

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the **12th** day of **March**, 2019

Present :

Hon'ble Mr. Rakesh Sagar Jain, Member-J

Original Application No.331/00109/2018

Smt. Lal Munni Devi, aged about 49 years, Wife of Late Kanhai Ram, Resident of House No.125/14A Rajapur, Allahabad, District-Allahabad.

.....Applicant.

By Advocate –Shri Moti Lal Chauhan

V E R S U S

1. Chief General Manager Telecom B.S.N.L. East Uttar Pradesh Zone Lucknow 221001 through its Circle High Power Committee.
2. Assistant General Manager (Recruitment) B.S.N.L. Office of the Chief General Manager Telecom. East Uttar, Zone Lucknow 226001.
3. Assistant General Manager (H.R.) BSNL Office of the General Manager Telecommunication, District Allahabad 211001.

..... Respondents

By Advocate : Shri Arvind Singh

O R D E R

The present O.A. has been filed by applicant Smt. Lal Munni Devi under section 19 of the Central Administrative Act, 1985 seeking the following reliefs:

- "(i) ***Quash the order dated 16.12.2017 as letter no. Recruitment/M-42/PG Status/10/IX/2017-18/93 dated 16.12.2017 passed by respondent No.1 and 2 and also quash the order dated 23.12.2017 as letter no. G.M.T.***

Alld./Amala/Anukampa/Lal Munni Devi/24 dated 23.12.2017 passed by respondent No.3 thereby the compassionate ground appointment of applicant has been rejected by the respondents.

- (ii) Issue any direction or order commanding the respondents and its Circle High Power Committee to reconsider the matter of applicant and to give compassionate ground appointment to the applicant on the ground of compassion weightage point as per rules and according to compassionate ground appointment Guidelines dated 27.06.2007.***
- (iii) Grant any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.***
- (iv) Grant award the cost of the original application in favour of the applicant."***

2. Case of applicant is that on death of her husband Kanhai Ram on 20.09.2012 while working in respondent-department, she filed an application seeking appointment on compassionate basis since she along with her 2 major children who were studying and 2 minor having financial problems and no source of income were unable to maintain themselves. On 20.10.2016, applicant was informed by written communication that due to limited vacancy, her appointment could not be recommended though obtaining 55 marks or entertains in session year 2017-2018. Thereafter, vide letter dated 23.12.2017 by respondent No.3 along with letter dated 16.12.2017 of respondent No. 2 whereby her application was taken up on three occasions and was rejected on the ground of limited vacancy appointment and so, it is not possible for further consideration. Applicant has challenged the impugned orders on a number of grounds and relied upon Hari Ram v/s FCI, 2009 (6) ADJ 90 in support of her argument that as per the said judgment, the consideration of her applicant cannot be limited to three years/occasions. Hence the present O.A.

3. In the counter affidavit, respondents have averred that case of applicant was not recommended in view of the guidelines No. 273 18.2013/CGA/P/P-IV dated 01.10.2014 which is in terms of DOPT's OM No. 14014/6/94 Estt (D) dated 09.10.1998 (Annexure-'A').

4. The main ground argued by learned counsel for applicant is the case of applicant was rejected in violation of the law laid down by Hon'ble High Court, Allahabad in Hari Ram v/s FCI, 2009 (6) ADJ 90. So, the question is whether the applicant can be limited for consideration to three occasions.

5. The settled law with regard to the compassionate appointment is that the applicant does not have any right for such appointment, but he is to be considered fairly in accordance with the scheme/rule for compassionate appointment formulated by Government. In the case of Bhawani Prasad Sonkar vs. Union of India and others reported in (2011) 4 SCC 209, it was laid down by Hon'ble Apex Court as under:-

"19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on

account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be. (iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

6. As per, the respondents, the application was considered for a maximum time of 3 occasions and since limited vacancies were available, case of applicant could not be accepted which stand of respondents as per learned counsel for the applicant is contrary to the law laid down by the Hon'ble High Court, Allahabad in Hari Ram v/s FCI, 2009 (6) ADJ 90.

7. In the said case of Hari Ram (supra), where the application for compassionate appointment could be kept for consideration for a maximum time of three years was set aside by the Hon'ble High Court by holding that:

"In my opinion the prescription of maximum of three after verification by the Prescribed Committee of the penurious condition of the dependents of the deceased is highly irrational and unreasonable. The compassionate appointment should not kept in the realm of a chance and to become a gaming exercise subject to availability of vacancies and the maximum number of years. It should be based on human and sympathetic consideration to the family of the deceased employee. Each case should be reviewed on its own merit and consideration should not be allowed to any number of years. If the family continues to be under financial distress,

there should be no limit of maximum of years for which an application may be considered.

20. The writ petition is allowed. The instructions contained in the Office Memorandum dated 5th May, 2003 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India fixing time limit of three for offering compassionate appointment is declared to be irrational, arbitrary, unreasonable and violative of Articles 14 and 6 of the Constitution of India. The order of the Executive Director, North Zone, Food Corporation of India dated 5.10.2007 is quashed. The respondents are directed to consider the petitioner's case for appointment afresh without considering the maximum limit of the number of years for which consideration may be made, taking into account the extreme poverty in which the family is living and also give special consideration for the disability of the petitioner in seeking employment to save his family."

8. However, learned counsel for the respondents submitted that judgment in Hari Ram (supra) was set aside by Hon'ble High Court, Allahabad in Special Appeal No.916 of 2009 vide judgment dated 31.05.2018 titled Food Corporation of India through Executive Director and others Vs. Hari Ram. In the said case, overruling the judgment of Hari Ram (supra), Hon'ble High Court has held that :-

"..... Court has recorded finding to the effect that Court will not ordinarily interfere with such policy of fixing time limit unless it is ex facie arbitrary and unreasonable. In interview maximum limit of 3 years, does not appear to be unreasonable considering objective of providing compassionate appointment hence we do not find ourselves in argument with the view taken by learned Single Judge.

We may point out that in Umesh Kumar Nagpal v. State of Haryana and Others (1994) 4 SCC 138, while considering object of compassionate appointment to enable family to come out of certain crisis occurred on account of death of bread-earner in harness, Court held that principle behind compassionate appointment is bad conditions of deceased family only. Since, it is an

appointment against general rule of direct recruitment, caution and care has to be taken that only in genuine cases appointment should be offered, more especially in the circumstances when quota is only 5 percent to the vacancies available under direct recruitment category.

On the question of interference of Court regarding fixation of cut-off date and inference in the policy decision of Government and Department, settled legal position is that Courts are not to decide as to what should be cut-off date and as to what should be time limit for a particular benefit to be offered under a particular scheme."

9. In view of the facts and circumstances of the case as well as law laid down by the Division Bench of Hon'ble High Court, Allahabad in Food Corporation of India (supra), I am of the opinion that there is no merit in the O.A., which is accordingly dismissed. No order as to costs.

Member-J

RKM/