

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

O.A. No. 332/00430/2015

Order Reserved on: 23.08.2018.

Order Pronounced on: 29.08.2018

The Hon'ble Mr. Devendra Chaudhry, Member (Administrative),

Manish Kumar Srivastava aged about 31 years, son of late Surendra Krishna Srivastava, resident of Mohalla Naurangabad, Gangotri Nagar Colony, District Lakhimpur Kheri.

....Applicant

By Advocate: Sri Alok Kumar Tripathi.

Versus

1. Bharat Sanchar Nigam Limited through its Chairman-Cum-Managing Director having its Corporate Office at 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001.
2. Chief General Manager Telecom, U.P. (East), Circle Lucknow.
3. General Manager Telecom, Bharat Sanchar Nigam Limited, District Lakhimpur Kheri.
4. Assistant General Manager (Rec'tt.), Bharat Sanchar Nigam Limited, C.G.M.T. U.P. (East), Circle Hazratganj, Lucknow.

....Respondents

By Advocate: Sri Balendu Bhushan Tripathi.

ORDER

The Hon'ble Mr. Devendra Chaudhry, Member (Administrative).

The instant Original Application (herein after referred as OA) has challenged the order dated 23.07.2015 passed by the Respondent No. 4 whereby the Applicant has been denied compassionate appointment on the ground of not being indigent and hence not eligible for compassionate appointment. The impugned order has also been assailed on the ground that it has been passed against the order dated 29.04.2011 of the Tribunal.

2. In brief, the facts of the case of the Applicant are as under:-

2.1 The mother of the Applicant was working as Phone Mechanic with the Respondents-BSNL and died on 30.05.2004. Applicant moved an application including a reminder seeking appointment under compassionate ground scheme. Meanwhile, Applicant received family pension, which was to the tune of Rs. 2,885/-+I.D.A. That further meanwhile, the respondents passed a circular dated 27.06.2007, in which a number system was introduced for scrutinizing the cases of compassionate appointment and on the basis of the said circular, the Applicant was informed vide letter dated 4/5.09.2009 that his case had been rejected in the meeting of High Power Committee held on 03.01.2009 & 09.01.2009.

2.2 The Applicant challenged the aforesaid letter dated 04/05.09.2009 alongwith Minutes for the meeting of High Power committee vide O.A. No. 156 of 2010 before this Tribunal which vide order dated 29.04.2011 quashed the impugned order and allowed his OA by directing the Respondents to consider the case of the Applicant afresh in view of the relevant Office Memorandum/Circulars, which were extant at the time of application made for the Compassionate Appointment ignoring the circular dated 27.06.2007 within six months.

2.3 The Respondents challenged the order dated 29.04.2011 of the Hon Tribunal vide Writ Petition No. 1875 (S/S) of 2011, in the Hon'ble High Court, Lucknow Bench which was dismissed by order dated 03.11.2011. The Applicant thereupon proceeded to file a contempt petition for non-compliance of the order dated 29.04.2011 of this Hon Tribunal which was withdrawn by the Applicant as stay orders had been granted by the Hon Apex Court vide 13.04.2012 in similar case concerning the Kerala High Court. However the Hon Tribunal gave liberty to file contempt petition afresh, depending on the order the Hon Apex Court. The SLP aforesaid were dismissed by the Hon'ble Apex Court vide order dated 18.02.2015 whereupon the Applicant made a representation dated 16.03.2015 quoting the orders of the Hon. Apex

Court above. However, the Respondents rejected the case of the Applicant again on very same grounds, which were already dealt with by this Hon'ble Tribunal as well as by the Hon'ble High Court. Hence, this Original Applicant has been filed seeking direction to Respondents to quash the order dated 23.07.2015 passed by R-4 rejecting the prayer of the Applicant for compassionate appointment.

3.1 As against the above, the Respondents have filed Counter Reply in which it has been stated that the scheme of compassionate ground appointment has been envisaged with the object of granting compassionate appointment to enable the family to tide over the sudden crisis and to relieve the deceased from financial destitution and to help it get over the emergency. It is added that the scheme does not necessarily imply that dependent of each and every deceased Government servant will be offered appointment on compassionate grounds. Further they have submitted that the quota prescribed for the purpose of compassionate appointment is only 5% of the total direct recruitment vacancies occurring in the year in Group 'C' and 'D' post and, therefore, no case is considered individually, but all the cases received from various divisions are considered by the competent authority constituted at the Headquarters as per the Government policy to find out the most deserving cases in acute financial distress/more indigent in comparison to other similarly placed cases against 5% quota of direct recruitment occurring in a given year.

