

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.669/2014

Thursday, this the 22nd day of June, 2017

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

Amit Sanjay Warade,
Shri Hari Nagar,
Wanjola Road,
Bhusawal-425201. **... Applicant.**
(By Advocate Shri Vicky Nagrani)

Versus.

1. The Union of India,
Through The Secretary,
Ministry of Telecommunication
& IT, Sanchar Bhavan,
New Delhi-110001.
2. Bharat Sanchar Nigam Ltd.,
Through Chief Managing Director,
Govt. of India Enterprises,
Having Corporate Office at
Janpat, 5th Floor Bharat Sanchar
Bhavan, New Delhi-110001.
3. The Chief General Manager,
Telecom Maharashtra Circle,
BSNL Complex,
Juhu Road,
Santacruz(W),
Mumbai-400054.
4. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom,
Jalgaon-425001. **... Respondents.**
(By Advocate Shri V.S.Masurkar)

Reserved on 16.03.2017.

Pronounced on 22.06.2017

O R D E R**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 of the case from the Respondents and after examining the same quash and set aside the impugned order dated 8.5.2012 with all consequential benefits.

(b) This Hon'ble Tribunal may further be pleased to direct the Respondents to grant Compassionate Appointment to the Applicant within the prescribed time as this Hon'ble Tribunal deems fit with all consequential benefits.

(c) Cost of the Applicant be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed”.

2. The case of the applicant is that he is the son of the deceased employee working with R-4. The applicant's father was appointed in the year 1992 and he died in harness on 30.7.2006 leaving behind the following dependants :-

i)	Bharati Wife	(Age 40 years)
ii)	Suwarna Daughter	(Age 18 years at the time of death)
iii)	Amit Minor Son	(Age 15 years at the time of death)
iv)	Sumit Minor Son	(Age 13 years at the time of death)
v)	Lilabai Mother	(Age 69 years at the time of death)

On the death of the deceased employee, who was the only earning members, the applicant and the family were left in destitute condition without any source of income.

2.1 The family received Rs.4,50,776/- as Terminal benefits and was sanctioned Rs.2,960/- as Monthly Family Pension. At the time of the death of the deceased employee the applicant was a minor and was still studying. The wife of the deceased employee, being in need of financial assistance in the form of compassionate appointment, applied on 22.2.2007 to R-4 for grant of compassionate appointment in favour of the applicant. Vide letter dt. 18.8.2007, R-4 returned the application stating that the applicant is below the age of 18 years and hence he cannot be considered then. The respondent further advised the applicant to apply again after he completes 18 years of age.

2.2 The applicant made an application on 24.3.2009 for appointment on compassionate grounds on attaining the age of 18 years along with the said application. The applicant had also enclosed the Affidavit of undertaking to maintain whole family from the payment he will receive and also enclosed

NOC of all the dependants and all other relevant documents.

2.3 It is submitted that the Welfare Inspector was deputed to investigate the financial condition of the family and further to submit his report whether the family deserves appointment of applicant on compassionate ground. The said investigation report dt. 3.6.2009 arrived at a conclusion that the family is in distress and that the benefit of appointment on compassionate ground is essential.

2.4 The R-3 vide letter dt. 14.10.2009 raised a query as to why the wife of the deceased employee had not applied for compassionate appointment and if she is not fit to accept the said employment a documentary proof such as medical certificate may be submitted. Such medical certificate dt. 26.10.2009 was submitted vide letter dt. 29.10.2009. She expressed her unwillingness for appointment and further requested to consider the case of the Applicant for grant of appointment on compassionate ground.

2.5 Since no response was received from the respondents, the mother of the applicant sent a reminder on 18.11.2010, followed by another reminder

on 6.5.2011.

2.6 Accordingly, vide order dt. 20.5.2012, respondents communicated the final rejection of the case of the applicant by the HPC, as the HPC had not found the family eligible for employment on compassionate ground. Hence, this O.A.

