

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00782 OF 2014
Cuttack, this the 19th day of June, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

.....
Manoj Kumar Swain
Son of Late Akshaya Kumar Swain,
Village & P.O. Bankual,
P.S. Saheed Nagar, Bhubaneswar,
Dist. - Khurda.

...Applicant

(By the Advocates - M/s. Dr. R.Ch.Das, P. Bhutia)

-VERSUS-

Union of India Represented by

1. Secretary, Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi- 110001.
2. Chairman and Managing Director (CMD) Corpoate Office of BSNL, BSNL Bhawan, Harish Chand Mathur Lane, Janpath, Connaught Place, New Delhi-110001.
3. Chief General Manager, Bharat Sanchar Nigam Limited, Odisha Telecom Circle, Bhubaneswar-751001, Dist. Khurda.
4. Sr. General Manager, Bharat Sanchar Nigam Limited, Door Sanchar Bhawan, Unit-IX, Bhubaneswar-751007, Dist. Khurda.

...Respondents

(By the Advocates- Mr. D.K.Mallick (for R-1) & Mr. K.C.Kanungo for BSNL)

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O R D E R

R. C. MISRA, MEMBER (A):

This Original Application has been filed by the applicant
praying for appointment in the Respondents-organization, i.e. BSNL,

on compassionate ground. The father of the applicant was an employee of the BSNL and he expired in the year 2001. The wife of the deceased employee received the family pension and other terminal benefits like Gratuity etc. She also filed an application before the Respondent-authorities on 08.11.2001 praying for compassionate appointment in favour of her elder son, who is the applicant in this case. Since the applicant was a minor at that time, her mother was advised by the BSNL authorities to wait for a period of three years till he became major. Subsequently, on 09.02.2004, the wife of the deceased employee submitted a letter forgoing her claim for compassionate appointment, along with an application for compassionate appointment submitted by the present applicant. This application was placed before the Circle High Power Committee of BSNL at Bhubaneswar on 24.03.2010 after an inordinate delay of six years. The recommendation of the Circle High Power Committee was sent to the corporate office of BSNL in New Delhi. Finally by a letter dated 02.11.2012, the applicant was informed that his prayer for compassionate appointment has been rejected after due consideration. Thus aggrieved, the applicant filed O.A. No. 368/13 in the Tribunal. The Tribunal disposed of the matter issuing a direction to the Respondent No.2, i.e. Chief General Manager, BSNL, Bhubaneswar, to consider the representation of the applicant filed on 27.11.2012 after he received the order of rejection. The Respondents were further directed to communicate the result of their consideration by a reasoned and speaking order to the applicant.

Thereafter, the Respondent No.2 communicated a reasoned and speaking order to the applicant by a letter dated 19.08.2013. The applicant had filed a Contempt Petition bearing C.P.No. 43/14 before the Tribunal making an allegation that the Respondents had not considered the representation properly as per the direction of the Tribunal. However, the said C.P. was disallowed. Subsequently, this O.A. has been filed by the applicant challenging the order dated 19.08.2013 passed by the Respondents.

2. The BSNL authorities, who are Respondents in this case, have filed a very detailed counter opposing the claim made by the applicant for compassionate appointment. The main submission in the counter affidavit is that the Respondent-authorities are guided by the DoPT order dated 09.10.1998 with regard to the compassionate appointment. According to this guideline, the whole object of compassionate appointment is to enable the family to tide over the sudden crisis and to lift the family of the deceased from the financial destitution. Compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any point of time in future. The Respondents have drawn my attention to the judgment of the Hon'ble Supreme Court dated 28.02.1995 in the matter of Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambedkar, in which this principle has been highlighted. Therefore, the argument of the Ld. Counsel for the Respondents is that when the deceased employee died in the year 2001,

at such a delayed point of time no further consideration should be given to the prayer. It is further argued that the applicant's case was considered by the Circle High Power Committee giving due consideration to the guidelines with regard to the compassionate appointment. The Committee has followed a Weightage Point System, which was introduced in the BSNL in the year 2007, in order to assess the objectivity in the assessment of indigent condition of the family in respect of the various prayers for compassionate appointment. According to the guidelines, cases which received assessment point below 55 are treated as non-indigent. By following the Weightage Point System, which has been appreciated by various judgment of the Tribunal, the case of the applicant as well as other contenders have been objectively and uniformly assessed. According to such assessment, the applicant's case was not found to be fit for granting compassionate appointment.

