

18.07.2013

OA No. 71/2011

Mr. Abhim Khan and Mr. M. K. Meena, Counsel
for applicant.

Mr. Neeraj Batra, Counsel for respondents.

Heard.

O.A. is disposed of by a separate
order on the separate-sheets for the
reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 71/2011

Jaipur, the 18th day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Miss Bhavna Choudhary daughter of Late Shri L.R. Jat, aged about 26 years, resident of House NO. 1334, Basant Vihar, Kota, Rajasthan.

... Applicant

(By Advocate: Mr. Aslam Khan)

Versus

1. Bharat Sanchar Nigam Limited, (A Government of India Enterprise) through Chief Managing Director, Corporate Office, 102-B, Statesman House, New Delhi.
2. The Chief General Manager, BSNL, Telecommunication, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.
3. The General Manager, BSNL, Telecom, Jhalawar Road, District Kota.

... Respondents

(By Advocate: Mr. Neeraj Batra)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

"It is, therefore, most humbly prayed that this Hon'ble Tribunal may very graciously be pleased to admit/allow this original application and further be pleased to declare the impugned order of rejection, dated 03.04.2008 (Annexure A/1) as illegal and bad and the same may kindly be quashed and set aside.

Direct the respondents to consider the candidature and application of the petitioner for appointment on compassionate ground and further direct the respondents to give the appointment to the applicant in compassionate basis.

Pass any other order as may be deemed just and proper to the facts and circumstances of the case including award of cost of original application."

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2. The brief facts of the case, as stated by the learned counsel for the applicant are that the applicant's father expired on 18.04.2005 while he was in service.

3. The widow of the deceased submitted an application dated 17.11.2005 seeking appointment on compassionate ground in favour of her eldest daughter, Ms. Bhavna Choudhary.

4. That the respondents vide their letter dated 13.11.2006 (Annexure A/5) informed the applicant to furnish certificate from First Class Magistrate verifying about the fact whether she was daughter of Late Shri J.R. Jat. The applicant submitted an affidavit with statement on oath that she is the daughter of Shri Jagan Singh Choudhary, mentioned in educational testimonials.

5. However, the respondents vide their letter dated 11.12.2006 (Annexure A/6) informed the applicant that she was asked to submit a certificate from First Class Magistrate and, therefore, the affidavit submitted by the applicant did not meet the requirement of the department.

6. The applicant in compliance of letter dated 11.12.2006 submitted a certificate from the office of the Sub-Divisional Magistrate, Kota dated 12.02.2007 (Annexure A/7) clarifying that the applicant is the daughter of Shri J.R. Jat alias Jagan Singh Choudhary, who was working in BSNL by the name of Shri J.R. Jat.

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7. The learned counsel for the applicant submitted that all the formalities were completed and the applicant was waiting for her appointment on compassionate grounds but when nothing was heard till 11.09.2007 then the applicant submitted a detailed representation dated 11.09.2007 (Annexure A/8) stating therein about the entire position and the hardship of her family after the death of her father.

8. Thereafter, the respondents vide impugned letter dated 03.04.2008 (Annexure A/1) communicated that since the applicant had scored 44 points against minimum weightage point system as stipulated to be 55 or more, thus she was not living in indigent condition and so the appointment was denied on the check list point system.

9. The learned counsel for the applicant argued that the respondents have rejected the application of the applicant for appointment for compassionate grounds relying on the policy of weightage point system introduced by the respondents on 27.06.2007 whereas the same is not applicable in the case of the applicant. The applicant moved an application for appointment of compassionate ground in the year 2005, therefore, the notification dated 27.06.2007 (Annexure A/13) is not applicable to the case of the applicant. The policy of weightage point system introduced in 2007 cannot be applied retrospectively in the case of the applicant. The learned counsel for the applicant submitted that the case of the applicant should be considered as per the policy of the

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respondents, which was applicable at the time of submitting the application by the applicant for appointment on compassionate grounds. The learned counsel for the applicant relied on the order of the Central Administrative Tribunal, Allahabad Bench dated 01.07.2011 passed in the case of **Pavitra Kumar vs. BSNL & Others [OA No. 1202/2010]**. Therefore, he argued that the communication dated 03.04.2008 (Annexure A/1) may be quashed and set aside and the respondents be directed to consider the candidature of the applicant for appointment on compassionate grounds on the basis of the policy that was invoked prior to the policy of weightage point system introduced in 2007.