2.7 The applicant has filed a delay condonation petition, wherein it is submitted that the final order of rejection was received on 20.5.2012. Hence cause of action for filing the O.A. arose on 20.5.2012. Hence there is a delay of 15 months and 26 days delay in filing the present O.A. It is submitted that applicant was not aware of any legal remedy for redressal of his grievance since he lived in a remote area in Bhusawal. He was also not aware as to where the orders passed by the respondents can be challenged. He also could not arrange for funds for filing the present O.A. Due to the above reasons, the applicant was in mental depression and could not approach this Tribunal within time. Later, on the advise of relatives he approached the lawyer for filing the present O.A. It is further submitted that his mother and grandmother were also not keeping good health and were continuously under

medical treatment and the payment received by way of family pension was being used for treatment. For this reason also, the applicant could not file the O.A. within time due to insufficient funds. The applicant has a very good case on merits and hence seeks condonation of delay in the interest of justice.

3. In the reply to the O.A., it is stated that the original cause of action arose on 30.7.2006 on the demise of the applicant's father. Whereas, the O.A. was filed on 17.9.2014. Accordingly, as per law the O.A. suffers from delay and is hit by the law of limitation. Several Judgments of the Hon'ble Supreme Court have been cited in this connection. It is also stated that as per settled law, preliminary objection with regard to jurisdiction and limitation has to be decided first before going into the merits of the case.

3.1 The respondents have relied upon several case laws to show that appointment on compassionate grounds cannot be a right of a person and that such appointment is violative of the rule of equality enshrined under Article 14 of the Constitution of India. Further compassionate appointment is an

exception to the general rule of equality and cannot be treated as any other independent or parallel source of employment.

3.2 The respondents have also relied upon other judgments of the Hon'ble Supreme Court on the issue. The learned counsel for the respondents submits that it is a settled position of law that if the family has survived for so long, there is no question of grant of compassionate appointment once it is proved that inspite of death of the bread winner, the family has survived for a substantial period of time, then there is no necessity to dispense sympathy.

3.3 The judgments relied upon are as follows :-

i) General Manager, State Bank of India and Others v. Anju Jain {(2008) 8 SCC 475}.

ii) State of J&K v. Sajad Ahmad Mir {(2006) 5 SCC 766}.

4. An additional affidavit has been filed by the applicant on being granted liberty to inspect the original file records. The applicant on perusal of the records observed that Maharashtra circle has recommended the case of the applicant for appointment at page 111 of the records. However,

the HPC has rejected the case of the applicant without assigning any reason and mainly relying on the DOPT O.M. dt. 9.10.1998. Persons securing higher marks i.e. 79, 78 and 74 at Sl. Nos.11, 12 and 13 were rejected and persons with lesser marks were selected.

4.1 As per Question No.40 of the FAQs it is categorically mentioned that the case can be considered after 3 years also if the case is rejected due to non-availability of vacancies. Even if the case is rejected and closed due to non-availability of vacancies, the applicant's case was considered only once and thereafter rejected and closed. It is clear that applicant has fulfilled all the conditions and even then the respondents without assigning any specific reasons have rejected the case of the applicant.

5. In the reply to the additional affidavit filed by the learned counsel for the respondents, it is stated that the pleadings were completed on 30.6.2015. Thereafter, the O.A. was posted for final hearing on 13.8.2015, 5.11.2015, 17.11.2015, 3.12.2015. On 18.1.2016 the Tribunal directed the respondents to produce the original proceedings of

the HPC which was deposited with the Tribunal on 25.8.2016. The O.A. was then heard on 8.9.2016, 22.11.2016, 27.1.2017. On 31.1.2017 the Tribunal allowed inspection of the records to the counsel for applicant. Following inspection, the applicant filed additional affidavit dt 17.2.2017 and the Tribunal passed an order on 31.1.2017 and accordingly the original records were allowed to be returned and hence the present affidavit in reply. It has been submitted that contrary to the provisions of the AT Act, 1985, CAT Procedure Rules, 1987 and CAT (Rules of Practice), 1993 the settled procedure is filing of M.A. for such a requirement of the applicant. Hence, the additional affidavit dt. 17.2.2017 is required to be disallowed from being taken on record since the O.A. was fully heard on 31.1.2017.

5.1 The respondent is a public sector undertaking under the provisions of the Companies Act, 1956 and it is not a government department and hence governed by the policy framed by the Company and hence reliance on the DOPT OM by the applicant is totally misplaced.

