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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No.O.A.350/00286/2014

Date of order : 3.8.2016

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

Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. SURAJIT BISWAS
2. SMT. RADHARANI BISWAS

VS.

**UNION OF INDIA & OTHERS
(BSNL)**

For the applicant : Mr. T.K. Biswas, counsel

For the respondents : Mr. A.K. Gupta, counsel

ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicants in this case have applied to C.A.T. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) The respondent authority concerned to give appointment under died in harness category to the applicant no.1, after property verification of the applicant in accordance with law;
- b) The respondent authority concerned may be directed to give provisional appointment to the applicant no.1 till next DHPC meeting for safeguard the applicants family from their economically distress condition;
- c) And/or to pass any other order or order to Your Lordships may deem fit and proper.
- d) Leave may be granted to move this application jointly under rules 4(5)(a) of the CAT procedure Rules 1987."

2. Heard both and consulted the records.

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3. It is the case of the applicants that father of Applicant No.1, Sri Sankar Chandra Biswas, an employee of BSNL, Calcutta Telephones passed away on 30.09.2003 leaving behind six sons and one widow. Elder son of the deceased employee is married and living separately along with his family. It is stated that though the widow is getting family pension, there being no other source of income, it is not possible to maintain herself and her dependent family members including her son, Sri Surajit Biswas, applicant No.1 in this case, with such meagre amount of money.

4. The mother of applicant No.1 was informed on 10.10.2012 that their case was put up before the Departmental High Power Committee(DHPC) held in March, 2005 for consideration, but that was not recommended due to non-availability of vacancy under compassionate appointment quota and the DHPC meeting could not be held since 2007 due to the same reason i.e. non-availability of vacancy. She was also informed that the case of compassionate appointment will be reconsidered in the next DHPC meeting as and when it would take place in the light of the weightage point system as per guidelines of BSNL authorities.

5. The applicant No.2 made a representation on 10.02.2014 to the respondent authority concerned, praying for consideration of her son, Sri Surajit Biswas(applicant No.1) for appointment on compassionate ground, but till date they have not been favoured with any reply. Hence, they have filed the present O.A. on 04.03.2014.

6. It is the case of the respondents that the applicant No.2, Smt. Radharani Biswas was informed on 24.05.2005 regarding consideration of the case of her son i.e. Applicant No.1 in the DHPC meeting held in the month of March, 2005, but it was not recommended by the committee for

appointment on compassionate ground. Further, vide letter dated 10.10.2012 she was again informed with a copy as to why her case could not be considered. Such letter dated 10.10.2012(Annexure A-4) is set out below:-

"To
Sri Somendra Nath Mitra
Hon'ble Member of Parliament(Loksabha)
A.K. Point

68-B, A.P.C. Road,
Kolkata-700 009

No. SAA-4000/L-(1855) Dated at Kolkata-700001, the 10th October, 2012

Sub :- Compassionate Ground Appointment – case of Sri Surajit Biswas, S/o late Sankar Chandra Biswas, Ex Sr. TOA(G), CTD, expired on 30-09-2003.

Ref :- DH/SM/Emp.280712/12-13 Dated 28-07-2012.

Dear Sir,

Kindly refer to your above cited letter addressed to the Chief General Manager, Calcutta Telephones on the subject above.

I have been directed to intimate you that the case of Sri Surajit Biswas, S/o late Sankar Chandra Biswas, Ex. Sr. TOA(G), CTD, was put up in the DHPC meeting held in the month of March 2005 for consideration. After due consideration of terminal benefits assets liabilities, and due to limited number of vacancies the committee had restricted such appointment to more deserving candidates only, so the committee did not recommend the above case for Compassionate Appointment.

It is also intimated that as directed by the competent authority of CTD the case will be again put up for re-consideration in the next DHPC meeting as and when it will take place in the light of weightage point system as per guidelines of BSNL Co. It may also kindly be noted that due to non-availability of vacancy under CGA quota, DHPC meeting could not be held since 2007.

This is for your kind information please.

Yours sincerely,

(A.K. Ghorai)
Dy. G.M.(HR & Admn.)
BSNL/Cal. Telephones"

Also from Annexure R-3 annexed to the reply it appears that the case of Sri Surajit Biswas was again considered on 27.03.2014 and rejected because he had received lesser marks than that of the required marks for consideration i.e. 55. However, from the reply at R-3, page 15 it appears that the case of the applicant has been rejected by taking into account the weightage marks of Family Pension and Retiral benefits.

7. In O.A. 1214/2014 [**Purnima Ghosh & Rahul Ghosh vs. Union of India & Others**] this C.A.T has passed an order, relevant portion of which is set out below:-

"6. The Learned Counsel for the applicants cited the recent decision of the Hon'ble Apex Court in the case of **Canara Bank and Anr V M. Mahesh Kumar and Anr Vs Chairman and Managing Director, Canara Bank & Ors.**, reported in AIR 2015 SC 2411. An excerpt from it would run thus:

"15. In so far as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequences in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependent of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.**, (2000)6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention is paragraph (13), this Court held as under:-

"13.....But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality.

The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

7. A mere running over eye over the decision in the case of M. Mahesh Kumar (supra) would exemplify and demonstrate that the Hon'ble Apex Court categorically held that considering the prayer for compassionate appointment the terminal benefits and the family pension extended to the family member(s) of the deceased should not be taken into consideration. Similarly, the Hon'ble High Court of Calcutta in the following judgments held that terminal benefits received by the family members of the deceased employee should not be taken into consideration for considering the prayer of the members of the deceased family for compassionate appointment:

(i) **Indrani Chakraborty Vrs. Union of India and others**, WPCT No.18 of 2013 dated 04.07.2013;

(ii) **Smt. Angurbala Maity & Anr. Vs. State of West Bengal & Ors.**, 2012(1)CLJ(Cal)279;

(iii) **Sujit Kumar Datta Vs United Commercial Bank** reported in 2011(4) CHN(cal) 29.

8. It is pertinent to point out that the Hon'ble Supreme Court in the aforesaid judgment of 2015 and the Hon'ble High Court of Calcutta in the cited decisions rendered during 2013, referred to the earlier judgment of the Hon'ble Supreme Court in the case of **Balbir Kaur & Anr V Steel Authority of India Ltd. & Ors.**, (2006)6 SCC 493. As such it has to be taken that as of now the law laid down by the Hon'ble Supreme Court is to the effect that while considering the appointment on compassionate ground the terminal benefits received by the members of the family and/or the family pension extended by the department in favour of the family members(s) should not be taken into consideration, however, subject to the other conditions, the application for appointment on compassionate ground has to be processed and accordingly it should be dealt with. In the impugned order it is clear that the authority concerned took into account the family pension which in our opinion is not correct."

8. In view of the above decision, the respondent authorities will once again consider the case of the applicant in their next DHPC meeting without taking into consideration the family pension and terminal benefits for ascertaining the eligibility of the applicant for compassionate appointment as per the existing rules.

9. Accordingly the O.A. succeeds. No costs.

(JAYA DAS GUPTA)
Administrative Member

(BIDISHA BANERJEE,
Judicial Member

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