

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.615 of 2014

Date of Decision: 07th February, 2017.

CORAM: HON'BLE MS. B. BHAMATHI, MEMBER (A)

Prashant S. Nagtode,
Aged 38 years, Occ: Unemployed
R/o Ward No.5, Karanja (Ghadage)
At Post: Karanja (Ghadage),
Dist. Wardha-442001.

...Applicant

**(By Applicant Advocate:-Ms.Priyanka
Mehndiratta)**

Versus.

1. Bharat Sanchar Nigam Limited
Office of the Chief General Manager
Maharashtra Telecom Circle,
Fountain Bldg. No.2
Mumbai-400001.
2. The General Manager Telecom
BSNL, Sanchar Bhavan
BSNL Road MIDC
Wardha-442001.

...Respondents

(Respondents by Advocate Shri V.S. Masurkar)

Reserved on 18.01.2017

Pronounced on 06.02.2017.

ORDER

Per:-HON'BLE MS.B. BHAMATHI, MEMBER (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(a). This Hon’ble Tribunal may graciously be pleased to call for the records from the Respondents and after examining the same, direct the Respondents to appoint the Applicant on compassionate grounds forthwith.

(b). Any other and further order as this Hon’ble Tribunal deems fit in the nature and circumstance of the case be passed.

(C). Cost of the Application be provided for.”

2. The case of the applicant is that his father, the deceased employee with R-2, died in harness on 16.05.2002 at the age of 52 after about 29 years of service. At the time of the death of his father the family consisted of his wife, two daughters and one son (applicant). At the time of death of this father the applicant was 26 years of age. The entire family was dependent on the deceased

employee. The family received an amount of Rs.4,24,093/- as terminal benefits which was spent on marriages of two daughters.

2.1. The applicant's mother submitted an application for appointment on compassionate ground in favour of her son in 2003 to R-2.

The applicant submitted a reminder on 03.02.2004. No action was taken by the respondents on the said applicant.

Thereafter, he represented his case through MLA on 18.07.2011. The respondents informed to the MLA that applicant's case has been rejected by High Power Committee (HPC), Mumbai Circle Office in 2003 vide letter dated 23.07.2011.

2.2. Thereafter, the applicant filed RTI application on 18.12.2013 seeking information with regard to appointments made on compassionate grounds from 2002-2013. The applicant received a reply 09.01.2014 informing that the CGA cases are decided by HPC at Circle Office, Mumbai. The applicant was further intimated about the rejection of

his case by Circle Office, Mumbai and he was provided the copies of letters of rejection of his CGA case dated 07.11.2003, 11.09.2003, 28.08.2003 and 22.09.2008. The applicant also sought information with regard to non-consideration of his case despite the fact that his name was at Sl.No.2 in the consideration list and as to why two other people, who had applied later in time than the applicant have been appointed overlooking the case of the applicant. However, no reply has been received to this query.

2.3. The applicant again filed RTI application dated 06.02.2014, seeking information as to how many people have been appointed on compassionate grounds from the year 2003 till 2014 and the date of their application. He received a reply dated 26.02.2014 informing that four people have been appointed but of which two had applied later in time than the applicant as per the dates of their application. This shows that applicant has been discriminated against.

2.4. As per OM dated 04.10.2012 there is no time limit for consideration of requests for appointment on compassionate grounds.

3. In reply to the OA the respondents have opposed the contentions of the OA. The preliminary objection is that the OA is hopelessly time barred. The applicant's father died on 16.5.2002 and the applicant applied for appointment on compassionate ground on 01.04.2003. It is submitted that after due scrutiny of the case, General Manager, BSNL, Wardha (R-2) forwarded the application of the applicant to the Chief General Manager, Telecom, Maharashtra Circle, Mumbai (R-1). The matter was placed before the HPC, HPC examined 98 cases and rejected the case of the applicant in the meeting held on 09.07.2003. The decision of rejection was communicated to the applicant by BSNL on 11.09.2003 and again on 07.11.2003, when it was received by R-2 from R-1 on 28.03.2003. The representation through the MLA was also replied to the MLA in 2003. The RTI was filed

in 2013. However, This OA has been filed in the year 2014 after a lapse of 11 years and hence the present OA is hopelessly time barred and the same is liable to be rejected on this count.

3.1. The applicant was not found to be in indigent. The family was in receipt of family pension of Rs.3,704/- per month and paid terminal benefits of Rs.4,24,093/-. The financial condition of the family of the deceased employee did not have any merit on the date of receipt of the application therefore was rejected by R-1.