5.2 The BSNL corporate office issued guidelines

of CGA on 9.10.1999 and 27.6.2007. In the guidelines dt. 27.6.2007 vide paras 2.0(I)(II) it is clear that cases with 55 or more net points shall be prima facie treated as eligible for consideration by Corporate Office. Hence, SSA as well as Circle Office considered the eligibility of applicant for sending the case to BSNL Corporate Office, being competent authority for further decision. It is submitted that in every case the grounds for acceptance or rejection depends upon indigent and non-indigent conditions and the applicant cannot cite the example of other cases and compare his case on all Maharashtra level or All India level. The case of the applicant was considered by taking into consideration, assets, liabilities, number of dependants in the family etc. and his case was considered fit to be rejected.

6. The Tribunal has gone through the O.A. alongwith Annexures A-1 to A-10, M.A. for condonation of delay, additional affidavit with Exhibits A-11 to A-13.

7. The Tribunal has also gone through the Reply, reply to M.A. for condonation of delay and additional affidavit in reply and additional

documents filed on 12.6.2017.

8. 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.

9. The respondents have contended that the OA is hit by delay and laches. In this connection, it is found that the applicant's father died on 30.7.2006 and the first application for compassionate appointment was filed by mother of the applicant in favour of the applicant on 22.2.2007. Hence, there was no delay in filing this application with reference to the date of death of the applicant's father.

10. The applicant being 15 years of age at the time of his father's death, he was directed to apply on attaining majority and accordingly another application was filed on 24.3.2009 by the applicant himself which was done immediately after his attaining majority. The Welfare Inspector submitted his report on 3.6.2009. Subsequently, certain clarifications were sought for by the respondents in October, 2009 with reference to the mother's

unwillingness for appointment, which was provided immediately and thereafter the HPC meeting was held only on 4.11.2011. The applicant's mother had issued reminder on 18.11.2010 stating that although she had enclosed her medical certificate in October, 2009 she has still not received any response. She reminded on 6.5.2011. The 38th HPC meeting in which applicant's case was rejected was held on 4.11.2011 and minutes were issued on 18.11.2011.

11. The decision to reject having been taken in November, 2011 by the Competent Authority, it was for the respondents to have communicated the said order in time. However, this order was communicated only on 20.5.2012 to applicant. It is not clear as to why it is stated in para 4.7 in the OA that the case was put up before HPC on 29.2.2012 (No records of the said meeting has been placed before the Tribunal) whereas, his case had already been decided on 4.11.2011. Hence, the Tribunal finds that there was no delay on the part of the applicant up to this point, while some intermittent delay was there on the part of the respondents between 2009-2012.

12. Subsequently, there was admitted delay on the part of applicant, when he filed this OA in

September, 2014, after the cause of action arose on passing of the impugned order in May, 2012, which delay has been explained by applicant. Without outrightly rejecting the OA on account of admitted delay, in the light of settled laws, the Tribunal would examine the merits of the case before expressing its conclusive findings on delay. Hence, if it is found that the case succeeds on merits, the delay issue requires to be carefully revisited in the interest of fuller justice and as per ratios laid down by the Hon'ble Supreme Court.

13. A close scrutiny of the facts of the case shows that the following marks were awarded in the applicant's case when the applicant's case came up before the High Power Committee (HPC) after recommendation by the concerned Circle and after recommendation by the Welfare Inspector's report based on local inquiry dt. 3.6.2009. At Annexure-A-10, the check list with reference to weightage point system is placed on record, which reads as follows :-

