

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Original Application No. 325/2013**

**This, the 29<sup>th</sup> day of May, 2018**

**Hon'ble Mr. Justice V.C. Gupta, Member (Judicial)**

Km. Upasana Pandey, aged about 23 years, D/o Late Madan Gopal Pandey, R/o Raja Oial Kothi, 1, Rana Pratap Marg, Lucknow.

.....Applicant

**By Advocate : Sri S.K. Yadav 'Warsi'.**

Versus

1. [deleted vide order dated 04.11.2016].
2. The Chief General Manager, Telecom, UP (East) Telecom Circle, Lucknow.
3. The Principal General Manager (BSNL), Lucknow Telecom District, Gandhi Bhawan, M.G. Marg, Lucknow.

.....Respondents

**By Advocate : Sri G.S. Srivastava.**

**ORDER [Oral]**

Heard the learned counsel for the applicant and learned counsel for the respondents. Today, respondents submitted photostate copies of marks allocated to the applicant, OM dated 09.10.1998 issued by DOPT and letter dated 27.06.2007 issued by BSNL for considering the cases for appointment on compassionate ground and evolving the weightage point system for assessment of indigent condition.

2. The brief facts giving rise to this petition are that one Madan Gopal Pandey was posted as Permanent Labour in the office of opposite party no. 3 (Principal General Manager (BSNL), Lucknow Telecom District, Lucknow) He died in harness on 25.05.1999. He was survived by his mother namely Manorama Pandey and one minor daughter Upasana Pandey. The mother of the deceased filed regular suit no. 234/99 which was decided

on 10.05.2000 whereby mother of the deceased declared Guardian of the minor Upasana Pandey till she attains the age of majority. Therefore, Smt. Manorama Pandey the mother of the deceased employee applied for grant of compassionate appointment to the minor daughter of the deceased namely Upasana Pandey the present applicant, by moving an application on 30.05.2000. The copy of which has been annexed as Annexure No. 4. The date of birth of Upasana Pandey, the applicant has been shown in the High School marksheet and certificate as 08.01.1990. The copy of same have been annexed to OA at page no. 37.

3. When applicant attains the age of majority i.e. 18 years she submitted a fresh application on 05.06.2009 for grant of compassionate appointment. The opposite party no. 3 has forwarded the entire documents alongwith application vide letter 16.11.2009 to the competent authority for considering her case. The copy of letter issued by opposite party no. 3 has been annexed as Annexure No. 5 to the O.A. When no heed was paid the applicant preferred another representation on 23.08.2012 for grant of compassionate appointment. The competent authority considered the case of compassionate appointment of applicant and rejected the claim of the applicant by non speaking order dated 10.04.2013 which was communicated to the applicant on 29.04.2013. The copy of which has been annexed as Annexure No. 2 to this O.A. and reads as under:

“Bharat Sanchar Nigam Limited  
(A Govt. of Indian Enterprise)

Office of the Principal General Manager, Lucknow Telecom District.  
Gandhi Bhawan, M.G. Marg, Lucknow-226001.

To,

Km. Upasana Pandey,  
D/o Late Madan Gopal Pandey  
Raja Vail Kothi No. 1, Rana Pratap Marg,  
Lucknow.

No. HRD/Bharti/M-35/343/12 Dated at Lucknow the 29.04.2013.

Subject : compassionate Ground Appointment – case of Km. Upasana Pandey D/o Late Madan Gopal Pandey, Ex. R/M.

As per Chief General Manager Telecom, U.P. (East) Telecom Circle,  
Lucknow No. Rectt/M-42/57/09 dated 10.04.2013 your request on the

subject, was put up for consideration before Circle Higher Power Committee.

Keeping in view the assets, limited liabilities and overall assessment of the financial condition of the family of the deceased official, the committee did not consider the family to be living in Penury and recommended for rejection of the request under provision of the scheme for the purpose (in accordance with instructions of Department of Personnel & Training laid down in O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 and BSNL HQ New Delhi Policy guidelines vide letter No. 273-18/2005-Pers-IV dated 27.06.2007).

In this regard, I have been directed to convey that your request for compassionate ground appointment is rejected accordingly.

Encl: One (Circle Office letter dated 10.04.2013)

Sd/-

AGM (Admn)

O/o PGM TD, Lucknow"

4. Aggrieved by the aforesaid order, the present original application has been filed challenging the impugned order and seeks direction to grant compassionate appointment.

5. Counter affidavit has been filed by the respondents wherein they supported the impugned order and alleged that the same was rightly passed. She does not fall within indigency criteria. However, factual matrix has not been disputed.

6. It was further pointed out that scrutiny was made by Circle High Power Committee and according to the scheme of dated 27.06.2007 the committee allocated 23 merit points to the applicant. According to the aforesaid circular dated 27.06.2007 for considering the case for compassionate appointment the minimum merit points required are 55. The applicant has not secured 55 merit points therefore, she could not be considered for grant of compassionate appointment in terms of the scheme.

7. Rejoinder has been filed wherein the applicant reiterated earlier stands taken by her. Thereafter, supplementary RA against CA filed by opposite party no. 2&3 has also filed and earlier stands reiterated and relied upon certain judgment of Hon'ble Apex Court and Hon'ble Allahabad High Court. Thereafter, Supplementary CA has been filed on behalf of respondent no. 2 & 3 which was virtually reply to the RA and reiterated the stands taken by respondents in the earlier CA.

