

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the 04th day of April 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

O. A. No.330/00284/2018

*Aditya Pandey, aged 26 years,
S/o Late Shri Shyam Sunder Pandey,
Villag & Post – Bhairapur Tikra
District – Faizabad (U.P.).*

..... Applicant

(By Advocate : Shri Ashutosh Shukla)

Versus

1. *Union of India through its Secretary,
Ministry of Telecommunication and I.T. New Delhi.*
2. *Chief General Manager Telecom, U.P. West, BSNL Circle,
Shastri Nagar, Meerut.*
3. *Circle High Power Committee, Office of Chief General
Manager Telecom, U.P. West, BSNL Circle, Shastri Nagar
Meerut.*
4. *Assistant General Manager (HR) Office of CGMT, U.P.
West Circle, BSNL Meerut.*
5. *General Manager Telecom, District – Muzaffar Nagar.*
6. *Assistant Director General (pers)-4
Corporate Office BSNL New Delhi.*

..... Respondents

(By Advocate : Shri D.S. Shukla)

O R D E R

In the instant OA filed this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the decision of the Circle High Power Committee of Circle Office, Headed by CGMT Meerut dated 14.11.2017 as well as weightage point systems dated 27.6.2007 and further sought a direction to the respondents to give him compassionate appointment forthwith.

2. Brief facts of the case are that father of the applicant (late sri Shyam sunder Pandey), who was working in BSNL, Muzaffar Nagar on the post of senior TOA (G) as a regular employee, died in harness on 7.10.2012 at the age of 56 years. The family consist two sons, two daughters and widow mother and both the brothers are unemployed and economic condition is poor.

2.1 The applicant moved an application for his compassionate appointment but nothing was done on his application. However, after his repeated requests, on 6.8.2016, the claim of the applicant was taken into consideration by the respondents and by letter dated 6.8.2016, the applicant was directed to fill up the form on the required procedure and again as per instructions, the applicant filled up the form on the requisite proforma on 26.9.2016. When nothing was done by the respondents, the applicant has no way except to take the shelter of Hon'ble

Court and preferred a Civil Misc. Writ Petition No.12449 of 2017 before the Hon’ble Allahabad High Court which was finally disposed of vide Order dated 27.3.2017 with direction to respondent no.2 therein to consider the claim of the applicant and pass the appropriate order in accordance with law.

2.2 Vide Order dated 14.11.2017, the Circle High Power Committee considered the claim of the applicant for compassionate appointment and has rejected the same on the ground that applicant has been awarded 33 points and the weightage point system stipulates that cases with net points 54 and less (based on Dependent’s Weightage, Basic family, Left Out service of ex-official, applicant’s weightage, terminal benefits, accommodation for living and negative marking for presence of earning member in the family and belated request) are to be rejected. The details of weightage points in the case of the applicant have been mentioned in the order dated 14.11.2017 which reads as follows:-

Dependents weightage – 3 dependent (3) dependents @ 5 points each	= 15
(As two daughters are married, cannot be counted as dependent as per BSNL Policy)	
Family Pension (Rs.2730.00 per month (Pre-revised)	=14
Left out service (04 years about) one point per year)	= 04
Applicant weightage (son applied)	= 00
Terminal Benefits (Rs.29,01,807.00)	= 00
Accommodation (Own house)	= 00
Negative Points:	
Income of spouse	= Nil
Belated request	= Nil
Net Points	= 33

2.3 The contention of the applicant is that weightage point system is only in BSNL and not in other departments of the Govt. of India and further they have counted the alleged points in arbitrary manner, which is not sustainable in the eye of law and is liable to be set aside by this Tribunal.

2.4 The further contention of the applicant is that under the mandate of policy and as per various judgments of the Hon'ble Courts, the departments are under the obligation to consider the case of each one for compassionate appointment in each year and a proper list of all the applicants/candidates with the offered candidates must be published on notice Board etc. but in the present case, the father of the applicant died in the year 2012 and only after the order of the Hon'ble High Court, the case of the applicant was considered first time in the year 2017 and as such the entire action and conduct of the respondents shows there ulterior motives not to give benefit to the dependents of the deceased employee.

