

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH, ALLAHABAD

Original Application No. 330/00138/2011

Pronounced on 15th day of March, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

1. Shail Kumari Pandey w/o late Markandey Pandey
2. Srikant Pandey son of late Markandey Pandey,
Both resident of Plot No. 936, New Basti, Phulwaria,
Post Phulwaria, P.S. Cantt., District- Varanasi.

Applicant

By Advocate: Sri Jaswant Singh

Versus

1. Union of India through its Secretary, Ministry of Communication and Information Technology (Department of Telecommunication), New Delhi.
2. Bharat Sanchar Nigam Limited through its Chief Managing Director, New Delhi.
3. Chief General Manager (Recruitment Section), U.P. East Telecom Circle, Lucknow.
4. Assistant General Manager, Bharat Sanchar Nigam Limited (BSNL), Varanasi.

Respondents

By Advocate: Sri Anil Kumar

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Applicant Shail Kumari Pandey and her son Sri Srikant Pandey have moved Original Application (O.A.) No. 138/2011 for compassionate appointment of applicant No.2.

2. Sri Kant Pandey. This O.A. has been moved with considerable delay. Therefore, a Misc. Application No.

656/2011 has also been moved for condonation of delay under Section 21 of the Administrative Tribunals Act, 1985 (in short AT Act).

3. Respondents has filed their objections against this delay condonation application through their counsel Sri Anil Kumar.

4. Heard Sri Jaswant Singh advocate for applicant and Sri Anil Kumar advocate for respondents on the limited question of condonation of delay.

5. Late Markandey Pandey, father of the applicant No. 2 Sri Sri Kant Pandey was working on the post of Assistant Clerk in the office of Mahaprabandhak Door Sanchar Nigam Limited (BSNL) at District Varanasi who died in harness on 26.11.1995 leaving behind two sons and two daughters along with his widow Smt. Shail Kumari Pandey (applicant No.1). Applicant No. 2 Srikant Pandey is the eldest son of late Markandey Pandey but it is said that at the time of death of his father, applicant No. 2 was minor. Smt. Shail Kumari Pandey was allegedly sick and was not in a position to perform the job. Therefore, she said to have moved an application on 4.9.1997 (Annexure No. MA-1 with Misc. Application No. 1999/2017) saying that the job should be given to her eldest son as soon as he attains majority. Incidentally, this document has been denied by the respondents

saying that no such application was ever given by Shail Kumar Pandey before respondents.

6. As soon as applicant No. 2 Srikant Pandey attained majority, an application for compassionate appointment under dying in harness rules was moved on 19.1.2004 (Annexure -4 to the O.A.). This application was dismissed vide order dated 28.6.2006 which is available on record as Annexure No. 1 to the O.A. This application was primarily dismissed on the ground that family had been managing the domestic affairs for last 10 years. Therefore, the committee did not find it fit to give appointment to applicant No. 2 on compassionate ground.

7. Learned counsel for respondents has argued that this O.A. has been filed in the year 2011 with considerable delay and that no reasonable cause has been shown for this delay. Therefore, the delay condonation application should be dismissed.

8. There is no doubt that this O.A. has been filed with considerable delay but it is pertinent to point out that in the year 1995 when late Markandey Pandey died, applicant No. 2 was merely around 10 years of age. Obviously, he could not have been considered for compassionate appointment in view of scheme of compassionate appointment which provides that lower age limit cannot be relaxed below 18 years age. As soon

as applicant became 18 years of age, he moved an application for compassionate appointment as is evident from the rejection order dated 28.6.2006 passed by the then Assistant Director General (Pers. IV) BSNL Corporate Office, New Delhi. This order was passed in the year 2006. Therefore, it is evident that applicant could not have filed this O.A. prior to this date. Unfortunately, it appears that a wrong legal advice was given to the applicant and therefore, instead of invoking jurisdiction of this Tribunal, he appears to have filed a civil suit in District Court, which subsequently was dismissed on 3.9.2010 as withdrawn with liberty to seek appropriate relief and thereafter, he filed the present O.A. in the year 2011.

9. Learned counsel for respondents has repeatedly stressed that in view of this considerable delay, no relief can be granted to the applicant. Whether relief can be granted to the applicant or not, can only be seen at the time of final disposal of O.A. This Misc. Application is merely filed for condonation of delay.

10. Argument that stated application dated 4.9.1997 (Annexure No. MA-1 with Misc. Application No. 1999/2017) allegedly filed before G.M. is a forgery cannot also be taken into consideration at this stage. This application merely says that Shail Kumari wanted a job for her son and not for her. This application has nothing

to do with the delay. Shail Kumari has right not to seek appointment for herself. May be she was not well as stated by her counsel or may be she did not feel competent enough to discharge the duties of the department or may be Shail Kumari wanted job for her son instead of herself. These questions , even if pertinent, can only be taken into consideration at the time of final disposal of the O.A.

11. The fact that applicant No. 2 Srikant Pandey was merely 10 years of age at the time of death of his father and that attained majority in the year 2004 is an important fact, which cannot be brushed aside at this stage. His application for compassionate appointment was dismissed in the year 2006. Thereafter, unfortunately , he filed a civil suit in District Court. All these things indicate that despite the delay, applicant No. 2 is more of a victim of circumstances. Condonation of delay does not mean that applicant eventually would be entitled for compassionate appointment. Condonation of delay merely means that he will have right to contest this O.A. on merit. All the questions of competence raised against the applicant No. 2 can be considered at the time of final disposal of O.A.

12. This Tribunal is of the view that applicant must be allowed to contest his case on merit. Accordingly, delay condonation application is allowed. Delay is condoned.

13. Let counter reply, if not already filed be filed within 6 weeks. Rejoinder reply be filed within one week thereafter.

14. Applicant has filed this O.A. against 4 persons. Secretary, Ministry of Communication and Information Technology (Department of Telecommunication), New Delhi is the first respondent. BSNL is a corporate body and it is not necessary to include Secretary, Ministry of Communication and Information Technology (Department of Telecommunication), New Delhi as a respondent. Applicant is directed to delete Secretary, Ministry of Communication and Information Technology (Department of Telecommunication), New Delhi from the array of respondent, modify respondent No. 1 and re-number the array of respondents.

14. List this case on 3.5.2019.

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-