3.2. With reference to the query of applicant about how 4 other people have been appointed on compassionate ground overlooking the applicant's case, it has been clarified that the financial condition of applicant's family on the death of deceased employee did not have merit on date of receipt of application and was also not on waiting list as per criteria. Hence, there is no discrimination.

3.3. The OM dated 01.10.2012 wrongly relied upon by the applicant pertains to Department of Revenue Central Board of Excise and Customs, New Delhi. Hence, same is not applicable to BSNL as the BSNL is the PSU having its own guidelines for compassionate ground appointment.

3.4. The applicant's case was again reconsidered by HPC in its meeting on 31.05.2008. The Committee considered the request with regards to Weightage Point System (WPS) introduced vide BSNL vide letter dated 26.07.2007, to have uniformity in assessment of indigent condition of the family within Government of India instructions on the subject of offering compassionate ground appointment, which are being followed in BSNL. The WPS stipulated that cases with 55 or more net points shall be prima facie treated as eligible for consideration for compassionate ground appointment. The points are allotted based on the various criterion viz. number of

dependent family members of the ex-official including special weightage to handicap, the widow, if seeking compassionate appointment for herself, left out service of the deceased employee, financial aspects of the family based on amount of family pension, terminal benefits, presence of earning member in the family (if any), belated request etc, as applicable in an individual cases. The applicant got less than 55% of marks and therefore HPC rejected his case, when his case was reconsidered by the HPC in the year 2008.

3.5. However, from that date also the present OA filed by the applicant is hopelessly time barred and hence, the OA is liable to be dismissed as time barred.

4. In another reply to the OA, filed on behalf of the respondents, (on change of counsel by the respondents), it has been stated that compassionate appointment of the applicant was rejected on 28.08.2003. The present OA was filed on 08.05.2014 and hence,

there is delay of about 11 years. The letter dated 28.8.2003 (Ex.R-1) has not been filed by the applicant.

4.1. The respondents have relied upon catena of decisions of Hon'ble Supreme Court pointing out to delay and latches and holding that the OA is not maintainable on the grounds of delay.

4.2. The applicant being educated person has to explain day to day delay as laid down by Hon'ble Supreme Court in **L. Chandra Kumar vs. Union of India & Others reported in 1997 (2) SLR (SC) 1.**

4.3. As per record, the applicant's case was rejected twice by CRC meeting first on 09.07.2003 and second on 31.05.2008 and the rejection order was duly intimated to the applicant twice i.e. on 11.09.2003 and 22.09.2008, respectively.

4.4. The four CGA cases (from whom applications were received in 2003) of Shri Banti A. Gedam, Shri Prashant S. Nagtode (Applicant), Shri Sachin N. Yadao, Smt. Malti

Iswar Aloni were forwarded to Circle HPC i.e. R-1 by Wardha SSA i.e. R-2. Out of the four, the case of Smt. Malti Iswar Aloni was approved and the case of Shri Sachin N. Yadao was deferred for getting information. Finally both were approved by Circle HPC, Mumbai and appointment order was issued vide letter dated 18.09.2003 and 10.03.2004, respectively. The two cases of Shri Banti A. Gedam and applicant were eventually rejected by Circle HPC, Mumbai in the meeting held on 09.07.2003 under Chairmanship of R-1.

4.5. The Circle HPC on 09.07.2003 examined 98 CGA cases received from various SSA all over Maharashtra and approved 32 cases only. The case of applicant was rejected on 09.07.2003 and it was intimated to Wardha SSA vide letter dated 28.08.2003 and further informed to the applicant on 11.09.2003. The mother of the applicant made a representation on 03.02.2004 and the MLA forwarded the same through his letter dated 12.05.2005. The same was replied vide letter dated 30.06.2005.

4.6. The applicant again made a representation on 01.07.2005 and being an appeal case, it was again reexamined in Circle HPC on 31.05.2008 and it was found that he had 44 weightage points. As per policy, the cases with net points below 55 points shall be treated as non-indigent and therefore rejected. Thereafter, the rejection order dated 27.08.2008 was issued to SSA, Wardha i.e. R-2, which order was communicated on 22.09.2008 to applicant. Later, the MLA referred the case again vide his letter dated 18.07.2011 and the same was replied by Circle Office, Mumbai vide letter dated 03.09.2011. It is clear from the above that applicant's case has been examined twice by Circle HPC on 09.07.2003 and 31.05.2008. There is no provision in the CGA policy to reconsider such cases again and again. The letter dated 01.01.2014 issued by the BSNL supports this contention.

