

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 23.8.2018

ORIGINAL APPLICATION NO. 060/01290/2017

Chandigarh, this the 4th day of August, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Bhupinder Batra son of late Shri Iqbal Rai Batra, age 33 years,
Gali-20, Ex Radhe Sham Sarpanch Kothi, Deshraj Colony, Panipat
(Haryana) (Group-C).

....APPLICANT

(By Advocate: Shri Kapil Kakkar, Advocate)

VERSUS

1. Union of India through Secretary, Department of Telecommunications, Sanchar Bhawan, Janpath Road, New Delhi-110001.
2. Bharat Sanchar Nigam Ltd., through its General Manager, Sector 8, Karnal.
3. A.G.M. (HR), BSNL, O/o CGMT, Haryana Circle, Mall Road, # 107, Ambala Cantt.

....RESPONDENTS

(By Advocate: None for respondent no. 1
Shri D.R. Sharma for respondents 2-4)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Bhupinder Batra seeking quashing of impugned order dated 24.5.2017 (Annexure A-10) whereby his claim for grant of compassionate appointment has been rejected by the respondent

department and has sought a direction to the respondents to issue the appointment letter to him on compassionate ground.

2. The applicant has stated that his father Shri Iqbal Rai Batra, who was working as TSO on permanent basis, died on 31.07.2002 leaving behind his wife, two sons and mother. There was no source of income with the family and as such the applicant represented for his appointment on compassionate grounds. His case was considered by Circle High Power Committee, Haryana Circle, Ambala in its meeting held on 11.12.2007 and 12.12.2007 as per policy dated 27.6.2007 and taking into account assets, liabilities and overall assessment of the financial conditions of the family, it was observed that the family was not living in penury and his claim for compassionate appointment was rejected vide order dated 8.9.2008 (Annexure A-1). Thereafter, the applicant on 6.2.2009 (Annexure A-2) submitted a representation to the respondents to reconsider his case in terms of policy dated 9.10.1998 i.e. the policy which was prevalent at the time of death of ex-employee and not in terms of policy of the year 2007 on the basis of which his case has been rejected. After approaching the department repeatedly when no fruitful result comes out, the applicant filed O.A. No. 762/HR/2009 in this Tribunal for quashing of order dated 8.9.2008, (Annexure A-1) which was dismissed by this Tribunal vide its order dated 13.10.2010 (Annexure A-3). The applicant filed CWP No. 6173 of 2011 before the jurisdictional High Court. The Hon'ble High Court vide order dated 5.10.2011 (Annexure A-4) set

aside the order of this Tribunal as well as order dated 8.9.2008 passed by BSNL rejecting his claim for compassionate appointment. Further it was directed that the case of the petitioner be considered afresh in the light of the policy governing compassionate appointment dated 09.10.1998 without adverting to the subsequent letter dated 27.06.2007 and the needful be done within a period of two months from the date of receipt of certified copy of this order. The Special Leave Petition (C) No. 17215 of 2012 filed by the BSNL against this order was dismissed on 18.02.2015 (Annexure A-5).

3. Thereafter, the applicant again represented on 16.3.2015 (Annexure A-6) to consider his case for compassionate appointment in terms of the High Court order. However, the claim of the applicant for compassionate appointment was again rejected vide letter dated 12.5.2015 (Annexure A-7). The applicant thereafter approached this Tribunal by filing O.A. NO. 060/0247/2016 challenging the rejection order. This Tribunal vide order dated 10.3.2017 (Annexure A-9) set aside the rejection order and remitted the matter back to the respondents to reconsider the case of the applicant by passing a reasoned and speaking order in the light of policy dated 9.10.1998 and by not taking into consideration the terminal benefits which were made available to the widow of the deceased employee, within a period of 2 months from the date of receipt of certified copy of the order. Now the applicant was hoping for favourable order, but the department has passed the impugned

order dated 24.5.2017 (Annexure A-10) rejecting his claim on the basis that the High Power Committee in its meeting held on 3.5.2017 did not find the family of the deceased employee to be living in indigenous condition and that it cannot be believed that a 32 years old son of the deceased is not earning anything. The applicant has attributed malafide and biased attitude as according to him 'he can earn only by begging on the roads and not otherwise'.

4. The applicant has prayed that the order dated 24.5.2017 be set aside as it is illegal, arbitrary and discriminatory and is also violative of Article 14 and Article 16 of the Constitution of India. Further, the claim of the applicant has been rejected on the ground that family is not living in indigent condition and mother of applicant is getting Rs. 8500/- pension per month, but in high price index today, it is difficult to survive with a meager amount of Rs. 8500/-. Besides, as per judgments of Apex Court as well as of High Courts in number of cases, payment of retiral dues cannot be a ground for denial of compassionate appointment. It is also stated that the family is paying monthly rent of Rs. 3300/- for the house and Rs. 700 - 800 towards water and electricity charges. Besides, number of candidates were issued appointment orders even though the family was given higher emoluments than were given to the family of the applicant. In support of this, Annexure A-13 is given based on the information obtained by the applicant through RTI.