"Check-list with reference to Weightage Point System

(A) Items with positive points

Sr. No.	Item	Details	Poi-nts	Rem-arks
1	Dependents Weightage	<div>Nos.</div> <div>(a) Total No. of Dependent(s) 4</div> <div>Out of from (a)</div> <div>(b) No. of Handicap depen- <u>Nil</u></div> <div>dents</div> <div>(c) No. of Minor dependent(s) One</div> <div>(d) No. of Unmarried daughter(s) One</div> <div>[for (b) certificate issued by</div> <div>competent authority be enclosed.</div> <div>(c) & (d) status to be taken</div> <div>w.r.t. date of CGA application</div> <div>in proforma part `A'.</div>	<div>20</div> <div>-</div> <div>5</div> <div>5</div>	
2	Family Pension	Amount of basic family pension Rs.2960/- (IDA or CDA 50)	12	
3	Left out service	<div>Years</div> <div>Left out service 15 years</div>	15	
4	Applicant's weightage	<div>Widow</div> <div>Or</div> <div>Others Son</div> <div>(Tick, whichever is applicable)</div>	Nil	
5	Terminal Benefits	Total terminal Benefits Rs.450776	6	
6	Accommoda- tion	<div>Family living in rented house and</div> <div>not owning his own house</div> <div>Or</div> <div>Family living in own house</div> <div>(Tick, whichever is applicable)</div>	Nil	
Total Points (1+2+3+4+5+6)			63	

(B) Item with negative points

Sr. No.	Item	Details	Poi-nts	Rem-arks
7	Monthly Income	<div>Income of spouse Rs.....</div> <div>Income of other dependents Rs.....</div> <div>(Income from any other source may be</div> <div>included. Income/salary certificate</div> <div>issued by employer/Tehsildar may be</div> <div>enclosed)</div>	Nil	
8	Belated Request	<div>Belated period, if any -</div> <div>(To be counted from date of death/</div> <div>medical invalidation till date of</div> <div>CGA application in proforma Part</div> <div>`A')</div>	NIL	
Total Points (7 & 8)			NIL	

*Points as per weightage point System. If points for Dependent's weightage and left out service come to more than the maximum allotted points w.r.t. weightage point system, the maximum allotted points are to taken for that item, while computing total points.

NET POINTS = A(1+2+3+4+5+6) - [B(7+8) = 63-Nil = 63"

14. As regards 1 (a) above, at the time of death of the applicant's father there were 5 (five) dependents of the deceased employee i.e. his wife, his mother (who was dependent on her son) and 3 (three) children including the applicant. However, in the check list at 1 (a) total number of dependents is only shown as 4 (four) and the points awarded is 20 (Twenty). Since there were 5 (five) dependents, as the grandmother of deceased employee was legally dependent on him, 5 (Five) additional points should have been awarded, taking the total to 25 at 1 (a) and the overall total from 63 to 68. No reason is given as to why the grandmother was excluded.

15. When the Investigating Officer submitted his field report he only took into account the three children and the mother of the applicant, but failed to include the aged mother of the deceased employee, who was 69 years at the time of the death of applicant's father and she was residing with the applicant's father being dependent on him. This mistake was not detected by the higher authorities and on that basis the check list was wrongly entered at item 1 (a) showing dependents as only 4 and not

5, thereby denying the benefit of 5 (five) additional points to the 5th dependent i.e. grandmother. The net tally goes up by 5 points from 63 to 68.

16. It is also not disputed by the respondents that at the time of death of the applicant's father 2 (Two) minor sons were left behind viz. Applicant aged 15 years and applicant's younger brother Sumit who was 13 years. However, the number of minor dependents is shown as 1 (one) whereas, it should have been 2 (Two). Hence, for the 2 (Two) minor sons the points awarded should have been 10 (Ten) as against only 5 (Five). The tally then goes up further from 68 to 73 points.

17. As per the weightage point system, an unmarried daughter is eligible to be counted for grant of 5 (five) points. Hence, legally, she is minor is upto 18 years of age. But as per weightage point system, for an unmarried daughter 5 (five) points are to be granted after 18 years of age, since in the case of an unmarried dependent daughter, dependency begins after 18 years. [Minimum age at marriage, as per law is 18 years and marriage below 18 in India is considered illegal and

void]. The date of birth of the daughter not being on record, it is to be seen whether she is entitled to 5 additional points under minor dependent also in addition to 5 points already granted as unmarried daughter. In the absence of clarity, no findings are possible till the matter is re-examined based on date of birth, as per records and whether the daughter was or was not minor i.e. was above 18 years or just below 18 years at the time of death of the deceased employee. If she had crossed 18 years of age then she was eligible for only 5 points as unmarried daughter which she got.

18. In view of the above, the total points would, in any case, go up substantially and in all certainty go beyond the allotted 63 points i.e. 73 points. Hence, the net point shown as 63 is factually incorrect, which resulted in a wrong finding on the issue of relative indigency by the HPC, while it was applicant's rights to be considered on correct facts. He suffered from under assessment, resulting from lack of due diligence.