3. In the Rejoinder filed by the applicant, it has been pleaded that the income criteria have not been properly assessed by the Respondent-authorities. It is also contended that the Income Certificate issued by the Tahsildar, Bhubaneswar, was false and misleading and assessment made on that basis is incorrect. Moreover, the Respondents themselves have committed delay in considering the prayer and conveyed the order of rejection dated 02.11.2012 and 19.08.2013 without assigning valid reason for the same. Therefore, the applicant has prayed for reconsideration of the matter.

4. Having heard the Ld. Counsels for both the sides, I have also perused the records of this case.

5. The perusal of the facts of the case makes it clear that the applicant's prayer for compassionate appointment was considered by the authorities after an inordinate delay. Law is very clear that Compassionate Appointment Scheme is formulated in order to provide assistance to the family which has come into distress on the sudden passing away of the breadwinner. Consideration of the prayer after a long lapse of time defeats the very purpose of the Scheme. Since this is not a vested right of an applicant, it cannot be claimed at any point of time. But in the present case, the delay was due to the Respondent-authorities and not due to the applicant. However, it has to be noted that the applicant had earlier approached the Tribunal by filing O.A.No. 368/13 and in that O.A. the order dated 02.11.2012 was challenged. This order was highly cryptic order and detailed reasons for rejection were not provided to the applicant. Therefore, in O.A.No. 368/13, a direction was given by the Tribunal to consider a representation dated 27.11.2012 filed by the applicant. Thereafter, the impugned order dated 19.08.2013 has been passed. This order, however, is detailed and some reasons have been assigned for the decision of rejection. One of the reasons is that date of application for compassionate appointment is 09.02.2004. This, however, is not a valid reason since it is the Respondents themselves, who considered the matter after a delay of 6 years for which the applicant cannot be held responsibility. Another

reason assigned is that terminal benefits and family pension have been provided to the family of the deceased. The Ld. Counsel for the applicant has pleaded that the terminal benefits should not have been taken into account. Ld. Counsel for the BSNL, however, has cited the judgment of the Hon'ble Apex Court in the case of Union of India and Ors. Vs. Shashank Goswami & Anr. In Civil Appeal No. 6224/2008 decided on 23.05.2012 in which it has been held that taking into consideration the terminal benefits to assess the financial condition of the family is proper and justified. Another reason assigned by the Respondents in the order dated 19.08.2013 is that the family has agricultural income as per the report of the State Govt. authorities. It cannot, therefore, be said that the impugned order is cryptic in nature. The law is well settled that the Tribunal cannot issue a direction to the concerned department to grant compassionate appointment to an applicant. The Scheme for compassionate appointment has its own rules and principles, according to which, each case shall have to be considered. The departmental authorities also have a duty to inquire into the indigent status claimed by an applicant. This Tribunal has the authority to decide whether a fair consideration has been given to the case of the applicant as per the laid down criteria. If the consideration is not properly done, a direction may be issued by the Tribunal for reconsideration. Compassionate appointment is not another source of recruitment. There is also a limit of 5% of the direct recruit quota for compassionate appointment and it will very much depend upon the

vacancies available for giving compassionate appointment to the claimant. The Respondents are to take all these criteria into consideration to make a just and fair appraisal for an application. In this case, there is no doubt that the BSNL authorities have considered the application for compassionate appointment after a long delay and, therefore, they are advised to consider such matters at an appropriate point of time when the family is really in the need of financial assistance. After saying so, however, I do not see any lacuna with regard to the consideration given to the applicant after the Tribunal gave a direction for disposal of the representation by intervening in the matter. Therefore, I do not find any substantial ground on which the matter would have to be reconsidered.

6. Considering the above, I find the O.A. to be devoid of merit and, therefore, the same is dismissed with no costs to the parties.

(R.C.MISRA)
Member (Admn.)

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