4.7. The respondents further contend that limited vacancies were available and also the

appointment on compassionate ground can be made only if a vacancy is available for that purpose and Committee should limit its recommendation to appointment on compassionate ground only in really deserving cases, in any case, not in excess of the ceiling of 5% vacancies falling under DR quota. The Committee considered the request as per existing CGA policy/ruling of DOPT letter dated 09.10.1998 and BSNL letter dated 27.06.2007, when his case was examined/reexamined, respectively, and then this case was rejected on 09.07.2003 and 31.05.2008 respectively. The applicant is misguiding the Tribunal stating that more than 12 years have passed, but his case has not been considered whereas, his application dated 01.04.2003 was considered and decided on 09.07.2003 and 31.05.2008.

4.8. As per family details, it is clarified that that at the time of death of his father all the three children were major i.e. two daughters aged 26 years and 19 years and son

i.e. applicant aged 27 years.

4.9. It has been submitted at para 22 that the reply sent by R-2 under RTI is wrong, showing 4 people were appointed. There were 4 CGA applications forwarded by Wardha SSA to the office of CGM during 2003 one of which was the applicant. Of this only two were approved by R-1 and two were rejected, one of whom was applicant.

5. In the rejoinder filed by the applicant the contentions in the OA have been reiterated, while disputing the contentions of the respondents in reply of the respondents. It has been stated that while passing the order dated 26.07.2012 by the DoP&T, the time limit for consideration of request for appointment on compassionate grounds has been done away with. The applicant has further submitted that the application of Smt.Aloni was much later in time than that of the applicant. Yet her application has been approved by the respondents for grant of compassionate

appointment. The applicant's mother submitted her application in 2003 whereas, he filed an appeal on 03.02.2004 whereas, Smt.Aloni's submitted her application in 2004 and Smt.L.P. Hirekhan submitted her application in 2010.

6. In Sur-rejoinder filed by the respondents, it is stated that applicant has suppressed very vital facts therefore the applicant has not come to the Tribunal with clean hands and in support of their contention the respondents have placed reliance on the judgment of Hon'ble Supreme Court in the case of **S.P. Chingalvaraya vs. Jaganath, AIR 1994 SC 853** which squarely covers the case of the applicant and the applicant has no right to approach the Court on the basis of falsehood. The respondents have also placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Vijay Syal vs. S/o Punjab (2003) 9 SCC 401 = 2003 (2) SCSLJ 134** in which it has been held that any party making misrepresentation before the

Court or concealing material facts from the Court must be ready to face the consequences that follow on account of the party's own making.

6.1. It is stated that Smt.Aloni made her application for compassionate ground appointment on 23.07.2002 and on a later date Shri Nagtode made application on 01.04.2003. Appointment order of Smt.Aloni was issued on 18.09.2003 and appointment order to Shri S.N. Yadav was issued on 10.03.2004. Hence, four cases were put up before the Circle HPC on 09.07.2003 but the case of Yadav was incomplete. The case of applicant and Shri Gedam was rejected by Circle HPC. Later on, the Circle HPC vide order dated 06.02.2004 also approved the case of Shri Yadav. The case of the applicant was rejected on 09.07.2003, hence the mother of the applicant made a representation dated 03.02.2004. The same was replied vide letter dated 30.06.2005. Hence, the cause of action in this case arose in 2005 and hence the OA

filed by the applicant is time barred and suffers from delay and latches.

7. The Tribunal has gone through the O.A. alongwith Annexures A-1 to A-8 and the rejoinder alongwith judgment in **Lekh Raj Vs. Union of India 2013 (1) CAT 37** filed on behalf of the applicant.

8. The Tribunal has also gone through the two replies alongwith the original file records filed on behalf of the official respondents.

9. The Tribunal has heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

10. The case of the applicant was first considered in the HPC meeting chaired by CGM, Maharashtra Circle (R-1) on 09.07.2003 when it was rejected. The list of cases starts from Sl.No.16 to 37 and 45 to 59, enclosed as Annexure R-4 shows that 14 persons were approved and some with age relaxation. A few

cases were recommended by the HPC and forwarded to BSNL, New Delhi. Some cases were incomplete and kept pending for further action. The applicant figures at Sl.No.54. He was amongst the rejected candidates. The ground for rejection reads as follows:-

“The ex-official expired at the age of 52 yrs. & 02 months survived by his wife, 2 sons & daughter. The family pension is Rs.3704/- p.m. & other terminal benefits were Rs.424093/-. Keeping in view all above, it does not seems the family is living in indigent condition and the committee decided to reject the request.”

