining the age of majority on 19.7.2005. At the relevant time, the family consists of widow, daughter Mamta Kanwar and the applicant, as other two daughters namely Kanchan Kanwar and Poonam Kanwar had already got married. The case of the applicant was considered in the light of the policy formulated vide letter dated 27.6.2007 (Ann.R/1). As per the policy formulated by the respondents, cases with net point below 55 i.e. 54 or less shall be stated as non-indigent and has to be rejected. Since the applicant secured only 30 points, as such, his case for compassionate

appointment was rejected. The decision so taken by the respondents was communicated to the applicant vide letter dated 20.12.2007 (Ann.A/2). The representation made pursuant to Writ Petition No.2636/2008 was also rejected by the respondents.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above, have not been disputed by the respondents. In the reply, the respondents have categorically stated that widow or three daughters of the deceased did not apply in the year 1987, 1997, 1998 and 2003 when they were eligible and in fact the applicant made an application after a lapse of 18 years from the death of the deceased, as such the applicant was not entitled for compassionate appointment in terms of the policy decision Ann.R/1, as the net points secured by the applicant were only 30 which are less than 55 points and overall assessment of the family of ex-employee has not been found to be living in indigent condition. Thus, according to the respondents, the applicant is not entitled to any relief.

4. I have heard the learned counsel for the respondents and gone through the material placed on record. None ~~is~~ appeared today on behalf of the applicant. On two earlier occasions i.e. on 17.7.2010 and 14.9.2010, none was appearing on behalf of the applicant. As such, instead of dismissing the OA in default on the part of the applicant, I have proceeded to decide the case on merit in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

5. I am of the view that the applicant is not entitled to any relief as he has made application for compassionate appointment after a long time of 18 years and also on merit. The Hon'ble Apex Court has repeatedly held that compassionate appointment cannot be claimed or offered after a lapse of time when the crisis is over. In the case of Union of India vs. Bhagwan Singh, 1996 SCC (L&S) 33 where the railway servant left behind his widow, two major sons and a minor one (aged 12) and application for compassionate appointment was filed by the last mentioned son beyond 5 years from the event and beyond one year from the date of his attaining majority, the Apex Court held that at the time the railway servant died there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate ground. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, it must be held that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the authorities to consider the case of respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. The ratio as laid down by the Apex Court in the case of Bhagwan Singh (supra) is squarely applicable to the facts and circumstances of this case. In this case also widow as well as three daughters were eligible to apply for compassionate appointment in the year 1987, 1997, 1998 and 2003 but no such application was made either by the widow or three daughters, which fact shows that the family has pulled on

apparently without any difficulty. The application was made by the applicant after a lapse of 18 years even then the application was considered by the respondents on merits but the applicant could secure only 30 points as against 55 points which were mandatory for eligibility for appointment on compassionate grounds. To the similar effect is the decision of the Apex Court in the case of Haryana State Electricity Board vs. Naresh Tanwar and Anr., 1996 SCC (L&S) 816 whereby the Apex Court 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).

6. 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."

7. 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 livelihood. 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).

8. 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."

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

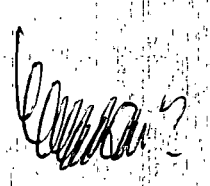
"11. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public 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." (emphasis supplied)

10. 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 exercise 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.

11. Yet for another reason, the applicant is not entitled to any relief. As per policy decision Ann.R/1, the cases of only those persons can be considered for compassionate appointment who has secured 55 or more points. The applicant has neither challenged validity of the said policy 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 of 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. Similarly, the applicant has also not made any grievance regarding awarding of points on the basis of criteria laid down in the policy decision. In the absence of challenge to the policy decision Ann.R/1 and the criteria evolved by the respondents to award points in different heads as mentioned above, no relief can be granted to the applicant.

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


(M.L. CHAUHAN)
Judl. Member

R/