3.2 That the competent authority took various aspects such as family size including age of children, amount of terminal benefits, amount of family pension, liability in terms of unmarried daughter(s), minor children etc. movable/immovable property left by the deceased at the time of death, to find out the cases of acute financial distress/most deserving cases in relative merit and recommends only the really deserving cases that too only if clear vacancy meant for appointment on compassionate ground exists within the ceiling of 5% direct recruitment vacancies. The Respondents have quoted a ruling of Hon'ble Apex Court in the case of Umesh Kumar Nagpal that offering of appointment on compassionate grounds as a matter of course irrespective of the

financial condition of the family of the deceased or medically retired Government servant is legally impermissible and compassionate appointment cannot be granted after lapse of reasonable period and it is not a vested right which can be exercised at any time in future.

3.3 That, accordingly, the case of the Applicant was thoroughly assessed in accordance with BSNL Circular letter dated 27.06.2007 which is in terms of DOP&T letter dated 09.10.1998 and accordingly High Power Committee rejected the claim which was communicated to Applicant through letter dated 23.07.2015. It has also been submitted that the order of BSNL dated 23.07.2015 has been issued following strictly the order of Hon'ble Supreme Court in SLP No. 13044 of 2012 (Annexure No. 15 to the OA). It has been further added that on the recommendations of High Power Committee held in the year 2009, the request of the Applicant for appointment on compassionate ground with 46 total weightage points was rejected by the competent authority in the light of prevalent circulars. It is further submitted that BSNL circular dated 27.06.2007 annexed at Annexure No. 9 of OA is not an independent rule but has been issued in the light of DOP&T O.M. dated 09.10.1998 annexed at Annexure No. 18 of OA merely to find out the actual eligible request of compassionate appointment on qualitative basis through criteria of weightage point system. Hence, it can be understood here that the request of Applicant has already been viewed in light of DOP&T O.M. dated 09.10.1998.

3.4 Further, that in compliance of the direction of Hon'ble Supreme Court / High Court/ this Tribunal the case of Applicant was reconsidered afresh by Circle HPC held on 03.07.2015 solely in view of DOP&T O.M. dated 09.10.1998 which was in force at the relevant time and ignoring BSNL Corporate Office Circular dated 27.06.2007. That an examination of the minutes of Circle HPC held on 03.07.2015 (Annexure No. CR-1) makes it clear that the circular dated 27.06.2007 was ignored and decision taken only in the light of circular dated 09.01.1998 of the DoPT and that this decision was communicated to the Applicant vide a fully reasoned speaking order dated 23.07.2015 rejecting the request of

the Applicant for compassionate appointment as per approval of the competent authority. Accordingly, since the Respondents have taken every due care to comply with the order of the Hon'ble Tribunal and keeping in light the ruling of the Hon'ble Apex Court and with due reasons passed the order dated 23.07.2015 which is fully legal and hence needs to be upheld and OA accordingly therefore needs to be dismissed.

4. I have heard Learned Counsel for the Parties at length and examined with care the material on record.

5. First of all, it is clear that the impugned order has taken care to take into account of order of the Tribunal dated 29.04.2011 and has not been hobbled by circular dated 27.06.2007 as directed by Tribunal. It is to be noted that the case for appointment on Compassionate Ground was considered again and again in light of the various orders of the Tribunal and it has clearly emerged that the HPC had gone through the relevant documents of the case from which it is revealed that deceased Smt. Kanti Srivastava Ex. P.M., O/o GMTD Lakhimpur Kheri who herself was compassionate ground appointee and beneficiary of the scheme, expired on 30.05.2004 at the age of 50 years and was survived by two sons (aged 20 & 29 years) and one unmarried daughter (age 24 years) as per status at the time of applying for CGA. The applicant Shri Manish Kumar Srivastava (aged 20 years) had applied for appointment on compassionate ground on 18.10.2004 when, the son other than Applicant, Mr. Ashish Kumar Srivastava was already doing some private work and was getting Rs. 18000/- per annum as referred in income certificate issued by Tehsildar Lakhimpur Kheri vide certificate no. 645 dated 17.10.2006. **The family was living in their own house.** Both the sons and daughter were major with age 20 yrs., 29 yrs. & 24 yrs. at the time of applying for CGA who could have very well taken care of themselves and since no specific grounds of indigency could be made out as per circular dated 09.10.1998 of the DoPT hence the HPC for CGA could not offer the contested compassionate appointment. This arguments of the Respondents supported by material on record (detailed order of 23.07.2015) takes care of the averment of the

Applicant that at the time of demise of the employee, which was in the year 2004, on 30.05.2004 the extant circular was needed to be applied.