5. The respondents, on the other hand, have stated that the case of the applicant was first considered in terms of policy dated 27.6.2007 which was prevalent at the time of consideration and was rejected as family of the applicant was not found in indigent condition. This order was challenged before this Tribunal and then in Hon'ble High Court which directed the respondents to reconsider the case of the applicant afresh in the light of policy dated 9.10.1998. The SLP filed by the respondents was dismissed by Hon'ble Supreme Court. As such, the case of the applicant was considered under policy dated 9.10.1998 and speaking order dated 12.5.2015 was passed. However, in the O.A. filed by the applicant before this Tribunal and in terms of CAT order dated 10.3.2017, the respondents were directed to reconsider the case of the applicant without taking into consideration the terminal benefits of the deceased. Accordingly, the respondents have reconsidered the claim without taking into consideration the terminal benefits and as per policy dated 9.10.1998. The case of the applicant could not succeed as the family of the applicant was not found to be living in an indigent condition. As far as the contention of the applicant that individuals who were granted more terminal benefits have been considered for appointment on compassionate grounds, it is stated that the individuals have been appointed taking into consideration the family circumstances and assets and liabilities of each individual. Circle High Power Committee, which considered the cases for appointment on compassionate ground, has to

consider family circumstances as well as number of dependents of the deceased employee like married daughters and unmarried daughters and source of income etc. Beside, the stand of the applicant being made on basis of terminal benefits is contrary to the stand taken by him in his earlier O.A. and the orders of CAT and High Court in this regard. The applicant and his brother are of 32 and 30 years old and are not dependent on their mother. The mother of the applicant is getting family pension of over Rs. 11000/- per month.

6. The respondents have further pleaded that the compassionate appointment cannot be claimed as a matter of right. The case of the applicant was examined by the Circle High Power Committee keeping in view policy for such appointments and the family circumstances prevalent at the time of death. The Committee came to the conclusion that the family of the deceased was not found to be in indigent condition. Moreover, no one has been given appointment on compassionate grounds whose financial condition is better than that of the applicant. No discrimination has been caused to the applicant and there is no illegality in the impugned order dated 24.5.2017. The family of the deceased employee has survived for over 16 years since the death of the ex-employee and both the sons are now major. Hence, the case is not covered under the policy for compassionate appointment which is to be given for immediate relief to the family of the government servant.

7. We have heard the contentions of the learned counsels for the opposite parties, have carefully gone through the pleadings and given our thoughtful consideration to the matter.

8. The facts of the case are largely not in dispute. The applicant's father died on 31.7.2002 leaving behind wife, two sons and his mother. The case of the applicant has been considered in terms of policy dated 9.10.1998 which was prevalent at the time of death of the deceased employee. The case has been considered by Circle High Power Committee of the respondent department in its meeting held on 03.5.2017. It is stated in the order that the deceased has left behind two sons and widow and both the sons are above 30 years and the applicant is more than 32 years and cannot be said to be dependent on his mother. It is also stated that none has been appointed in Haryana Circle on compassionate ground who is in better financial position than the applicant. The claim for compassionate appointment is not a vested right and it has to be considered at the time when the application is made. In the instant case, first application was made on 24.12.2004 and his case was considered alongwith others in 2007 and at that time also the family of the deceased was not found by the High Power Committee to be in indigent condition. His younger brother is a LIC Agent. Taking into consideration the size of the family, age of two sons and thus they not being dependent on mother and keeping in view the limited number of vacancies against 5% quota, the Circle High Power Committee has rejected his claim for appointment on

compassionate ground. As regards the list at Annexure A-13, the same serves no purpose as terminal benefits are not to be taken into account while considering compassionate appointment. In any case, this ground being taken by the applicant is contrary to the Apex Court's orders and his own plea taken in earlier O.A. In any case, it is categorically stated by the respondent department that no one in better financial condition than the applicant has been offered appointment on compassionate ground.

9. It is obvious that compassionate appointment is not a normal method of recruitment. It is an exception to normal selection process. Appointment to public service is not to be decided by mere descent, but on merits after following due selection process. Hence, compassionate appointment cannot be claimed as a matter of right and is to be made only in circumstances where the family of the deceased government servant is in destitution and to render immediate economic assistance to the family and relieving it from economic distress. In the facts and circumstances of the case, the deceased government servant has beside widow, only two sons and mother and it is almost 16 years since his death. These facts are not disputed.

10. In view of fresh orders passed by the respondent department and the fact that the financial condition of the applicant has been assessed by the Circle Selection Committee in the light of policy governing the compassionate appointment prevalent at the time of death of the deceased government employee and also the fact that

the Committee did not find the family of the deceased to be living in indigent condition as well as the categorical statement made by the department that no applicant in better financial condition than the applicant has been offered compassionate appointment by them, we find no plausible reason to interfere with the impugned orders.

11. The O.A. is accordingly dismissed with no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 04.09.2018
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