2.5 The respondents have also not disclosed the fact since 2012 how many vacancies occurred for compassionate appointment and who have been appointed against those vacancies.

2.6 The binding clause of points in policy is also adverse, illegal and is liable to be removed from the policy.

3. With the consent of parties, we have heard learned counsel for the parties at the admission stage itself.

4. Counsel for the applicant submitted that impugned policy which has a provision of awarding weightage point systems for consideration of the case for grant of compassionate appointment and rejecting the case if points awarded are below 55 is arbitrary, illegal and unconstitutional as there was no such provision in any other organisation of the Govt. of India.

5. Counsel for the respondents submitted that applicant has been awarded points as per the provisions contained in the Policy dated 27.6.2007 and there is nothing illegality in rejecting the claim of the applicant as the applicant has been awarded only 33 points and to be in the zone of consideration, as per the said policy/scheme, a candidate must have been awarded points not below 55 points. Further the applicant has not challenged that the points have been wrongly awarded in his case.

6. This Court is unable to accept the contentions of counsel for the applicant as the applicant has not stated anywhere in the OA that points have not been awarded in his case rightly. Rather the applicant is challenging the said policy on the ground that clause that the cases with NET POINTS below 55 (i.e. 54 or less) shall be treated as non-indigent and rejected is arbitrary, unconstitutional and against the law.

7. This issue of challenge to the said Policy dated 27.6.2017 was raised before the Chandigarh Bench of this Tribunal in OA NO.99/2014 in the case of **Amandeep Bhagania vs. Bharat Sanchar Nigam Limited and others** decided on 13.11.2014 and the Chandigarh Bench held as follows:-

"1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"(i) That impugned order A-1 dated 11.6.2013 be quashed/set aside and invalidated qua applicant.

(ii) That the impugned Compassionate Appointment Policy dated 27.06.2007, Annexure A-2, challenged to the extent qua points assessment criteria for recommendations of the indigent conditions of the family with 55 marks net to treat prima facie as eligible for consideration for compassionate appointment be quashed/set aside in view of the Government of India order dated 09.10.1998, Annexure A-6 so that the poor wards of the deceased could be able to get compassionate appointment as per Government of India orders in the interest of justice.

(iii) That this Tribunal may issue directions to the respondents for granting compassionate appointment to the applicant in lieu of his deceased father who died in harness, granting him Group 'D' post on compassionate grounds in case Group 'C' post is not available taking into consideration his higher qualification and grant all consequential benefits to which he may be found entitled to under the rules and law."

2. Averment has been made in the OA that the applicant belongs to Scheduled Caste Category. His father one Sh. Amarjeet Lal was working as Telecom Mechanic in the BSNL at the time of his death on 10.08.2009 when he was still in service. The bereaved family received the retiral benefits to the tune of Rs. 9,15,304/-. The applicant is unmarried and is also handicapped due to amputation of his right thumb. After the death of his father, the applicant submitted his application for appointment on compassionate grounds in February, 2011. Since the appointment was not afforded to the applicant, he filed OA No. 1397/PB/2012 titled Amandeep Bhagania Vs. BSNL. This OA was disposed of by CAT Chandigarh Bench vide order dated 8.4.2013 (Annexure

A-3). In spite of the direction of the Tribunal dated 8.4.2013, the office of respondent No. 2 had passed the impugned order A-1 vide No. RD/R&E/R-48/870/11 dated 11.06.2013 (Annexure A-1) rejecting the claim of the applicant for compassionate appointment on three premises i.e. (i) living in own house (ii) weightage point system comes total 22 positive points, whereas 55 marks are required for recommending the case for compassionate appointment and (iii) financial condition of the family living in penury was also not approved by the Competent Authority. Taking into consideration these reasons, the impugned order (Annexure A-1) has been passed by respondents totally ignoring that the respondent No. 3 while sending case to respondent No. 2 had granted 32 points as attached by respondent No. 2 with the impugned order Annexure A-1 and also attached as Annexure A-4 herein whereas no point has been awarded to the applicant qua his being handicapped for which there is provision in the point system communicated to the applicant under RTI Act, Annexure A-5 and also no point has been awarded on the premises that applicant is living in his own accommodation as he has not been living in his own accommodation and that is hit by Annexure A-7. Hence, coupled with all these points, the impugned order rejecting the compassionate appointment of the applicant is unsustainable in the eyes of law and deserves to be quashed and invalidated.