10. On the other hand, the learned counsel for the respondents submitted that the applicant's mother was also eligible for appointment on compassionate grounds at the time of death of ex-employee but she did not apply for appointment on compassionate grounds. The applicant's mother moved an application intimating that her daughter would apply for appointment on compassionate ground after her B.A. Degree. The applicant moved an incomplete application for appointment on compassionate grounds on 03.11.2006. The applicant was required to submit some documents, which were submitted by the applicant on 12.02.2007 (Annexure A/7).

11. Meanwhile, the office of the respondents received letter dated 27.12.2006 (Annexure R/2) from BSNL Corporate Office, New Delhi directing all BSNL Circle Offices "not to convene any

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meeting of the Circle High Power Committee (HPC) for considering the cases for offering CGA or not to take any follow up action if any such meeting is in process till new guidelines are issued.

12. Meanwhile the Committee of the BSNL approved the following guidelines for appointment on compassionate grounds – to continue with the policy guidelines on CGA issued by DOPT vide OM No. 14014/94-Est (D) dated October, 9, 1998 and to introduce the weightage point system, as per Annexure-I of BSNL Corporate Office New Delhi letter No. 273-18/2005-Pers IV dated 27.06.2007 (Annexure R/3) the cases with net point 55 shall be prima facie treated as eligible for consideration for CGA and cases with net point below 55 (i.e. 55 or less) shall be treated as non-indigent and are rejected.

13. Learned counsel for the respondents submitted that thus the weightage point system stipulates that the case with 55 or more net point shall be prima-facie treated as eligible for consideration to appointment on compassionate grounds. The points are allotted based on various criteria viz. number of dependant family members of the ex-employee including special weightage to handicap, minor members in the family and unmarried daughter, special weightage to the widow if seeking appointment on compassionate grounds for herself, left out service of the ex-employee, having accommodation (rented or own house), financial aspects of the family based on amount of family pension, terminal benefits, presence of earning members in the family (if any) etc. as applicable in an individual case.

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14. The learned counsel for the respondents further submitted that the Circle High Powered Committee meeting was held on 18.03.2008 after the receipt of letter of BSNL Headquarter New Delhi dated 27.06.2007. This Committee also considered the case of the applicant and observed that the applicant's father, Shri J.R. Jat, had expired on 04.11.2005 at the age of 54 years 10 months 15 days with left out service of 5 years 01 month 16 days. He was survived his wife, one son (minor), two daughters (one unmarried and one minor), Ku. Bhavana Choudhry (1st daughter) applied for CGA on 03.11.2006. Smt. Sushila (Widow) did not apply for CGA. As per report of the Visiting Officer, the family is residing in own house having two rooms, one kitchen at ground floor and one room at 1st floor at Distt. Kota. The amount of terminal benefits paid to the deceased family was Rs.3,79,133/- only and family pension is being paid Rs.4108/- + IDA P.M.

In view of the above, facts, net weightage points scored in the case of applicant are 44 only which is less than 55. Therefore, in overall assessment, the family of the ex-employee has not been found to be living in indigent condition and the committee did not consider the case fit for giving appointment to Kr. Bhavana Choudhary and hence the case was rejected (Annexure A/1).

15. Learned counsel for the respondents argued that similar controversy has been settled by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in the case of **H.C. Patel vs. Union of India & Others** in OA No. 377/2008 decided on 28.08.2009 (Annexure R/6). He further submitted that similar

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controversy has also been settled by this Bench of the Tribunal in the following cases:-

1. TA No. 02/2009 (CWP No. 14002/2008)
Shankar Lal Verma vs. BSNL & Another
Decided on 11.10.2010
2. TA No. 03/2009 (CWP No. 14001/2008)
Mukesh Verma vs. BSNL & Another
Decided on 11.10.2010
3. OA No. 560/2009
Rashid Ali Khan vs. Union of India & Others
Decided on 11.10.2010

16. Learned counsel for the respondents further drew my attention to the judgment of the Hon'ble Supreme Court dated 08.02.2010 in the case of **State Bank of India & Another vs. Raj Kumar**, 2011 (1) SCC (L&S) 150, in which the Hon'ble Supreme Court has held that the scheme that is force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

Therefore, he argued that as per the law laid down by the Hon'ble Supreme Court and also that similar controversy has been settled by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad Bench in OA No. 377/2008 (supra) and by this Tribunal in TA No. 02/2009, TA No. 03/2009 and OA No. 560/2009 (supra), the applicant has no right to be considered under the old scheme. Moreover, the applicant has not challenged the weightage point system and has also not challenged that the applicant has been given less points than what she is entitled. Therefore, this OA has no merit and it should be rejected with costs