11. A perusal of the original file records shows that the Committee has wrongly recorded that the deceased applicant was survived by widow and 2 sons and a daughter whereas, at the time of death of the deceased employee the dependent members of his family consisted of the widow, 2 unmarried daughters and one son. The rejection has taken place on a factually wrong basis which is vital criteria in deciding the merits of a case. According to the letter dated 28.12.2003 of the mother of the applicant both were married after the

death of her husband. On 16.05.2002, when the father of the applicant died they were both at marriageable ages of 26 years and 19 years respectively. Factoring liabilities arising from death of the deceased employee had to take into account the fact of his leaving behind 2 unmarried daughters not one. This special criteria remained unamended whether it was 1995 OM or any other subsequent OM of DOPT, while considering any case of compassionate appointment. The overlooking of the said fact of the unmarried status of one of the 2 daughters was a vital mistake on the part of the HPC while assessing the applicant's case and rejecting the case. The HPC also further committed the mistake of neutralising the above liability by treating in her place a son, also a fiction, as applicant was the only son.

12. Further, when the Circle Committee met at Wardha to verify, as per check list, the applicant's case, by duly constituting the three member Committee headed by TDM, Wardha

as Chairman (R-2), CAO, Wardha and DE (A),
Wardha as Members, on 04.04.2003 it was
recorded at para 12 of the minutes as
follows:-

The welfare officer not below the rank of SDE should personally investigate regarding financial status movable/immovable property, income from immovable property, whether living in his own house or rented house, agricultural land saving earning etc. and living standard of the family and submit his detailed report along with the case. Welfare officer should explore and the assets/recourses not mentioned in Para A of synopsis.	Verified by Welfare officer
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13. The case was then recommended to HPC. However, the office of CGM (R-1) vide letter dated 18.6.2003 directed the TDM, Wardha (R-2) that the investigation report of Welfare Officer regarding financial status, movable and immovable property etc. left at the time of death of the deceased employee may be sent to the office of CGM (R-1). But, the meeting took place on 09.07.2003 without obtaining the report of Welfare Officer. The said report was forwarded to R-1 after the date of the meeting of HPC on 28.07.2003, in

reply to the letter dated 07.07.2003 issued by R-2 to the Welfare officer pursuant to the said R-1's letter dated 18.6.2003 seeking information about the economic status of applicant. The report of the Welfare Officer reads as follows:-

“Subject:-Investigation report regarding movable and immovable property of Shri P.S. Nagtode son of Late Shri S.P. Nagtode.
“After investigation from possible sources it is observed that late Shri S.P. Nagtode is having nine (9) acres of non cultivated land in his name as immovable property. There is no movable property in his name or in the name of his family. Family is residing at rented house at Karianja. There is no other source of income other than pension. Financial status and living standard of family is medium.
This is forwarded in reference to your letter
No.E.20/6/Comp/Rece/PNS/8 dt.WDA
7/7/03.”

14. This shows that neither the Circle Office nor the HPC had before them, specific report with details regarding the economic status of the applicant whether on 04.04.2003 or 09.07.2003. Hence the grounds for rejection that applicant was not in indigent condition had no basis, since no information

was then available. Hence, the ground for rejection that applicant was not found in indigent condition was not based on records as no report on the indigent condition been submitted/received by R-1 and R-2 till 28.07.2003. By mention of only one daughter without mention of her unmarried status and adding a nonexistent additional son and non availability/non-consideration of Welfare officer's report on economic status, effectively meant that applicant's case was rejected only on this ground of receipt by the mother of family to the tune of Rs.3704/- and terminal benefits amounting to Rs.4,24,093/-. The effect was that this alone was the residual/surviving ground on which applicant's case got rejected.

