

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.272/2013

This the 6th day of September, 2016

Hon'ble Shri P.K. Basu, Member (A)

Yogendra Singh
S/o late Shri Lala Ram
Ex. Telephone Supervisor
Resident of: Uma Nagar Colony
Near Peeli Kothi
Post-Badeshi, Distt. Aligarh (UP) ..Applicant

(By Advocate: None)

Versus

1. Union of India, Through the Secretary
to the Govt. of India
Ministry of Communication, Deptt. of
Telecommunication, Sanchar Bhavan
20-Ashok Marg, New Delhi.
2. The Chairman & Managing Director
B.S.N.L., Corporate Office, Sanchar Bhawan
Harish Chandra Mathur Lane, Janpath
New Delhi-110001.
3. The Director General
Department of Telecommunication
Sanchar Bhawan, 20-Ashok Marg
New Delhi.
4. The Executive Director
Mahanagar Telephone Nigam Ltd.
Headquarters Delhi Telephones
Khurshid Lal Bhawan
New Delhi-110050. ...Respondents

(By Advocate: Shri Hilal Haider for Res. No.1 & 2 and Ms. Yoothica Pallavi, Res. No.4)

O R D E R (ORAL)

The learned arguing counsel for the applicant did not appear on 26.07.2016. None appears on his behalf today as well. This is a 2013 matter and cannot be adjourned

any further. The case of the applicant is that on the death of his father, he applied for compassionate appointment but he has not been given the said appointment. In support of the applicant's claim, the learned counsel for the applicant relied upon the following judgments to establish that the courts have held that ban on compassionate appointments imposed by MTNL is illegal and that pending cases will not be affected by them. Further, in case of compassionate appointments supernumerary posts be created. Lastly, that delay has to be condoned in such cases:

- (i) Hon'ble Punjab & Haryana High Court in the case of ***Mahar Chand Vs. Secretary to the Govt. of Punjab (2009 (2) SCT-66 (P&H)***
- (ii) Hon'ble Punjab & Haryana High Court in the case of ***Dimple Vs. State of Punjab (2009(2) SCT-532) (P&H)***
- (iii) Hon'ble Madhya Pradesh High Court in the case of ***Aarti Aakaliar Vs. State of M.P. and Ors., M.P. (2003(8) SLR (MP) (DB) 182)***
- (iv) Hon'ble Rajasthan High Court in the case of ***Kaushbendra Singh Naurka Vs. State of Rajasthan (1999 (8) SLR (Rajasthan) 336)***
- (v) Hon'ble Rajasthan High Court in the case of ***State of Rajasthan Vs. Phooli Devi (2003(3) SLR (Rajasthan)(DB) 796)***
- (vi) Hon'ble CAT, Bombay Bench in the case of ***Satya Bhama Uma Gaikwad (Smt.) Vs. U.O.I. (ATR 1993(1) CAT-321)(Bombay)***

- (vii) Hon'ble M.P. High Court in the case of **T. Swamy Das Vs. U.O.I.** decided on 10.01.2002
- (viii) Hon'ble Supreme Court in the case of **State Bank of India Vs. Jaspal Kaur** decided on 01.02.2007 (2007(3)AISLJ-1)
- (ix) **Pankajini Sahoo and Anr. Vs. The Sr. Suptd., R.M.S. 'N' Division Cuttack and Ors.** 3/2005, Swamynews 54 (Cuttack) date of judgment 14.07.2004
- (x) **Sujit Kumar Vs. U.O.I. and Ors.** decided on 19.05.2003 (2003(6)SLR-125) (Calcutta High Court)
- (xi) **Dhanjit Bayan and Anr. Vs. UOI and Ors.** (6/2006-Swamynews 60) (Guwhati) Date of judgment 05.09.2005 (O.A. No.234/2004 and 85/2005)
- (xii) **Smt. Wasanti and Anr. Vs. UOI and Ors.** (2006(2) ATJ-490) (CAT-Bombay Bench)
- (xiii) **Kishan Das Vs. U.O.I. and Ors.** (2004(1)ATJ-54)(CAT-Jabalpur Bench) decided on 31.10.2003
- (xiv) Hon'ble CAT, Cuttack Bench in the case of **Nayan Kumar Nanda Vs. UOI and Ors.** decided on 07.04.2004 (2004(2)ATJ-483)
- (xv) Hon'ble CAT, Principal Bench in the case of **Smt. Natho Devi and Anr. Vs. UOI and Ors.** decided on 05.08.2005
- (xvi) Hon'ble Calcutta High Court (DB) in the case of **State of West Bengal and Ors. Vs. Smt. Bina Debnath and Ors.** decided on 18.09.2007
- (xvii) Division Bench of Hon'ble Punjab and Haryana High Court in the case of **Jitesh Kumar Dembla Vs. State of Haryana and Ors.** decided on 01.08.2006

