

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. 330/1240/2014

Himanshu Shukla, Son of late Shiva Nand, aged about 26 years (DoB 20.06.1988), resident of House No. 102-30, "Block' Didwai, Kanpur (U.P.) .
...Applicant

V E R S U S

1. Bharat Sanchar Nigam Limited, 301-A, Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi through its Chairman / Chief Managing director.
2. Assistant General Manager, B.S.N.L. Corporate Office (Personnel IV Section), 5th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi – 10001.
3. Assistant General Manager (Rectt. Cell) Office of Chief General Manager, Telecom, U.P. (E), Telecom Circle, Hazrat, Lucknow.
4. Assistant General Manager (Admn.), Office of General Manager, Telecom District Kanpur.

.... Respondents

Advocate for Applicant : Shri S.K. Pandey

Advocate for the respondents : Shri D.S. Shukla

O R D E R

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

"8.1.to issue a writ order or direction in the nature of CERTIORARI quashing the impugned order dated 31.12.2013 (Annexure A-I to compilation –I to the OA).

8.2 issue a writ order or direction in the nature of MANDAMUS directing the respondents to consider the case of the applicant for compassionate appointment in accordance with law....."

2. The applicant, in this case, was an applicant for compassionate appointment after death of his father on 1.9.2005. He applied for the compassionate appointment in 2005. When the respondents rejected the application vide order dated 20.6.2011, the applicant filed the OA No. 644/2013 impugning the decision. The Tribunal allowed the OA and vide order dated 23.5.2013, directed the respondents to re-consider the case of the applicant. Thereafter, the applicant submitted a representation with a copy of the order dated 23.5.2013 of the Tribunal (Annexure A-6) to the

respondents, who also rejected the representation vide order dated 31.12.2013 (Annexure A-1). Being aggrieved, the applicant has filed the instant OA, impugning the order dated 31.12.2013, with prayer for following reliefs:-

3. The applicant has advanced following grounds in support of the OA:-

- The impugned order is not as per the order of the Tribunal dated 23.5.2013 (Annexure A-6), since it was not considered as per the High Court judgment in the case of Hari Ram and Asha Mishra.
- The applicant has got higher merit points than the last selected candidate, which is also mentioned in the order dated 31.12.2013.
- His father died after 17 years of service leaving behind the applicant's mother, the applicant and four daughters.
- The applicant's case is fully covered by the scheme of the DOPT.
- In view of the judgment of Hon'ble Supreme Court in the case of Balveer Kaur and another vs. Steel Authority of India and of the Tribunal in the case of Smt. Arti Gupta vs. BSNL in OA No. 1368/2012, the applicant's case needs to be considered.
- Respondents were under legal obligation to offer appointment on the basis of merit prepared by High Power Committee.

4. Respondents in their Counter Reply stated that the case has been reconsidered as per the order of the Tribunal. As per the circular dated 27.6.2007 of the BSNL (Annexure A-4 to the OA), the case will be sent to the head office based on the merit point above 55 and the BSNL High Power Committee at the Head office, considers the cases. The case of the applicant's case has been re-considered by the High Power Committee as per the direction of the Tribunal, before passing the order dated 31.12.2013. Hence, getting a higher merit score does not guarantee final selection by the High Power Committee. The applicant's case has been fairly considered as per the circular dated 27.6.2007.

5. The applicant, in the Rejoinder, reiterated the averments made in the OA, particularly regarding higher merit point for him than last selected candidate and non-consideration of his case as per the order of the Tribunal.

6. Heard learned counsel for the applicant who vehemently argued that the applicant, having higher merit point was overlooked, while another candidate with lower merit point was selected as mentioned in the order dated 31.12.2013. He also submitted that the case was not re-considered as per the order dated 23.5.2013 of this Tribunal in OA No. 644/2013.

7. Learned counsel in his submissions countered the arguments of the applicant's counsel by stating that the case was re-considered as per the Tribunal's order with approval of the competent authority. He also pointed out that the merit point is assessed to find out *prima facie* eligibility of the cases as per the circular dated 27.6.2007 (Annexure A-4).

8. Regarding the contention of the applicant having higher merit point than selected candidate, it is seen that the para 2 of the circular dated 27.6.2007 of the respondents states as under:-

“2.0 Accordingly, The High Power Committee of the Corporate office for considering compassionate ground appointment cases, Headed by Director(HRD), recommended for introduction of a weightage point system, within DOPT guidelines, to bring uniformity in assessment of indigent condition of the family, which has subsequently been approved by the Managing Committee of BSNL as per the following:-

(I) To continue with the policy guidelines on compassionate ground appointment, issued by DOPT vide OM No. 14014/6/94-Estt (D) dated October 9. 1998 and to introduce a weightage point system as per details given at Annexure-I.

