

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00349/2017

This, the 02nd day of November, 2018

Reserved on 24.10.2018

.....

CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

Suresh Chandra Rangi S/o Late Shri Dharma Ram Rangi, aged about 26 years, b/c Rangi (SC) R/o village & Post Meghwalo Ka Bas, Sumerpur, District Pali. (late Shri Dharma Ram Rangi was posted at Udaipur under BSNL as TM).

...APPLICANT

BY ADVOCATE : Mr. S.P. Singh

VERSUS

1. Bharat Sanchar Nigam Limited through Chairman-cum-Managing Director, 20 Ashoka Road, New Delhi.
2. Bharat Sanchar Nigam Limited through the Chief General Manager, Telecommunication, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.
3. Assistant General Manager (R&E), BSNL O/o Chief General Manager CGMT, Rajasthan Circle, Sardar Patel Marg, C' Scheme Jaipur-302 008.

RESPONDENTS

BY ADVOCATE : Smt. K. Parveen

ORDER

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The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(a) That the respondent may kindly be directed to consider the case of applicant for appointment on compassionate ground.*
- (b) That by writ, order or direction the impugned order dated 22.07.2017 kindly be declared just and illegal and deserves to be quashed and set aside.*
- (c) By writ or direction the respondents may kindly be directed to give appointment in place of other official who is appointed illegally in place of applicant subject to decision of this original application.*
- (d) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (e) That the costs of this application may be awarded to the applicant.”*

2. The brief facts of the case as stated by the applicant are as under:-

The father of the applicant met with an accident and expired on 04.05.2007 leaving behind his wife and three children in penury, without any means of livelihood, in financial destitution and indigent condition. It is the claim of the applicant that his father had served the department with devotion and put his best efforts which is evident from his service records. The applicant was in possession of required academic qualification and had completed his 10th standard in 2003 and the incomes from all sources are very meager and it was very difficult to maintain the entire family. The applicant being eligible for compassionate appointment had applied for the same in June 2008 with all required documents and the competent authority had forwarded the same to the higher authorities. It is the case of the applicant that though the applicant had obtained 61 marks yet appointment was given to another person i.e. Smt. Yadhoda. He was not given compassionate appointment though he secured higher marks in merit points as declared by the Circle High Power Committee held on 14.05.2010. It is the case of the applicant that

the applicant was not informed about the marks and also he was not informed that he was placed at serial No.19 in the said list. When the compassionate appointment was not granted the applicant, he sent a legal notice through his counsel and it is only on receipt of the said legal notice, the respondents revealed that the applicant is not being given compassionate appointment. The applicant further states that he belongs to SC category and his family is facing great hardship, and therefore the action of the respondents have pushed the normal life of his family into penury. Though, the respondent had informed vide letter dated 15.05.2013 about rejection of his case for compassionate appointment vide letter dated 29.05.2012, but the same was not addressed to him. The applicant had earlier filed an Original Application No.93/2014 before this Tribunal seeking quashing of the order dated 29.05.2012 and 13.04.2012. The Hon'ble Tribunal vide order dated 25.07.2016 had dismissed the said OA. The applicant thereafter approached the Hon'ble High Court of Rajasthan vide DB Civil Writ Petition No.13254/2016 and the Hon'ble High Court vide its order dated 24.11.2016 had disposed of the said writ petition with a direction to the authorities to consider the case of the applicant in the light of Circular dated 05.05.2003 if applicable to BSNL, by passing a reasoned and speaking order within a maximum period of three months from the date of receipt of a certified copy of the order. In pursuance of the said directions, the respondents has passed the impugned order dated 22.07.2017 (Annexure-A/1) by which they have passed the speaking order and rejected the case of the applicant for appointment on compassionate grounds. Aggrieved by the said order, the

applicant has filed the present OA for quashing and setting aside the impugned order dated 22.07.2017 (Annexure-A/1).