15. This is in conflict with the law of **Hon'ble Supreme Court** laid down in the case of **Govind Prakash Verma vs. Life Insurance Corporation of India & Others** delivered on **23.01.2004** reported in **(2005) 10 SCC-289** wherein, it was held that terminal benefits

and family pension cannot be taken into account. Scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service, which the spouse or legal heirs gets on the death of the employee. Hence, compassionate appointment cannot be denied on the ground that any member of the family has received pension benefits/retiral dues admissible under Rules. It could not be considered as gainful employment. The receipt of terminal benefits is a right of the deceased employee and that alone could not have become a ground for rejection for compassionate appointment.

16. Further, a perusal of the minutes of the meeting dated 09.07.2003 shows that in all the approved cases and in those cases where approval was given with age relaxation, there is no mention on what grounds they have been approved. Whereas, in the cases which were not recommended/rejected the grounds are specifically mentioned, rendering any

comparison impossible. Even if the meetings pertained to the pre weightage system (PWS) the HPC had to engage itself to do comparative analysis while selecting 32 out of 98 cases in 2003. There was a mechanical recording of minutes without reference to factual information or profile of applicant.

17. Very specifically, one Smt. Aloni at Sl.No.52, who is admitted to have been granted compassionate appointment, there is no explanation as to how she was found more deserving than the rejected cases, including that of applicant, since, the minutes only says 'Approved'. This shows that the process adopted by HPC cannot be considered to be transparent besides the fact that the HPC used 3 wrong/nonexistent/unavailable factual grounds to reject the case of the applicant, as discussed earlier at para 14 of this order.

18. It was at this time that the DoP&T OM dated 05.05.2003 was issued, which governed the case of applicant then. According to the

said circular the maximum period a person can be considered for offering compassionate appointment will be three years from the year of rejection subject to the verification of the penurious condition of the family of the deceased employee at the end of first and second year. There is nothing on record to show that the applicant's case was reviewed and it practically stood closed in 2005 and since it was closed, the facts of the case, as per criteria remained not revisited to verify the penurious conditions till the next meeting.

19. In view of the above, this Tribunal is of the considered view that had there been a transparent process for rejection of applicant, had there been recording of minutes based on correct data to compare the said data between rejected and recommended cases in the minutes of the HPC meeting of 09.07.2003, it cannot be ruled out that applicant could have stood some chance to come into the ceiling of 5% of DR vacancies, when a total of 32 cases were found deserving among 98 cases. That applicant was found less

deserving was never considered on facts and remained unestablished by the HPC given the factually incorrect minutes rejecting applicant's case. The letter and spirit of the DoPT OMs since 1998 emphasises the need to have comparable data based on criteria laid down, to decide who is more deserving or less deserving even in the pre weightage dispensation. This was not done in 2003.

20. The applicant's case is stated to have been re-examined on 31.05.2008. The first committee meeting was held on 09.07.2003 before WPS came to effect. The HPC held in minutes on 31.05.2008 based on the appeal filed by the applicant's mother on 03.02.2004 after WPS came into effect in 2007. It is stated in the reply given to the elected representative of the State Legislative Assembly that applicant did not meet the cut off limit of 55 points (Only later it was stated that he had only 44 points). There is nothing on record to show that as the wrong factual position before 2003 was corrected

and that is how applicant got 44 points. We have already established that the applicant's case was wrongly assessed to have not qualified for selection based on wrong facts/nonexistent/available data before the HPC on 09.07.2003 as per para 14 of this order. Not only had this criteria, of dependency one more unmarried of the two unmarried daughters given credence this important vital criteria was replaced and neutralised by factoring a nonexistent/additional son, over and above applicant to the disadvantage of the applicant's case. Although, no marks system was available before 7.7.2007 in BSNL, involving verifying the indigent condition of the family is an important evidence of dependency arising from the presence of one more unmarried daughter in this case. It is true that at the time of death of deceased employee both daughters were unmarried. This issue was not taken into account in 2003 or any time, thereafter. There is nothing on

record to show that any data different from what was placed before the HPC meeting on 09.07.2003 formed the basis of second assessment on reconsideration for the meeting dated 31.05.2008 leading to the second rejection of applicant's case on the ground that he scored only 44 points. The Check-list with reference to WPS considered in 2008 is reproduced for ease of reference, which reads as follows:-