(II) The assessment criteria for recommendation of the indigent condition of the family by the Circle High Power Committee shall be- (a) cases with 55 or more NET POINTS shall be *prima-facie* treated as eligible for consideration by Corporate Office High Power Committee for compassionate ground appointment and (b) cases with NET POINT below 55 (i.e.54 or less) shall be treated as non-indigent and rejected.”

9. From above, it is clear that the merit point is assessed for deciding *prima-facie* eligibility of cases by Circle High Power Committee, for sending the cases to the Corporate Office High Power Committee (in short HPC), which will assess the cases and the criteria for such assessment is not specified to be the merit point. No where the circular dated 27.6.2007 states that the merit point will determine the order of merit for consideration of the compassionate ground appointment cases, which will be decided by HPC with approval of CMD, BSNL as stated in para 7 of the circular dated 27.6.2007. Hence, the contention of the applicant's counsel that the applicant's case has been ignored, while another case with less merit point has been selected for appointment, is not in accordance with the circular dated 27.6.2007.

10. The other ground taken by learned counsel for the applicant was that his case was not considered as per the order dated 23.5.2013 of this Tribunal. The operative part of the said order stated as under:-

“5. The respondents are directed to do all these within three months from the date of receipt of a certified copy of this order. The respondents are also directed to reconsider the claim of the applicant as per the Rule position and pass a reasoned order in the light of the order of Hon’ble High Court of Allahabad in the case of Hari Ram Vs. Union of India and Ors. reported as 2009 (3) UPLBEC 2212, which was subsequently followed by the Division Bench of Hon’ble High Court in the judgment delivered by the judicature of Hon’ble High Court of Allahabad in Civil Misc. Writ Petition No. 13102/2000 in the case of UOI and others Vs. Smt. Asha Mishra & Anr. decided on 07.05.2010.”

11. The impugned order has disclosed the mark secured by last selected candidate, which was less than the applicant. But as discussed in para 8 above, this is not a violation of the BSNL’s circular dated 27.6.2007 which is a policy guidelines for compassionate ground appointment. The merit point is for determining prima-facie eligibility and the select list is not prepared based on the merit point as per the circular dated 27.6.2007, which is not under challenge in this OA. The other point was to consider the applicant’s case in the light of the judgment of Hon’ble Allahabad High Court in the cases of Hari ram and Asha Mishra, which have not been discussed while passing the impugned order dated 31.12.2013. But before deciding whether any direction in this regard can be given to the respondents in this regard, it will be examined if the applicant’s case can be considered to be covered by these cited cases based on the material available on record.

12. Hon’ble Allahabad High Court in the case of Hari Ram v. Food Corporation of India, 2009 UPLBEC 2213 (copy of the judgment enclosed at annexure A-6 to the OA) 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 kutcha 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 in

the case of Hari Ram (supra). Obviously, the facts of Hari Ram case are different from the facts and there is no similarity at all with regard to the ground of rejection and finding of extreme poverty is not there in the instant OA.

13. In the case of Smt. Asha Mishra, as seen from the judgment copy enclosed at Annexure A-6 of the OA, the Smt. Asha Mishra had applied for appointment on compassionate ground after death of her husband while in service. She was informed that she was selected for compassionate appointment on the post of LDC and she will be appointed after vacancy is available. But subsequently, she was informed that her case will not be considered since a person's name could be kept under consideration for three years as per the guidelines and as she could not be appointed within three years, it is not possible to consider her case. The writ was allowed by Hon'ble High Court since the case was rejected only on the ground that it could not be accommodated within three years. Hence, the facts and circumstances as well as the reason for rejection in the case of Smt. Asha Mishra (supra) are different from the facts and reason for rejection in the instant OA.

14. In view of discussions in para 12 and 13 above, the ratio of the judgments in the case of Hari Ram (supra) and Smt. Asha Mishra (supra) are not applicable to the present case and the cited cases are distinguishable. It is also noted that the order dated 23.5.2013 of this Tribunal did not come to any finding that the instant OA is covered by above two referred cases or not. Hence, no point will be served if the respondents are told to consider in the light of above cited cases, whether the facts as well as the reason for rejection were different from the present OA.

15. In the circumstances, the OA is devoid of merit and is liable to be dismissed. Accordingly, it is dismissed. No order as to costs.

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

Anand...