

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

O.A. 1364 of 2015

Order dated: 17.2.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Sri. Bibhas Chandra Koley,
Son of Late Krishna Chandra Koley,
Residing at Village – Madhya Pachla,
P.O. – Pachla, District – Howrah,
West Bengal – 711 322.

..... Applicant.

Versus

1. Bharat Sanchar Nigam Limited,
A Government Enterprise having its
Registered office at Harish Chandra
Mathur Lane, Janpath,
New Delhi – 110 001
And having its Corporate Office at
33, B.B.D (South),
Kolkata – 700 001.
2. The Bharat Sanchar Nigam Limited,
The Chief Accounts Officer Telegraph
Check Office, 33, B.B.D Bag (South),
Kolkata – 700 001.
3. Bharat Sanchar Nigam,
The Chief General Manager,
BSNL, West Bengal Telecom, Circle,
1, Council House Street,
Kolkata – 700 001.
4. Bharat Sanchar Nigam,
Deputy General Manager,
BSNL, West Bengal Telecom Circle,
1 Council House Street,
Kolkata – 700 001.

..... Respondents.

For the Applicant : Mr. S. Nandy, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This is a case where employment assistance to the son of deceased has been denied on the ground of suppression of facts and false statements that the widow mother who had 4 sons and 1 daughter claimed that the deceased had left behind herself and one son as legal heirs.

3. The respondents in their reply averred the following:

Krishna Chandra Koley, ex cook of Office canteen of Telegraph Check Office, Kolkata died in harness on 13.11.1993. His widow Smt. Radha Rani Koley received family pension and other death benefits. After a period of near about five (5) years Smt. Radha Rani Koley, submitted an application dated 21.09.1998 with a prayer to appoint her son Sri Bibhash Chandra Koley i.e. the present applicant on compassionate ground.

Sri. Bibhash Chandra Koley on the same date i.e. 21.09.1998 submitted Part-I Form in respect of employment of dependents of Government Servant dying while in service/ retired on invalid pension.

In the Part-I Form it is seen that under Serial IV – "Brief Particulars of the liabilities if any, particulars of all dependentsor separately." Sri Bibhash Chandra Koley mentioned his name and name of his mother.

The declaration of the applicant was certified on 13.04.1999 by one Sushanta Kumar Kar of RLO office 33, BBD Bag (South), Kolkata – 700 001, but the said declaration was not verified by Welfare Officer.

On the basis of the said application dated 21.09.1998 and Part-1 Form submitted by Sri. Bibhash Chandra Koley, spot verification for assessing the details of assets and liabilities of the applicant was conducted on 29.11.1999.

During spot verification, Smt. Radha Rani Koley submitted a written statement stating that Bibhash Chandra Koley was her only child and she had no other children etc. The said statement was witnessed by one Sri. Binoy Chandra Koley of RLO Office and one Sri. Swapan Kumar Koley on 29.11.1999.

The service Book of Binoy Chandra Koley was called for from Postal Department. It was seen that Binoy Chandra Koley was the son of Krishna Chandra Koley i.e. the brother of the applicant Bibhash Chandra Koley and that the applicants were total four (4) brothers i.e. (1) Binoy Chandra Koley, (2) Biman Chandra Koley, (3) Bikas Kumar Koley, (4) Bibhas Chandra Koley and there was a daughter Baby Koley. Thus it was established that Smt. Radha Rani Koley made a false statement on 29.11.1999 before the inquiry Officers during spot verification.

The applicant Bibhash Chandra Koley meanwhile submitted representation before the Senior Deputy Director General (Estt.), BSNL, Head Quarter, New Delhi for his compassionate ground appointment.

Deputy General Manager (Admn) intimated on 25.03.2008 that the case was not considered by CGM, WBTC as Smt. WBTC as Smt. Radha Rani Koley, Widow of

the deceased official and mother of the applicant, submitted a false statement to the effect that Sri. Bibhash Chandra Koley was her only child and she had no other children. In fact she had four (4) sons and one (1) daughter and Sri. Binoy Chandra Koley was one of them.

The said Deputy General Manager (Admn.) by his letter dated 30.05.2008 requested the D.P.S. (H.Q.), Department of Post to take departmental action against Sri. Sushanta Kumar Kar for false certification of Sri. Bibhash Chandra Koley in Form-I.

S.D.E. (S-II) by letter dated 22.12.2010 requested the Chief Accounts Officer, Telegraph Check Office to inform the fact to the applicant and accordingly the Chief Accounts Officer, Telegraph Check Office by letter dated 25.01.2011 informed the fact to Sri Bibhash Chandra Koley.

4. The respondents have further submitted the following:

Appointment on compassionate ground is not another source of recruitment but to meet out the financial distress of the family who has no means of livelihood soon after the death of the only bread earner of the family.

The widow of the deceased official for the first time submitted her prayer for appointment of the applicant nearly 5 years after the death of her husband with false statement and the applicant after more than 20 years from the death of his father has raised his claim before the Hon'ble Tribunal by suppressing the material facts. The very fact is that the applicant has been able to manage somehow his livelihood all these years. Adequately proves that he had some dependable means of subsistence. Over and above there were other member of the family was in service. Hence, his prayer should be turned down.