3. After issuance of notice, the respondents had filed their reply on 10.07.2018 stating that the BSNL follows the Scheme of Compassionate Ground Appointment (CGA) issued by DOP&T vide OM No.14014/6/94-Estt (D) dated 09.10.1998. The objective of this scheme is to grant appointment on compassionate ground to a dependent family member of a BSNL employee dying in harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of BSNL employee concerned from financial destitution and to help him to get over the emergency. As per this scheme, the family living in indigent condition and deserving immediate assistance from financial destitution is eligible for Compassionate Ground Appointment. In order to bring uniformity in assessment of indigent condition of the family 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. There is no constitutional provision to give weightage to SC/ST category candidates in the matters of Compassionate Grounds Appointment. It has been further averred in the reply that the case of the applicant was considered by this Tribunal in the earlier round of litigation in OA No.93/2014 and the same was dismissed vide order dated 25.07.2016. Thereafter, the applicant had approached the Hon'ble High Court of Rajasthan by way of filing DB Civil Writ Petition No.13254/2016 challenging the order of this Tribunal dated 25.07.2016. The Hon'ble

High Court disposed the said writ petition on 24.11.2016 with a direction to the respondents to consider the case of the applicant in the light of Circular dated 05.05.2003 and pass a reasoned and speaking order. In pursuance to the said directions, the case of the applicant was considered by the respondents in the light of the Scheme of Compassionate Grounds Appointment of BSNL and also passed a reasoned and speaking order dated 22.07.2017 (Annexure-A/1). It is clarified in the impugned order dated 22.07.2017 that the OM dated 05.05.2003 has been withdrawn by the DOP&T vide letter dated 26.07.2012 and it has been also been clarified vide OM No.22034/1/2016 –Estt(D) dated 09.08.2016 of DoP&T, that any OM issued by DoP&T is not suo moto applicable to employees working under BSNL. It is the claim of the respondents that the case of the applicant has been considered by the respondents as per the instructions of DoP&T OM dated 09.10.1998 and Weightage Point System Guidelines of BSNL dated 27.06.2007. It is also clarified by the respondents that Smt. Yashoda had got 75 weightage points as compared to the applicant who had got only 61 points. Further they have clarified that the serial number has no relevance and also the case being at lower serial number does not mean that it has scored more weightage points. Therefore, the respondents have rightly passed the impugned order dated 22.07.2017 (Annexure-A/1) after taking into consideration the entire case of the applicant as per the directions of the Hon'ble High Court of Rajasthan, and the same is just and proper and needs no interference by this Tribunal.

4. Heard Shri S.P. Singh, learned counsel for the applicant and Smt. K. Parveen, learned counsel for the respondents.

5. Learned counsel for the applicant submits that the respondents have not considered the case of the applicant for compassionate appointment in accordance with the mandatory provision as laid down under established procedure of law. The respondents ought to consider the case of the applicant on the basis of indigent condition and acute financial crisis of the deceased family but despite of the applicant being most indigent candidate and suffering from acute financial crisis, his case was rejected. The applicant is very qualified candidate and he is in possession of very good academic qualification and belongs to SC category. But the respondents has adopted pick and choose policy to accommodate their own person, who is below in merit. Further, the respondents did not inform the report submitted by the Committee and also the applicant was not informed that his name is placed at serial No.19 in the list of the candidates whose name is recommended. In support of his contention, he relied upon the order of this Tribunal passed in Arjun Singh vs. Union of India & Ors. (OA No.533/2013) decided on 02.10.2015, wherein it has been held that it is necessary for the CRC or the competent authority to inform the applicant about the marks obtained on each and every count vis-a-vis other candidates. It is the claim of the applicant that he had obtained 61 marks yet the appointment was given to Smt. Yadhoda, whose name placed serial No.25, whereas the applicant was placed at serial No.19. Learned counsel for the applicant further submitted that at least three successive years, the case of the applicant has