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17. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. The learned counsel for the applicant submitted that the applicant is not challenging the weightage points given to the applicant. She is also not challenging the policy of weightage point system introduced by the respondents in 2007. However, main contention of the applicant is that she should have been considered as per the policy for appointment on compassionate grounds, which was applicable at the time of filing the application for compassionate grounds by the applicant that is on 17.11.2005. Therefore, I am restricting my finding to the question whether the applicant should have been considered by the respondents according to the policy for appointment on compassionate grounds that was applicable prior to the introduction of the weightage point system in 2007.

18. I have carefully gone through the order passed by the Central Administrative Tribunal, Ahmedabad Bench in OA No. 377/2008 decided on 28.08.2009 (supra) and I am of the view that the ratio decided by the Central Administrative Tribunal, Ahmedabad Bench in the said order is applicable under the facts & circumstances of the present OA. I am fully in agreement with the averments made by the learned counsel for the respondents that the similar controversy has been settled by this Tribunal in TA No. 02/2009, TA No. 03/2009 and OA No. 560/2009 (supra).

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19. Moreover, the Hon'ble Supreme Court in Para nos. 11 & 12 in the case of **State Bank of India & Another vs. Raj Kumar (Supra)** has held as under:-

"11. Normal schemes contemplate compassionate appointment on an application by a dependant family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable."

20. The law laid down by the Hon'ble Supreme Court in this case is squarely applicable under the facts & circumstances of the present case. The applicant in the present OA has no vested/legal right for appointment on compassionate grounds under the scheme for appointment on compassionate grounds. There is no immediate or automatic appointment merely on an application. Several circumstances having bearing on the eligibility and financial condition upto the date of consideration have to be taken into account. Therefore, I am of the view that the respondents cannot be directed to consider the case of the applicant for appointment on compassionate ground on the policy which was in

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force prior to the introduction of the weightage point system in 2007. The case of the applicant has been rejected by the respondents in terms of the new policy of weightage point system. This weightage point system has proven to be followed and it is a transparent system in which all the candidates are given weightage points and then a comparative merit list is prepared. Thus it also eliminates the element of corruption.

21. The learned counsel for the applicant placed reliance on the order of the Central Administrative Tribunal, Allahabad Bench in the case of **Pavitra Kumar vs. BSNL & Others [OA No. 1202/2010]** (supra). I have carefully perused the the order of the Central Administrative Tribunal, Allahabad Bench and I am of the opinion that the order passed by the Central Administrative Tribunal, Allahabad Bench in OA No. 1202/2010 is not applicable under the facts & circumstances of the present case. Moreover, the law laid down by the Hon'ble Supreme Court in the case of **State Bank of India & Another vs. Raj Kumar** (supra) was not brought to the notice of the Allahabad Bench of the Tribunal.

22. Moreover, the learned counsel for the applicant could not mention that criteria adopted for determination of indigent condition of the family, as stipulated in the policy dated 27.06.2007 was different to the procedure which was adopted by the respondents earlier. Therefore, mere assertion that the case of the applicant should have been considered in the light of the earlier guidelines cannot be accepted. It may be relevant to quote relevant para of the guidelines issued by the Government of India

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vide OM No dated 09.10.1998 in Para No. 16 (c) dealing with balance & objective assessment of financial condition while considering compassionate appointment:-

".....While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc."

23. Thus if policy guidelines of the Government of India as issued vide OM dated 09.10.1998 and present guidelines issued by the respondents are compared then it would be seen that there is not much difference between the two except that the weightage point system has been introduced under the new guidelines for assessing the indigent condition. In my opinion, the weightage point system is more transparent and cannot be said to be arbitrary. Therefore, the applicant cannot be given any relief by this Tribunal on the ground that the applicant should have been considered under the old policy. It was for the applicant to establish his case that the criteria for assessing indigent condition of the family at the time of death of the father of the applicant was different than the criteria/weightage system prescribed as per the policy dated 27.06.2007 in order to get relief from this Tribunal. Moreover, the applicant has neither challenged the marks assigned to her by the respondents in terms of weightage point system, nor challenged the legality of the new guidelines introducing the weightage point system.

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24. In view of the discussions held above, I find that there is no merit in the OA. Consequently the OA is dismissed being devoid of merit with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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