Thereafter, Supplementary RA has been filed by the applicant and reiterated the same stands.

8. The matter pertains to grant of compassionate appointment but the applicant has taken adjournment in the case since long. In such type of the cases where the applicant pressing for compassionate appointment the time period played an important role. However, the Tribunal cannot shut the eyes to the facts of this case. Consequently, the respondents were directed to place on record the merit points allocated to the applicant and scheme under which the allocation was made. The copies of the same has been given to the learned counsel for the applicant and filed in this case today.

9. The description of granting the merit points have been mentioned in the letter dated 16.07.2012 which was addressed to Chief General Manager Telecom, UP (East) Telecom district-Lucknow by Assistant General Manager (Le). The letter is relevant as such the same is reproduced herein below:

“Bharat Sanchar Nigam Limited  
(A Govt. of Indian Enterprise)  
Corporate Office  
[Personnel-IV Section]

5<sup>th</sup> Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001

No. 268-101/P-IV/LE-2011      Dated : 16<sup>th</sup> .07.2012

To,

Chief General Manager Telecom  
UP(E) Telecom Circle,  
Lucknow.

Sub:   Compassionate Ground Appointment-Case of Km. Upasana Pandey,  
D/o late Sh. Madan Gopal Pandey, Ex.RM-reg.

I am directed to refer the case of compassionate ground appointment on the above mentioned subject, which was forwarded to this office for consideration. The case papers have been scrutinized and found that this case is not fulfilling the criteria of minimum 55 points for being eligible for consideration by HPC of HQ.

S. No.	Item	Details	Points
1	Dependents Weightage	Total no. of dependents=2 No. of minor children=1	15

2	Family Pension	Basic family pension=3500(IDA Scale)	8
3	Left Out Service	Approx. 22 years	15
4	Applicant's Weightage	Daughter is applying for CGA	00
5	Terminal Benefits	Total Terminal benefits=87338	10
6	Accommodation	Family is living in rented house.	10
7	Monthly Income		00
8	Belated Request	10 years 10 days	-35
Total			23

As this case is having total points below 55, therefore as per policy, it is treated as non-indigent and hereby returned. However, you are requested to get the case examined as the same was neither identified by the Circle Admn. nor the Circle HPC. This is a serious matter as suspicion arises that some mischief may have been played to push the case to BSNL CO. Necessary action may be taken, based on the findings and under intimation to this office.

The case papers are returned herewith for further necessary action, as stated above.

Sd/  
(P.M. Verma)  
Asstt. General Manager (LE)"

10. The perusal of aforesaid letter reveals that if 35 merit points which were deducted from total secured marks are added in 23 the marks allocated would be 58 which fulfills the criteria of considering the application for grant of compassionate appointment.

11. The learned counsel for the applicant vehemently argued that deduction of 35 merit points on account of belated request are not sustainable as the applicant was minor on the date of death of the deceased employee.

12. The fact that applicant was minor at the time of death of deceased employee has not been disputed. It is also not disputed by the respondents that application by grandmother of the applicant was given in the year 2000 after getting the certificate of Guardianship from the competent court. It was further pointed out that as per scheme of compassionate appointment circulated

by Government of India on 09.10.1998 it was clearly mentioned in relaxation clause that upper age can be relaxed whenever found it necessary but the lower age limit could not be in any case be relaxed below 18 years age. As such, the case of the applicant could be considered only when she would have attained the age of 18 years.

13. It was further contended that though the respondents is under a legal obligation to disposed of application given in year 2000 for compassionate appointment on attaining the age of 18 years but instead the respondents slept over the case despite representation given by applicant in 2009. The application was virtually decided in 2013 on the basis of alleged marks allocation.

14. Learned counsel for the respondents fails to give cogent explanation for deducting 35 merit points and simply said that guidelines provides that if the delay is of 10 years and above in making the request for compassionate appointment 35 marks should be deducted.

15. The Tribunal is of the view that the decision of the respondents take in this matter is not in accordance with law and is liable to be set aside.

16. Admittedly, the application was given in the year 2000 within a period of one year from the date of death of the deceased employee. The department has not considered the same rightly till applicant attains majority but when she attain the age of 18 years why the respondents not considered the case of applicant. No explanation has been offered by the respondents' counsel nor disclosed while giving reply by respondents in the OA. In these circumstances there is no reason to deduct 35 merit points of delayed claim.

17. The time taken for deciding the application after attaining the age of majority in 2009, in year 2013 is also not in accordance with scheme propounded by DOPT on 09.10.1998. The application for compassionate appointment should be disposed of as early as possible but in this case the respondents had not discharged the obligation conferred under the scheme and as such caused substantial delay in deciding the claim of the applicant. On this count too impugned order is liable to be set aside.

18. Hence, Original Application is allowed. The impugned

order dated 29.04.2013 is set aside. Respondents are directed to reconsider the case of the applicant within a period of 2 months by conveying special CRC meeting for consideration of the case of the applicant against the vacancies available for compassionate appointment in the department. The exercise be commenced forthwith after receipt or communication of this order.

19. Considering the facts and circumstance of the case there shall be no order as to costs.

**(Justice V. C. Gupta)**  
**Member (J)**

JNS