19. In the HPC meeting which took place on 4.11.2011, a total of 207 cases were scrutinized and found complete in all respects. With reference to

weightage point system guidelines, out of the cases forwarded by the Field Units of BSNL, a total number of 50 cases were discussed in an earlier meeting held on 21.10.2011 and remaining 157 cases were put up before the 38th HPC on 4.11.2011. After a detailed scrutiny of all the cases, the HPC recommended 4 cases for approval, 46 cases for rejection and 107 cases were to be considered in subsequent meeting. In the list of 46 cases rejected, the applicant's case figures at Sl.No.62. The ground for rejection as per DOPT OM of 9.10.1998 in the case of applicant reads as follows :-

Sl. No.	Name of applicant/ Ex-Official/Designation/ File No./Circle	Details of the cases
62	Sh.Amit Sanjay Varade, S/o Late Sh.Sanjay Laxman Varade ex-TM 268-164/2010-Pers.IV MH	The ex-official expired on 30.07.2006 at the age of 44 years survived by his wife, two sons & a daughter. The family pension is Rs.2960+IDA and other terminal benefits were Rs.4,50,776. Family is living in own house. The elder son has applied for CGA vide application dated 03.06.2009.

20. The applicant was shown to have scored 63 weightage points by the HPC. Candidates at Sl. No.57 and 62 who were selected had 62 weightage points each, Candidate at Sl. No.72 had 63 weightage points and Candidate at Sl.No.77 had 64 weightage points. The applicant was considered and rejected against

the weightage points of 63 which the Tribunal has established to be erroneous as per the wrong entries in the check list. Had applicant been correctly awarded the weightage points he would have scored substantially more than 63/64 weightage points and would have ranked higher than 3 of the cases, which were selected, from the list of 50 cases, which is the lone list produced before the Tribunal.

21. Further, once weightage points are allotted as per circular of the BSNL dt. 27.6.2007, it is assumed that all parameters laid down in the guidelines such as assets, liabilities, overall assessment of financial condition, indigent condition, recommendation for approval etc. were all considered and nothing more remains to be considered. Hence, total weightage points of the applicant being higher than 63, even higher than the candidate at Sl.No.74, in the list produced, who had 69 points, applicant was still not selected.

22. The Tribunal is not privy to the entire list, as the respondents have produced list from Sl. No.51-100, even though entire list of those recommended, rejected and approval should have been produced. Even the records, which were inspected by

applicant, which were withdrawn with the permission of the Court to file reply to the additional affidavit, were not resubmitted and hence Tribunal has been denied the benefit of the said record at the time of writing this order. Hence, the Tribunal is not in a position to examine the specific/additional contentions of applicant filed by way of additional affidavit i.e. regarding discrimination, contending that other persons with higher points having been rejected, while other persons with lower points having been selected, even though according to his points he was not in the said category of rejection. The applicant wrongly believed that he had only 63 points.

23. Accordingly, the respondents are legally bound to re-cast the weightage points in the check list filed at page 32 Annexure-A-10, in respect of applicant, as per facts, read with guidelines, relevant for assigning the correct weightage points and reconsider his case for compassionate appointment after following laid down procedures.

24. The respondents' contention that had the mother applied, the outcome would have been different and that not having applied, it is a proof

that there was no economic distress is not tenable. As per the circulars, if the mother applied, she would have scored higher points. She had the option of not seeking appointment for herself, which she has explained on medical grounds for not opting and decided to forego the higher points, potentially available to her. The higher weightage to widows, as per policy, was to encourage female spouse to apply. Hence, not applying/opting is not a sign of absence of distress, financial or otherwise.