The respondents have cited the following decisions:

- (i) **Auditor General of India & Ors. – Vs – G. Ananta Rajeswar Rao [(1994) 1 SCC 192]** in order to contend that "appointment on grounds of descent clearly violates Article 16(2) of the Constitution, but if appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on the grounds of immediate need of assistance in the event of there being no other earning members in the family to supplement the loss of income from the bread earner to relieve the economic distress of the members of the family, it is unexceptionable".
- (ii) **Umesh Kumar Nagpal –Vs- State of Haryana & Others [JT 1994 (3) S.C. 525]** where the Hon'ble Apex Court held:
 - (I) *The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.*

(II) *Compassionate appointment cannot be granted after a lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.*

(III) **J&K and Ors -Vs- Sajjad Ahmed Mir (Civil) 6642 of 2004** where Hon'ble Supreme Court was pleased "observe" that "when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in government or public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution".

(IV) **LIC -Vs- Mrs. Asha Ramchandra Ambedkar & Ors. [reported in JT 1994 (2) S.C. 183]** that – "High Courts & Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can direct consideration of the claim for such an appointment".

5. The respondents further contested the claim on the ground of limitation as in accordance with the Section 21 of Administrative Tribunal Act the application had to be filed within One (1) year Six (6) months from the date of representation, if, the representation was not considered and in the present case the date of representation was dated 21.09.1998.

6. In the rejoinder the applicant has omitted to mention that the other brothers were not looking after the widow and the present applicant. On the contrary they submitted the following "The petitioner's mother had not stated any false statement but had not stated the fact that the petitioner is the only son of the deceased employee". "The mother of the petitioner i.e. Radha Rani Koley, had not deliberately and willfully stated false statement but had done, so as to let the petitioner have the appointment so that he may be able to survive". "The petitioner's income is not more than 3,500/- (three thousand and five hundred) and he does not work regularly at a fixed place". "His family

consists of his wife, his three children and the mother. All the 3 children study in government schools having mid day meal and which have no fees or at least very nominal fee. The wife also is not educated enough to help the applicant and the applicant had to try all means possible to run his family". "In such circumstances if the compassionate appointment is given to him not only is life but the life of the children shall be stable and he could give them a better dignified life to his wife and to his children".

7. The Ld. Counsels were heard and materials on record were perused.

8. The following facts were discerned:

- (i) The employee died in harness on 13.11.1993 leaving behind his widow, 4 sons and a daughter. The application seeking employment assistance has been filed in 2016, i.e. after almost 23 years from the date of death and therefore it is hopelessly time barred.
- (ii) In 1998, for the first time the widow sought employment assistance in favour of her youngest son, falsely claiming that she had no other children except one son.
- (iii) One of her son was already employed in postal department which she suppressed, again there is a deliberate suppression to gain advantage.
- (iv) She earned a pension.
- (v) Her claim was rejected on 25.3.08 but she did not challenge the same.
- (vi) She has claimed that she wrote a letter on 5.8.08 but did not produce it, therefore her claim is not substantiated.
- (vii) After two years she again represented on 3.7.2010.
- (viii) She further prayed on 15.10.11 for reconsideration which has however not yet been disposed of as it stood already rejected.
- (ix) After 4 years she approached the Hon'ble High Court in WP 12574(W) of 2015 which was disposed of with liberty to approach this Tribunal, emboldened thereby the present O.A. has been filed.
- (x) The Hon'ble High Court while granting liberty had not condoned the delay.
- (xi) In the O.A. the applicant has deliberately suppressed existence of three other sons and daughters. Therefore she has not come with clean hands, and would, on that ground alone, deserve no relief from this Tribunal. Her approach was based on a falsity.

9. That apart a few Judgments, (extracted with supplied emphasis for clarity) would be useful to quote:

- (i) In **Umesh Kr. Nagpal -vs- State of Haryana [(1994) 4 SCC 138]** it has been held by the Hon'ble Apex Court as hereunder :

"The question relates to the considerations which should guide while giving appointment in public service on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public service should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule, which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and living his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employments. The whole object of granting compassionate employment is, thus, to tide over the certain crisis."

Hon'ble Court held,

"Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

The Hon'ble Court also held,

"Compassionate employment cannot be granted after a lapse of a 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. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

- (ii) In **State of J&K -vs- Sajjad Ahmed Mir [2006 (5) SCC 766]** Hon'ble Apex Court observed that,

".....such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the

setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

- (iii) The Hon'ble Apex Court in the case of **Life Insurance Corporation of India -vs- Asha Ramchandra Ambedkar (Mrs.) & Anr. [(1994) 2 SCC 718]** cautioned us as follows :

"The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regulations and Instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Disregardful of law, however, hard the case may be, it should never be done."

- (iv) The Hon'ble Apex Court in the case of **Eastern Coalfields Ltd. -vs- Anil Badyakar [2009 (3) SLJ 205]** has held that compassionate appointment is not a vested right which can be exercised at any time in future.
- (v) In the case of **State of Manipur -vs- Md. Rajaodin [2004 (1) SLJ 247]** the Hon'ble Apex Court has held that compassionate appointment cannot be claimed or offered after a lapse of time when the crisis is over.

10. In view of above, insinuating circumstances being galore as to why the applicant would not deserve any benefit in this O.A., the O.A. is dismissed. No costs.

(Bidisha Banerjee)
Judicial Member

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