to be considered for appointment on compassionate grounds, and the Hon'ble Apex Court has also propounded in several judgments that the three opportunities are to be extended for appointment on compassionate grounds. He further relied upon the judgment of Hon'ble Apex Court passed in *Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.*, (2005 SCC (L&S) 590) wherein it has been held that the terminal benefits & family pension received by the widow cannot be taken into account while deciding the case of compassionate appointment. In support of the said contention, he also relied upon the order of CAT Ernakulam Bench passed in *Syam Kumar B. vs. the Chairman-cum-Managing Director, BSNL & Ors* (OA No.18/2010) decided on 22.10.2010. Learned counsel for the applicant submitted that the impugned order dated 22.07.2017 is per se illegal as the same has been passed without application of mind and appreciation of correct factual and legal aspects of the matter and the same deserves to be quashed and set aside.

6. Learned counsel for the respondents has argued the case as per pleadings made in the reply and also stated that the respondent authorities in compliance of the directions issued by the Hon'ble High Court of Rajasthan in DB Civil Writ petition No.13254/2016 decided on 24.11.2016, has passed the impugned speaking order dated 22.07.2017 (Annexure-A/1). She further submitted that Smt. Yashoda has scored 75 marks after considering overall condition of the deceased family whereas the applicant has secured only 61 marks, therefore, the case of Smt. Yashoda was considered for compassionate appointment. She further

submitted that the serial numbers of the candidates in forwarding the letters does not having any importance, however, the cases are being considered by Circle High Power Committee (CHPC) as per guidelines issued by DoPT in OM dated 09.10.1998 and also as per Annexure-I of Corporate Office, BSNL, New Delhi dated 27.06.2007. She further submitted that the impugned speaking order Annexure-A/1 was issued with the approval of the competent authority taking into all aspects available on record. It has also been submitted that the OM dated 05.05.2003 has been withdrawn by DoP&T vide letter dated 26.07.2012, by which three opportunities are extended for consideration of appointment on compassionate grounds. Therefore, the respondents after keeping in view the liabilities on record of the family of the deceased official, grown up children of deceased, constitution of family, overall assessment of the condition of the family and also the limited number of vacancies in CGA quota, considered his case vis a vis other candidates but his case could not be found more indigent as compared to others, therefore, the case of the applicant has rightly been rejected by passing the impugned speaking order Annexure-A/1.

7. Considered the rival contention of both the parties and perused the pleadings available on record as well as the judgments cited by both the counsels.

8. It is an undisputed fact that the case of the applicant was dismissed by this Tribunal in earlier round of litigation i.e. in OA No.93/2014 decided on 25.07.2016 and thereafter the applicant approached the

Hon'ble High Court of Rajasthan vide DB Civil Writ Petition No.13254/2016, which the Hon'ble High Court vide its order dated 24.11.2016 held as under:-

“In the Original Application that there was a generalized pleading with regard to consideration for three successive years and the Circular dated 05.05.2003 was not mentioned. It is therefore not possible for us to make any positive statement on the same. Additionally, it is not known whether the Circular issued by the Ministry of Personnel, Public Grievance and Pensions, is applicable to the Respondents-Corporation. It also does not appear from the impugned order that it was urged during arguments before the Tribunal. It shall be open for the petitioner to approach the authorities for that limited relief under the Circular dated 05.05.2003 if applicable to BSNL, to be considered and disposed by a reasoned and speaking order within a maximum period of three months from the date of receipt of a certified copy of the order.”

In pursuance of the aforesaid directions, the respondents passed the Annexure-A/1 speaking order dated 22.07.2017. It is clear from the impugned speaking order dated 22.07.2017 that the respondents have fully complied with the directions issued by the Hon'ble High Court of Rajasthan. From perusal of the impugned order dated 22.07.2017 (Annexure-A/1), it is clear that the case of the applicant was considered by the Circle High Power Committee in its meeting. It has also been mentioned in the impugned order that the OM dated 05.05.2003 regarding consideration of cases for compassionate appointment on three successive years has been withdrawn by the DoP&T vide letter dated 26.07.2012. Further, it has also been mentioned and clarified that any OM issued by DoP&T is not suo moto applicable to employees working under BSNL. It appears from the impugned order dated 22.07.2017 (Annexure-A/1) that the same has been passed after considering the liabilities of the family of the deceased official, grown up children of deceased, constitution of family, overall assessment of the condition of

the family and also the limited number of vacancies in Compassionate Ground Appointment quota which is offered to more needy candidate.