“(A) Items with positive points

Srl	Item	Details	Points	Remarks
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1.	<u>Dependents</u> <u>Weightage</u>	Nos.		
		(a).Total no of dependent(s)Out of from (a)4.....	25	
		(b).No. of Handicap dependent(s)0.....		
		(c).No of Minor dependent(s)0.....		
		<u>(d).No of Unmarried daughter(s)</u>1.....		
		(For (b), certificate issued by competent authority be enclosed. For (c) & (d) status to be taken w.r.t. date of CGA application in Proforma Part 'A'.		
2.	Family Pension	Amount of basic family pension Rs.3655/- (IDA or CDA+ 50%)	6	
3.	Left Out Service	Left our service- 7/8 years (to be counted w.r.t. date of death/medical invalidation)	8	7
4.	Applicant's Weightage	Widow Or Others (Tick, whichever is applicable)	NIL	
5.	Terminal Benefits	Total terminal Benefits-Rs.424093	6	

6	Accommodation	Family living in rented house and not owning his own house Or Family living in own house (Tick, whichever is applicable)		
Total Points (1+2+3+4+5+6)			45	

(B) Items with negative points

7.	Monthly income	Income of spouse-Rs..... Income of other dependents-Rs..... (Income from any other source may be included Income/salary certificate issued by employer/Tehsildar may be enclosed)	NIL	
8.	Belated Request	Belated period, if any- (To be counted from the death/medical invalidation till date of CGA application in Proforma Part 'A')	NIL	
Total Points (7+8)			NIL	

21. It is also the contention of the applicant that there was discrimination against the applicant. This allegation of discrimination, if any, has to be explained with reference to the case of Smt. L.P. Hirekhan, who was a post PWS appointee. The

criterion is not who applied first or who applied later/last. At the time of this meeting, the person under consideration has to meet the test of relative indigence. So the fact that Ms. Hirekhan submitted her application in 2010, whereas applicant submitted in 2003 (after Ms. Aloni submitted in 2002) may not be the real issue. The date of receipt of application for grant of compassionate appointment vis-à-vis applicant is as follows:-

“List of Applications received from 2002 to 2013 for Compassionate appointment.

1.	Smt.S.M. Dusad	2002
2.	Sh P.S. Nagtode	2003
3.	Smt. R.P. Yewle	2003
4.	M.I. Aloni	2004
5.	S S.N. Yadav	2004
6.	Sh V.N. Ingle	2007
7.	Sh D.L. Chavan	2007
8.	Sh P.A. Vaidya	2008
9.	Sh Kunal N.	2008
10.	Sh Shaikh Irfan Shaikh Usman	2008
11.	Sh S.R. Talvwkar	2008
12.	Sh P.L. Papewar	2008
13.	Sh R.J.; Thakur	2009
14.	A.A. Ghayevan	2009
15.	Smt. L.P. Hirekah	2010
16.	Sh s S Kalpande	2013

Name of persons appointed on Compassionate grounds.

1.	Smt. M.S. Dusad	2002
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2.	R.P. Yelwe	2003
3.	Smt. M.I. Aloni	2004
4.	Sh S.N. Yadav	2004
5.	Smt. L.P. Hirekhan	2010"

22. The above information was communicated under RTI in 2013-2014 which R-1 has held to have been wrongly given by R-2 with reference to Ms.Aloni. R-1 has relied on the reply to RTI showing 4 cases of compassionate appointment from 2003-2014. Ms.Aloni was granted compassionate appointment on 18.09.2003 following the HPC meeting of 09.07.2003. Shri S.N. Yadav was granted appointment on 10.03.2004 following the same HPC meeting of 09.07.2003, when his case was kept pending as information was incomplete and was later on given appointment vide letter dated 10.03.2004. In both the cases of Ms.Aloni and Sh. S.N. Yadav no grounds are available in the minutes of the 2003 meeting as to how they were found more deserving than any of the other candidates, who were rejected (or not recommended) including that of applicant even in the pre weightage

system. It is also not clear as to how Smt.L.P. Hirekhan, who applied in 2010 got appointed after the last appointment of Shri S.N. Yadav in 2004 after the PWS was introduced and the marks obtained by her. Since the applicant raised the issue of discrimination it was legally necessary for the respondents to have show as to how Smt.L.P. Hirekhan qualified based on record under PWS. There is no averment in this connection. These facts are relevant as applicant had the right to be considered for three years i.e. till 2006 based on the DoP&T OM of 05.05.2003 subject to verification of penurious condition. If there was no HPC meeting between 2003 and 2008 (held on appeal filed by applicant's mother) then applicant had the right to be considered in subsequent meetings.

23. As of now, as per the DoP&T OM dated 26.07.2012, the DoP&T OM dated 05.05.2003 has been superseded and the time limit for compassionate appointment has been opened up.