25. Further, the applicants contention is also that his case could not have been outrightly rejected as being non-indigent if he had scored over the minimum of 55 points, because there were no vacancies at that time. The case should have been taken forward for reconsideration against future vacancies as per the DOPT circulars also, as the 1998 O.M. stood modified on this issue by subsequent circulars (The respondents were bound by DOPT circulars since even the case of applicant was rejected on the basis of 1998 OM). Hence, item 40 of the DOPT FAQ of 2013 relied upon by the applicant and which merits consideration applies in favour of the applicant. The para reads as follows :-

Sl. No.	Question	Answer
Introduction and Objective		
40	Can the cases which were closed on completion of 3 years' time-limit as provided in DOPT OM dated 5.5.2003, be re-opened after the waiver of time-limit in DOPT OM dated 27.07.2012?	<u>Yes</u> , provided that the cases were closed due to non-availability of vacancies during the 3 year time-period and subject to the criteria mentioned in S.No.32 and S.No.39. <u>Such cases should not be opened merely because the time limit has been waived off.</u>

26. Accordingly, the Judgments relied upon by the learned counsel for the respondents do not merit any consideration, at this juncture in view of the above findings since the Tribunal holds that the applicant has not been accorded in a rightful manner of a manner not the applicant was entitled to, by which even the right to be considered for grant of compassionate appointment was not allowed to be availed.

27. Per contra, the applicant has rightly relied upon the order of this Tribunal in **O.A. No.148/2014 - Rajendra Raghu Naidu decided on 28.7.2016**, since this Tribunal is of the view that the matter requires to be remitted to the respondents in the light of paras 12 to 26 for reconsideration in the light of the facts, circumstances, circulars and settled law.

28. The respondent's contention that when the Tribunal allowed applicant's prayer to inspect the records, there was a violation of CAT (Procedure) Rules, since such a permission could have been given only on filing M.A., is not tenable. In this connection, it is stated that having complied with the order, directing inspection of records by applicant, it is not open to challenge now and the Tribunal holds that the additional affidavit filed after inspection is legally justified, to meet the ends of justice, since a vital question has been raised as to how those with lower marks were selected, which could only have been subjected to judicial scrutiny in the light of complete original records, not available now.

29. On 18.1.2016 after hearing on earlier dates, the Tribunal directed respondents to submit the original records. On 22.2.2016 Respondents sought further time to produce records, stating that the records are to be obtained from Jabalpur. Two adjournments were granted on the specific prayer for time from the learned counsel for respondents. The OA, which was treated as part-heard was then cancelled on 20.6.2016, due to delay/nonproduction

of records. Finally, records were produced in the Registry on 25.8.2016 after repeated adjournments, on one ground or other.

30. During oral arguments on 31.1.2017, the learned counsel for applicant sought inspection of records, which was allowed. This was not an ex parte decision. After making preliminary observations, the learned counsel for applicant sought time/leave to file additional affidavit, which was also allowed. This also was no ex parte decision. The learned counsel for respondents even sought direction of the Tribunal for the return of the records to file reply to the additional affidavit, which was allowed. The same was returned to the learned counsel for respondents in a sealed cover by the Registry and it was directed that the same shall be filed again and made available at the time of final hearing. The case was again restored to the status of a part heard matter on 31.1.2017 with the consent of parties. The respondents were again directed to file original records on 15.3.2017 to reserve for orders. The OA was reserved for orders, notwithstanding awaiting filing of original records to expedite adjudication. When the relevant

records were still not forthcoming, on 30.3.2017, the matter was listed for "speaking to". On receipt of certain records, the Tribunal observed that the records filed, then, pertained to the personal file of applicant only and did not contain the minutes of HPC meeting, the final list of cases scrutinized/rejected etc. Adjournment was thereafter granted to learned counsel for respondents on his prayer to provide the original records. On 20.4.2017, the learned counsel for respondents informed that the records pertaining to the HPC meeting has not been received from the BSNL Corporate Office. The matter was again adjourned on the prayer of learned counsel for respondents. On 2.5.2017, learned counsel for respondents again sought time for production of records from BSNL. Having treated the matter as part heard, the Tribunal gave further adjournment on the prayer of learned counsel for respondents with the understanding that the case shall be de-reserved if the original records are not produced on the next date of hearing. But, again on 12.6.2017, the learned counsel was granted one more day's time to file the records. On receipt of documents, on

13.6.2017 the case was reserved for orders.

