

Reserved on 14.08.2018

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the ***21st*** day of ***August, 2018.***

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/309/2016

Rajesh Kumar Yadav, son of Late Chandraseet Yadav, resident of Village – Pyarepur, Post – Sadar, Police Station – Saraikhwaja, District - Jaunpur.
...Applicant

V E R S U S

1. Union of India through Secretary, Ministry of Tele & Communication, Government of India, New Delhi.
2. Chief General Manager (Recruitment Cell), U.P. (East) Telecom Circle, Hazratganj, Lucknow.
3. Assistant General Manager / Assistant Director (Recruitment), Office of Chief General Manager, U.P. (East), Telecom Circle, Hazratganj, Lucknow.
4. Telecom Divisional Manager / Divisional Manager (Administration), Office of Bharat Sanchar Nigam Limited, Jaunpur.
5. Divisional Engineer (Administration), Office of Bharat Sanchar Nigam Limited, Jaunpur.

.... Respondents

Advocate for Applicant : Shri V.K. Singh

Advocate for the respondents : Shri V.K. Pandey

O R D E R

This applicant has filed this OA seeking the following main relief:-

“(i).to quash the impugned order dated 05.01.2016 as well as order dated 26.03.2012 (Annexure-1 to the Original Application) passed by respondent no. 2.

(ii) to direct the respondents to appoint the applicant on compassionate ground”

2. The father of the applicant died on 7.11.2002 while in the service under the respondents Bharat Sanchar Nigam Ltd. (in short BSNL). The applicant, thereafter, submitted an application for compassionate appointment and in reply, the respondent no. 5 vide letter dated 9.12.2004 (Annexure A-3) called for certain documents from the applicant, which were submitted. It is stated in the OA that in spite of several

reminders, no action was taken by the respondents on his application including a representation dated 19.12.2015 (Annexure A-4). Finally, his application was rejected vide order dated 5.1.2016 (Annexure A-1), which stated that his case was rejected by a detailed order dated 26.3.2012 (Annexure A-1). It is stated in the OA that the said order dated 26.3.2012 was not informed to the applicant till after issue of the order dated 5.1.2016.

3. It is stated in the OA that the impugned order dated 26.3.2012 is illegal as it was passed without giving any specific reason and without any speaking order. It is further contended that when Class III post is not available, class IV post may be given for compassionate appointment.

4. The respondents filed Counter Affidavit (in short CA) with the following main averments:-

- (i) The applicant was informed that the case has been referred to BSNL headquarters for consideration of the High Power Committee.
- (ii) The High Power Committee rejected the case after noting that the family was getting family pension of Rs. 2885.11 and had received terminal benefit of Rs. 3,01,806 and living in their own house. Keeping in view of the assets and liabilities and overall assessment of financial condition of the family, it was decided that it does not live in penury (vide letter dated 29.2.2012 at annexure CA-2 to the Counter).
- (iii) The decision of the BSNL is in accordance with the DOPT circular on the scheme vide OM dated 09.10.1998.

5. The applicant has filed Rejoinder, mainly reiterating the contentions in the OA. It is stated that the decision has been taken by the respondents without considering the documents furnished by the applicant.

6. I have heard learned counsel for the applicant as well as the respondents and also considered the pleadings on record. It is noted that the OA has challenged the order dated 26.3.2012, but no application for delay condonation has been filed by the applicant. Although delayed communication of the order dated 26.3.2012 has been stated in the OA, but it was necessary to file a delay condonation application for impugning the order dated 26.3.2012.

7. On merit, learned counsel for the applicant had submitted that the family pension at present is Rs. 1700/- which is not at all adequate. He also filed a copy of the judgment of Hon'ble Allahabad High Court in the case of Hari Ram v. Food Corporation of India, 2009 UPLBEC 2213. Hon'ble Allahabad High Court, in the case of Hari Ram (supra) observed that a committee had visited the residence of the deceased employee and found that the family was living in extreme poverty and the family was living in a kuchcha tiled house, with the sons working as farm labour. Further, the application for compassionate appointment was pending for more than three years in that case. The case was rejected for the reason that the case could not be considered during three years due to non-availability of vacancy. All these circumstances were considered by Hon'ble High Court before allowing the writ petition. The facts including the reason for rejection of the case in the instant OA are different. In the OA, there is no report of any inspecting official or committee with the finding that the family is living in extreme poverty. Hence, the ratio of the cited case is inapplicable to the instant OA.

8. Further, the applicant stated in the Rejoinder that the respondents have not considered the documents furnished by the applicants. On perusal of the documents, it is seen that there is nothing in the documents or in the pleadings of the applicant in this case to show that the decision of the High Power Committee of BSNL headquarter as communicated vide order dated 26.3.2012 is incorrect.

9. The guidelines of the Government on the Scheme for Compassionate Appointment vide the circular dated 16.1.2013 of the Department of Personnel and Training states the following to be the object of the scheme:-

SCHEME FOR COMPASSIONATE APPOINTMENT

“1. OBJECT

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

19. IMPORTANT COURT JUDGMENTS

(a)

(b) The Supreme Court's judgement dated May 4, 1994 in the case of Umesh Kumar Nagpal vs. State of Haryana and others [JT 1994(3) S.C. 525] has laid down the following important principles in this regard:

(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e. in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad-hoc basis.

....."

The sub-para (b)(vi) of para 19 of the DOPT guidelines clearly lays down the principle that compassionate appointment cannot be granted after lapse of a reasonable period and it is not to be taken as vested right.

10. It is noted that the applicant's father died in 2002 and there has been substantial delay after death of the applicant's father. If there was urgency, the applicant should have taken appropriate legal steps if the respondents did not consider his request for compassionate appointment within a reasonable time as the guidelines of DOPT referred in paragraph 9 above.

11. In view of the above discussions, I am of the considered opinion that the applicant has failed to furnish adequate justifications for the OA, which is accordingly, dismissed. No costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

Anand...