9. However, the grievance of the applicant is that though his father expired on 04.05.2007, weightage has to be given to penury conditions of his family members and not towards the retiral benefits/pension received by deceased family members. It is clear that the BSNL follows the Scheme of Compassionate Ground Appointment (CGA) issued by DOP&T vide OM No.14014/6/94-Estt (D) dated 09.10.1998. The object of this scheme is to grant appointment on compassionate ground to a dependent family member of a BSNL employee dying in harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of BSNL employee concerned from financial destitution and to help him to get over the emergency. As per this scheme, the family living in indigent condition and deserving immediate assistance from financial destitution is eligible for Compassionate Ground Appointment. In order to bring uniformity in assessment of indigent condition of the family 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. There is no constitutional provision to give weightage to SC/ST category candidates in the matters of Compassionate Grounds Appointment. From perusal of the record, it is seen that under the head of terminal benefits paid to the dependents of the deceased employee i.e Rs.4,02,330/-, the applicant was awarded 6 points, and under the head of family pension being paid to the applicant i.e. Rs.3035/- per month, he

was awarded 10 points. Therefore, seeing the weightage points given in the case of the applicant, it is clear that there is no illegality or injustice done to the applicant. Further, it is not the case of the applicant that other similarly situated persons have been awarded higher marks under these two heads. It is also not the case of the applicant that while awarding the marks, discrimination has been done. It is also seen from the records that the applicant scored 61 points and the selected candidate i.e. Smt. Yashoda scored 75 points. The High Power Committee of Corporate Office after considering assets and liabilities of family of the official, support arrangements and overall assessment of the condition of the family did not find the case of the applicant more deserving in comparison to the case of Smt. Yashoda who scored 75 points for appointment on compassionate grounds. Learned counsel for the applicant has also failed to point out that the person who scored less marks in comparison to the applicant, has been given appointment on compassionate grounds.

10. I have also perused the judgment of Hon'ble Apex Court passed in *Govind Ram Prakash Verma* (supra) and the order of CAT Ernakulam Bench passed in *Syam Kumar B.* (supra). On going through these cases, I find that the facts and circumstances of the aforesaid cases are different from the facts and circumstances of the instant case.

11. The Hon'ble Supreme Court in *Umesh Kumar Nagpal Vs. State of Haryana & Ors.*, reported in (1994) 4 SCC 138, has observed that mere death of an employee in harness does not entitle his family to such source of livelihood (compassionate appointment). 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. It was further observed that compassionate appointment cannot be granted after a lapse of reasonable period, which must be specified in the rules. The consideration for such employment is not a vested right, which can be exercised at any time in future. It cannot be claimed or offered whatever the lapse of time and after the crisis is over.

12. In the present case, the father of the applicant has expired on 04.05.2007 and the family is able to maintain itself since then. It is thus clear that the family is not in indigent condition or financial distress and are able to maintain themselves. It is also clear that compassionate appointment cannot be claimed as a matter of right. The object of compassionate appointment is to enable the deceased family to get over the sudden financial crisis. It is not a source of recruitment but to provide source to the family of the employee who die is harness.

13. In view of the discussions made in the above paras, it is clear that the impugned order dated 22.07.2017 (Annexure-A/1) passed by the respondents is just and proper, and the same needs no interference by this Hon'ble Tribunal. Accordingly, the OA is dismissed. No order as to costs.

(HINA P. SHAH)
MEMBER (J)