

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT BENCH : BILASPUR

ORIGINAL APPLICATION NO. 203/00526/2015

Jabalpur, this Friday, the 16th day of February, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Kishore Kumar Patel Ram
S/o Late Shri Manaharan Lal Patel,
Aged about 29 years, Unemployed,
R/o Village and Post : Mangala,
Tehsil and District: Bilaspur
Pin: 495001 (Chhattisgarh)

- APPLICANT

(By Advocate – Shri B.P.Rao)

Versus

1. Bharat Sanchar Nigam Limited,
Through : The Chief General Manager (Telecommunication)
Bharat Sanchar Nigam Limited, Khamtarai,
RAipur-492001 (CG).

2. The Assistant General Manager (Administration and HR)
Bharat Sanchar Nigam Limited,
O/o General Manager Telecom District
BSNL, Telephone Exchange Road,
Bilaspur – 495001 (CG)

The Assistant General Manager (Human Resources Department)
Bharat Sanchar Nigam Limited,
O/o Chief General Manager Telecom
Chhatisgarh Circle,
RAipur-492007 (CG).

(By Advocate – Shri Sandeep Dubey)
(Date of reserving the order: 09.11.2017)

ORDER

By Navin Tandon, AM-

The applicant is aggrieved that respondents are not offering him Compassionate Ground Appointment (CGA) and hence this Original Application.

2. The facts of the case are that the father of the applicant while working as Telephone Mechanic in Bharat Sanchar Nigam Limited (BSNL) passed away on 25/02/2008 while in service. Applicant's father left behind his widow, two unemployed sons and two unmarried daughters. The applicant applied to the respondents on 17.6.2009 (Annexure A-3) for job on compassionate ground. However, the respondents vide communication dated 6.8.2011 (Annexure A-8) rejected his case as the family had not secured minimum bench mark in the economical assessment of the family.

2.1 The applicant had approached this Tribunal through OA/203/00898/2014, which passed orders on 18.11.2014 (Annexure A-10) directing the respondents to consider and decide the applicant's representation with a reasoned order within a period of three months. The respondents considered the representation of the applicant and rejected it. They communicated their decision on 31.12.2014 (Annexure A-12).

3. The applicant has claimed following relief:-

“8.1 That the Hon’ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant’s grievance.

8.2 That the Hon’ble Tribunal be pleased to declare the Policy Guidelines dated 27.6.2007 (Annexure A-7) for appointment on compassionate grounds in BSNL is totally unreasonable, irrational, opposed to the public policy, arbitrary, discriminatory and unconstitutional and thus quash the same.

8.3 That the Hon’ble Tribunal be pleased to set aside the Respondent’s Impugned Letters dated 6.8.2011 (A-8) and dated 31.12.2014 (A-12) in the interest of justice.

8.4 That the Hon’ble Tribunal be pleased to pass an order, directing the Respondents to consider the Applicant for appointment on compassionate grounds duly taking into consideration the actual indigent condition of the deceased employee’s family.”

4. The applicant has submitted that preliminary assessment report prepared by Respondent/2 had awarded 61 points to the applicant (Annexure A-6). However, Respondent/3 has wrongly deducted 10 marks because family is living in ancestral home. Thus, the 51 points awarded in the assessment became less than minimum bench mark of 55. He has placed reliance on the decision of Ernakulam Bench of this Tribunal in the matters of **T.R.Syam Raj Vs. The Chairman-cum-Managing Director, B.S.N.L.** in Original Application No.1064/2011, passed on 14.06.2013 (Annexure A-13), wherein respondents were directed to reconsider a case of CGA.

5. The respondents have submitted that the case of the applicant has been processed as per the extant rules of the respondents in all fairness. The assessment of indigent condition has been made as per Weightage Point System of the respondents, which was circulated by Corporate Office of BSNL on 27.06.2007 (Annexure A-7). It was found that the case of the applicant does not come within the zone of minimum benchmark i.e. 55 points, and therefore, the case was rejected.

6. Heard the arguments of both the parties.

7. The main grouse of the applicant, as mentioned in para 4 above is that deduction of 10 points from the initial assessment of 61 points (Annexure A-6) due to staying in ancestral house is wrong. Learned counsel for the applicant argued that Ernakulam Bench of this Tribunal in the matters of **T.R.Syam Raj** (supra) had directed the respondents to consider the case even though the points awarded was 43.

8. We went through the policy guidelines (Annexure A-7) and the initial assessment prepared by Respondent/2 (Annexure A-6). The applicant has been awarded 10 points for “Leave (sic) in rented house”. However, as per communication produced as Annexure R-2, it is clear that the family is staying in ancestral house. Hence the 10 points awarded in Annexure A-6 was corrected deducted by Respondent/3. This fact has also been mentioned in Annexure A-12, and not refuted by the applicant.

9. Perused the orders of Ernakulam Bench of this Tribunal (Annexure A-13). While it has raised certain doubts about certain features of the Policy Guidelines, the same has not been quashed. Extract from the orders regarding living in own house is as below:-

“(8). The applicant owns a house. This aspect is taken note of. But the fact that it is a small asbestos roofed house built with hollow bricks is a material point in considering item No.6 in the check list. 10 points are allotted if the family is living in a rented house and does not own a house. But it is quite possible that a family living in own hut may be living in more acute poverty than a family living in a rented house”.

9.1 The applicant in the instant case has not brought out anywhere that the house they are staying in is in dilapidated condition. Hence, the similarity with the case of **T.R.Syam Raj** (supra) ends here itself.

10. Hon'ble Supreme Court in the matters of **Bhawani Prasad Sonkar Vs. Union of India**, (2011) 4 SCC 209 held thus-

“(15). Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on

the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

(16).

(17). In **Umesh Kumar Nagpal V. State of Haryana**, (1994) 4 SCC 138 while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that:

“2. ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

(18). Similarly, in **SAIL v. Madhusudan Das**(2008) 15 SCC 560 this Court has observed that:

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be

claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

(See also **SBI v. Anju Jain** (2008) 8 SCC 475)

(19). In **V. Sivamurthy v. State of A.P.** (2008) 13 SCC 730 this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well-recognised exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule: (SCC p. 741, para 18)

“(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.”

(20). Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme

(ii)

(iii)

(iv)”.

11. In the instant case, the respondents have prepared policy guidelines and the CGA can be offered only on the basis of these guidelines. No deviation from the same is permissible/desirable. The case of the applicant has been assessed on the basis of those guidelines and found not meeting the minimum bench mark. Hence, there is nothing irregular or illegal in rejecting the claim of the applicant for compassionate ground appointment.

12. Accordingly, the Original Application is dismissed, as it is devoid of any merit. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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