3. In the written statement filed on behalf of the respondents, it has been stated that in order to bring uniformity in assessment of indigent condition of the family of the claimants for offering Compassionate Ground Appointment, weightage point system was issued by BSNL as per letter No. 273-18/2005-Pers-IV dated 27.06.2007 (Annexure A-2). Since it is impossible to quantify all the parameters to be considered by HPC (High Power Committee) for judging comparative merit of different candidates, it is left to the discretion of HPC of BSNL Corporate Office to apply similar considerations which obviously conform to the provisions of law and are rational and justified to arrive at the right conclusion regarding financial destitution of the family of the deceased employee and the need for immediate assistance. By scoring 55 or more points, an applicant becomes prima facie eligible for consideration by High Power Committee of BSNL Corporate Office whereas, in the present case, the applicant was awarded 22 positive points. The salient features of the weightage point system are given below:-

(a) Dependants weightage (Positive points) : points per dependant, per handicapped dependant, per minor child, per unmarried daughter (after 18 years of age), maximum points restricted to 30.

(b) Basic family pension (Positive points) : 20 points varying from 20 to NIL depending on the basic family pension up to Rs. 2000/- to Rs. 4250/- and above.

(c) Left out service(Positive points) : 1 point for each year of left out service subject to a maximum of 15 points.

(d) Applicants weightage (Positive points) : 15 points for widow seeking compassionate employment and NIL for others.

(e) Terminal benefits (Positive points) : Maximum 10 points varying from 10 to NIL depending on the terminal benefits up to Rs. 1 lakh to > Rs. 10 lakh.

(f) Accommodation (Positive points) : 10 points for rented house and NIL points for own house.

Under the weightage point system, the case of the applicant was considered and he was awarded 22 points. Earlier he was awarded 32 points, which were awarded wrongly regarding accommodation and the same was corrected by SSA. The case was, thereafter, forwarded to the Circle High Power Committee for consideration as per the instructions dated 09.10.1998 and the policy dated 27.6.2007. The Circle High Power Committee recommended the case for rejection as the family was not found in indigent condition keeping in view the liabilities of the family, as the family has its own house to reside, and family is getting a pension of Rs. 7645 + IDA per month and other terminal benefits of Rs. 9,15,304/- have been released. The family consist of 6 members i.e. mother, applicant, his brother and his three sisters who are already married. The case of the applicant for appointment on compassionate ground has been considered by the respondents as per the instructions dated 09.10.1998 and the same has been rejected on the ground that the family of the applicant is non-indigent.

4. Arguments advanced by the learned counsel for the parties have been heard when they reiterated the content of the OA, Rejoinder and written statement respectively. It is seen from the material on record that nothing has been said in support of the claim of the applicant for quashing the compassionate appointment policy dated 27.6.2007 (Annexure A-2) . **This policy appears to be fair and has been upheld by the Courts/Tribunal from time to time. The policy provides for a transparent mechanism for assessing the claim of the applicants for appointment on compassionate grounds so that such appointment only goes to those who are truly in indigent circumstances and even among those the number of available vacancies has to be kept in view and recommendations are made on this basis. The cut-off points as per the policy circular of BSNL is 55 while the applicant secured only 22 points. Hence, the High Powered Committee of BSNL Corporate Office had no option but to reject the claim of the applicant for appointment on compassionate grounds. The applicants claim for appointment on compassionate grounds has been accorded fair consideration and hence**

the impugned orders do not merit judicial interference.
The OA is therefore rejected. No costs.

(emphasis supplied)

8. In view of the above, for the foregoing reasons, this Court finds that this case is squarely covered by the judgment rendered by the Chandigarh Bench of this Tribunal in the case of ***Amandeep Bhagania*** (supra). Accordingly, the present OA is dismissed at the admission stage itself. There shall be no order as to costs.

(Justice Dinesh Gupta)
Member (J)

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