31. It is now revealed at the time writing the order and after closer scrutiny of the records filed that the last filed document was a letter of 3.5.2017 addressed by BSNL, Mumbai to the learned counsel for respondents forwarding the letter of BSNL Corporate Office dated 2.5.2017, enclosing copy of HPC minutes. This shows HPC Minutes were available with the Mumbai Office i.e. R-3 on 3.5.2017 itself and still not produced before the Tribunal, claiming non-availability/non-receipt from BSNL, C.O., on the basis of which adjournments were granted. The Tribunal does not discount the possible fact that the learned counsel was himself seeking production of original records from respondents office, as directed by the Tribunal. He did express difficulty, orally, that he is not in receipt of records and hence, also, prayer for adjournment was granted.

32. Be that as it may. On 4.11.2011 as shown at Annexure-I to the letter of 2.5.2011, list of 50 cases is made available. The list of 4 (four) cases recommended by HPC is at Annexure-II. The list of rejected cases with reasons is shown as Annexure-

III. This last Annexure included the case of applicant at Sl.No.62 showing rejection on the grounds reproduced reproduced at para 19 of the order, as per the 1998 DOPT O.M. No scrutiny was done by the HPC as per 2007 circular, nor was the case forwarded for further consideration to forthcoming HPC meetings, as per DOPT circular, if it was a case of absence of vacancies, then. The decision of the HPC to reject on 4.11.2011 became the first and last order, contrary to the guidelines.

33. Further, the records which were earlier produced before the Tribunal and which, inter alia contained the earlier inspected records by the learned counsel for applicants and then withdrawn has not been resubmitted. The personal file of applicant which was brought on 30.3.2017, in a piecemeal manner, was also withdrawn and not resubmitted. Hence, the Tribunal is constrained to record that besides the fact that original records have not been filed, only photo copies of self-selected documents from the file has been filed without affidavit. The full records has not been made available to the Tribunal for reasons best known to the respondents.

34. The Tribunal is therefore constrained to conclude that there has been a complete lack of transparency. There has been a lack of cooperation with the Tribunal by respondents in effectively/conclusively/expeditiously adjudicating this case. This above finding also renders the contention of respondents in the reply to that additional affidavit of applicant, that the Tribunal has gone beyond the CAT (Procedure) Rules, by allowing inspection of records, after final hearing is a hollow and completely baseless contention not supported based on record.

35. In view of the above discussions, the impugned order is illegal and perverse and liable to be set aside based on the Tribunal's findings. The OA qualifies to be allowed. However, since it is settled law that no direction can be given by a Court or Tribunal for appointment, the hands of the Tribunal is bound. The Tribunal, therefore, directs the respondents to take all appropriate steps to correct the check list and have applicant's case re-considered by the HPC on the basis of the revised weightage points, as per guidelines, after the HPC itself looks through the entire original records,

the personal file of the applicant and applicant's father and then assess grant of additional points, as observed at paras 12 to 18 of this order, to be given to applicant and then consider grant of compassionate appointment after following laid down procedures.

36. Needless, to say that since the case operates strongly in favour of applicant, for reconsideration based on facts, law, guidelines etc. and the matter concerns denial of rights of applicant for even due consideration for compassionate appointment and the respondents having caused/contributed to some intermittent delay between 2009 to 2012 i.e. till the HPC meeting was held, relying on **Esha Bhattacharjee v. Raghunathpur Nafar Academy {(2013) 12 SCC 649}**, the Tribunal is legally bound to condone the delay.

37. Accordingly, OA is liable to be allowed in the light of the Tribunal's findings and observations directing reconsideration by the HPC, after going into the full facts, circumstances and applying the DOPT circular and settled law. R-2 shall thereafter pass a reasoned and speaking order. The entire exercise shall be completed within a

period of 4 (four) months from the date of receipt of certified copy of this order.

38. A cost of Rs.10,000/- is imposed upon the respondents to be paid to the applicant for having delayed the matter in the light of Tribunal's findings, for lack of due diligence, resulting in under assessment/mis-presentation of applicant's case before the HPC to be without any merits, while awarding weightage points which resulted in a wrong decision of HPC and caused injustice to the applicant, as also on account of the lack of complete transparency before the Tribunal as observed from paras 26 to 28 of this order.

39. Accordingly, OA is allowed, to the extent of above findings, with costs as stated above.

(MS.B.BHAMATHI)
MEMBER (A)

B.