5.1 Here it will be useful to examine the circular dated October 9, 1998 issued by DOP&T, Ministry of Personnel, Public Grievances & Pension, Government of India in which under para- Eligibility condition, the following has been stated:-

“(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

6. A. EXEMPTIONS

Compassionate appointments are exempted from observance of the following requirements:-

(a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange.

(b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training.

(c) The ban orders on filling up of the posts issued by the Ministry of Finance (Department of Expenditure).

.....

Further provision entails

DETERMINATION/AVAILABILITY OF VACANCIES

(a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.

(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group ‘C’ or ‘D’ post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on

compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.”

5.2 Thus examination of the order dated 23.07.2015, its make clear that the Applicant was not considered eligible at all on account of lack of fulfilling the criteria of the indigency in the aforesaid mentioned condition which existed at the time of demise the employee/mother of the Applicant. While terminal benefits are not conditions which give rise to ineligibility for compassionate appointment it is important to consider other factors like available employment of the members of the family of the deceased employee, available property etc. The Respondents have considered in manner possible, these conditions of indigency when compassionate appointment had been offered earlier to the mother of the applicant-son when her husband (that is father of the Applicant) had died. Therefore there was no cause for rejecting the case of the son if adequate grounds of indigency had emerged. As this was not so, hence the competent authority arrived at conclusion that the indigent conditions not being same in the case when the current employee (mother of the applicant) died and hence the case of compassionate appointment was not made out fully.

6. To say that this conclusion and finding of the Respondents is arbitrary or the property and earnings need to be more inorder to qualify

or need to be less for indigent condition fulfillment can be contested. There is no exact mathematical figure to be arrived at. Herein it will be useful to understand the ruling of the Hon'ble Apex Court in the case of Umesh Kumar Nagpal v. State of Haryana, 1994 SCC (4) 138 whose relevant portion is reproduced herein below for ready reference:

2. “....The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments 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 leaving 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 employment. 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...”

6. “....For these very reasons, the 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 1 (1989) 4 SCC 468:1989 SCC (L&S) 662:(1989)11 ATC 878:(1989) 4 SLR 327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over...”

Further as regards to the 5% quota for compassionate appointments it has been held in the matter of Himachal Road Transport vs Dinesh Kumar, 1996 (4) SLR 246, at pp. 248: AIR 1996 SC 2226: 1996 (4) SCC 560: 1996 (5) JT 319: 1996 SCC (L&S) 1053, it has been held that “In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public funds which is totally unauthorized. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and

subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post.”

Similarly in the State of Haryana vs Rani Devi, 1996 (5) SCC 308 it has been held that “ *The purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. Appointment on compassionate ground is an exception to the equality clause under article 14 and can be upheld if such appointees can be held to form a class by themselves, otherwise any such appointment merely on the ground that the person concerned happens to be a dependant of an ex-employee of the State Government or the Central Government shall be violative of articles 14 and 16 of the Constitution. But while framing any rule in respect of appointment on compassionate ground the authorities have to be conscious of the fact that this right which is being extended to a dependent of the deceased employee is an exception to the right granted to the citizen under articles 14 and 16 of the Constitution. As such there should be a proper check and balance.....*”

7. Accordingly, in sum it is difficult to conclude that the competent authority has not considered all the indigent conditions of the family before deciding on the case of compassionate appointment to the Applicant. The circular of 09.10.1998 and not 27.06.2007 has been the deciding factor to offer compassionate appointment as per averment of the status of the family on date of appointment. Even the 5% quota is justifiable atleast as per the ruling cited above (Himachal Pradesh Transport vs. Dinesh Kumar). In the event, therefore, I am of the view that the order dated 23.07.2015 is speaking and well reasoned order and hence, liable to be upheld and is therefore upheld.

8. Accordingly, the Original Application is hereby dismissed. There shall be no order as to costs.

(Devendra Chaudhry)
Member (Administrative)

JNS