Hence as per the DOP&T OM dated 26.07.2012, the criteria for consideration for compassionate appointment continues to be mainly that the family is indigent and deserves immediate assistance for relief from financial destitution. The onus for examining the penurious condition of the dependent family now rests with the authority making compassionate appointment. The other criterion that continuous to be required to be unfaillingly met with is that compassionate appointment is subject to availability of a vacancy within the ceiling of 5% of DR vacancies. Subject to above 2 conditions precedent, any application for compassionate appointment can be considered without any time limit subject to the merits of each case. Hence, respondents can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant has taken place long back. The cases earlier closed can be re-opened after the waiver of time-limit

permitted in DoP&T OM dated 26.07.2012 subject to the criteria of relative indigence/financial destitution and 5% ceiling. The cases should not be opened merely because the time limit has been waived off. The competent authority for waiving off is Secretary of the Ministry/Department.

24. Summing up, the applicant's case was rejected on factually incorrect grounds in 2003 (before WPS). There is no evidence on record to show that the second rejection in 31.05.2008 (after WPS) was done after rectifying the earlier wrong foundational information placed before HPC in 2003. During the period the DoP&T OM of 05.05.2003 was in force and applicant was bound to be considered as per the said OM. The issue of discrimination against the applicant vis-à-vis compassionate appointment of Smt.L.P. Hirekhan, post WPS has not been satisfactory explained. Further, the DoP&T OM of 2012 legitimises the consideration of the applicant, if not right to appointment, in

the light of above the Tribunal's findings. Hence, the Tribunal considers it appropriate to remit the matter to the respondents to examine the applicant's case in the light of the observations and findings in this order and after going into the fact/circumstances/guidelines of the same, the scheme was first notified in 1998 and as per records. R-1 is directed to pass a reasoned and speaking order after referring to all relevant records, as per the Tribunal's findings, within a period of 8 weeks from the date of certified copy of this order. If the case merits waiver of time limit, then the competent authority shall be approached for obtaining the approval of the said authority. This shall be done within a further period of 4 weeks thereafter. R-1 shall communicate the reasoned and speaking order to applicant within 12 weeks from the date of issue of certified copy of this order. The applicant shall be at liberty to approach the appropriate forum for remedy if

his grievance still persists.

25. As regards delay, the application of 2003 cannot be considered belated since the applicant's father died on 16.05.2002. The applicant, based on the consent of his mother approached R-2 for compassionate appointment in time i.e. in 2003. Hence, there is no delay with reference to the date of death of applicant's father as per the scheme. In fact, no negative points have been given in the check list regarding belated request as reproduced at para-20. But, since it is established in 2003 and again in 2008 that applicant continued to get rejected on wrong foundational facts starting from 2003, and in view of the DoPT OM of 26.07.2012 the Tribunal relying on judgment of the Hon'ble Supreme Court in the case of **Esha Battcharjee Vs. Management Committee of Raghunathpur Nafar Academy** reported in 2014 (1) SLJ (SC) 20 delivered on 13 September, 2013, considers it appropriate to condone the delay. We note that all the relevant information considered

relevant to decide the merits of the applicant were made available under RTI which has enabled the Tribunal to unravel the deficiencies in the action of respondents. The respondents contend that the applicant has not come with clean hands by suppressing the order of 2003. However, the respondents cannot absolve themselves of rejecting applicant's case without due consideration of correct facts. Condoning the said action of respondents would actually amounts to a more serious error than what was committed by the applicant as other material facts, relevant to decide the merits would have got pushed under the carpet. The Tribunal cannot be party to such non-transparent actions of respondents, which have come to light in the course of judicial scrutiny.

26. However, while remitting we are conscious of the law laid down by the Apex Court that applicant had the right to be considered, the right to legitimate expectation, but no right to be appointed if

he does not meet the conditions of penury and the criteria of falling within 5% of DR vacancies. It is also not within the scope of this Tribunal to direct appointment of applicant as per settled law. The above is clear from the very order of the Principal Bench, CAT, New Delhi in the case of **Lekh Raj Vs. Union of India 2013 (1) CAT 37** relied upon by the applicant. Hence, the decision to remit for due reconsideration of facts, as applicable as per scheme and settled law is the only appropriate direction to R-1.

27. In the light of the observations/findings/directions, this OA is disposed of. No order as to costs.

(Ms.B. Bhamathi)
Member

(A)

Amit/-