(xviii) Calcutta Bench of Hon'ble Tribunal in the case of **Smt. Mitali Saha Vs. C.P.W.D.** (9/2012, Swamynews 71 (Calcutta) decided on 07.07.2011

(xix) Allahabad High Court's judgment dt. 07.05.2010, the D.O.P. & T., vide its O.M. dt. 26.07.2012, withdrawn its order dt. 05.05.2003, limiting compassionate appointment considerations to three years."

2. In reply, the respondents, namely, MTNL has clarified that the wife of the said employee Shri Lala Ram had filed Writ Petition(C)No.4591/2003 in Delhi High Court. No relief pertaining to compassionate appointment had been claimed in the writ. However, Hon'ble High Court had directed the respondents to consider his claim for compassionate appointment. Wife of Shri Lala Ram, thereafter, requested for compassionate appointment of the applicant. On 23.08.2012, the applicant was informed that her application will be registered but no decision can be taken as MTNL, Management has imposed blanket ban on compassionate appointment in order to make MTNL a competitive vibrant organization and down size and optimize the organizational structure vide corporate office order dated 18.03.2004. Later on, on the death of the wife on 24.11.2009, it was clarified that the son need not apply afresh and the old registration will continue. The applicant had also filed OA No. 167/2011 before this Tribunal and vide order dated 02.05.2012, this Tribunal had directed

the respondents to pass speaking order. The speaking order dated 23.08.2012 has been challenged in this OA. In the speaking order, it is stated that there was a departmental proceeding against the employee, namely, Shri Lala Ram. A penalty of removal from service was passed against him. The respondents, therefore, rejected the case of compassionate appointment on the ground that he was removed from service on 23.03.2001 and there was blanket ban on compassionate appointment.

3. Learned counsel for respondent No.4 has also clarified that the department has passed an order dated 20.06.2013, whereby the applicant was informed as follows:-

"4. Her application which was cancelled vide order dated 23.08.12, mentioned above, is hereby restored with old registration no.2004/133. Since wife of Late Sh. Lala Ram too demised on 24.11.09, therefore, her son, Yogender Singh need not to apply in fresh for compassionate ground appointment.

5. Further, this is to inform Sh. Yogender Singh that since 2004 ban on compassionate ground appointment still persists."

4. Basically, the argument of the applicant based on the above cited judgment is that the prayer of the applicant for compassionate appointment cannot be denied for any policy framed subsequently. Shri Lala Ram had vanished in

1994 and, therefore, the 7 years period was completed in 2001 and the ban on compassionate appointment came in force in 2004 that is later than 2001.

5. I have perused the pleadings of the applicant as well as of the respondents, heard the learned counsel for the respondents and gone through the judgments cited by the applicant. As would be apparent, rejection has not been on the ground of delay or only on the basis of new policy. One of the grounds for rejection has been that the applicant has been removed from service for major disciplinary proceedings. In view of this, the OA does not survive and it is accordingly dismissed. No costs.

(P.K. Basu)
Member (A)

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