

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 800 of 2011

Dated: This the 12th day of March 2019.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Arun Kumar Sharma aged about 32 years, S/o Late Brij Pal Sharma,
R/o 219/64, New Sarvodaya Colony, Meerut, District Meerut.

.....Applicant

By Advocate: Shri Abhitab Kumar Tiwari, Shri S.M. Shukla

Shri R.N. Singh, Shri L.M Singh, Shri P.S. Chauhan.

Versus

1. Union of India, through the Secretary, Department of Telecom, Government of India, New Delhi.
2. The Deputy Director General (Establishment), Bharat Sanchar Nigam Ltd., New Delhi.
3. The Assistant Director Telecom (Rect.), office of the Chief General Manager (Rect. Sec.) BSNL, (U.P) West, Telecom Circle, MDA Building 1st Floor, Meerut.
4. The Chief General Manager, Bharat Sanchar Nigam Ltd., (U.P) West Telecom Circle, Meerut.
5. The Assistant General Manager (HR-2), Office of the Chief General Manager, Bharat Sanchar Nigam Ltd., (U.P), West, Telecom Circle, Meerut.
6. The Executive Engineer (Civil), Bharat Sanchar Nigam Ltd., Civil Division, Meerut.

.....Respondents

By Advocate: Shri D.S. Shukla

ORDER

1. The O.A. has been remanded back to the Tribunal by the Hon'ble High Court with the direction that "Matter is remanded to Tribunal to look into the merits of matter considering question, whether petitioner was rightly awarded marks to judge his

contingency or not and thereafter appropriate order in accordance with law."

2. The dispute relates to appointment of applicant Arun Kumar Sharma on compassionate ground due to death of his father Brij Pal Sharma who while working with respondent-department died on 04.03.2003 in-harness for which he filed the application in prescribed form on 09.07.2003. Petitioner limited case is that while rejecting his application he has been awarded 54 marks whereas the proper marks to be awarded to him are to be 67.
3. Petitioner case is that in Weightage Point System for assessment of Indigent Condition, he has been awarded 3 marks whereas the correct marks to be awarded to him are 7 under the Item No. 5 (Terminal benefits). In this respect, learned counsel for applicant submitted that the house belonging to his father was mortgaged in 2004 for Rs. 4 lakhs which has been wrongly included in the calculation made by respondents in aforementioned Item No. 5 (Terminal Benefits) and therefore the points awarded are incorrect on this count.
4. On the other hand, learned counsel for respondents while not disputing the fact that addition of Rs. 4 lakhs in Item No. 5 (Terminal Benefits) is incorrect, submitted that that the government servant i.e. Brij Pal Sharma died in the year 2003. Learned counsel further submitted that, as per, the applicant, at the time of the death of Brij Pal Sharma in the year 2003 had the self owned accommodation which was mortgaged in the year 2004. The corporation has to see the condition of the deceased employee's family at the time of his death and award the point as per the Scheme framed by the Corporation. As per the Scheme, the points to be awarded in respect of Item No. 6 (Accommodation) are: Family living in rented accommodation = 10 points and Family living in own house = Nil points. It has been further submitted by learned counsel for

respondents that the points awarded in respect of Item No. 6 are 10 but the same are to be corrected to Nil since at the time of death of Brij Pal Sharma, the family was living in own house and submits that necessary orders be given, as per, directions of Hon'ble High Court.

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. So, for the purpose of considering the application for compassionate appointment, the respondents are to see the financial condition, as per, the Scheme of the Corporation at the time of the death of the deceased.

7. In the present case, as per, aforementioned directions, it is to be seen whether applicant was rightly awarded points to judge his contingency at the time of death of his father. Looking to the facts of the case, it is apparent that the respondents have not rightly awarded the points to the applicant as detailed below:

A. Item No. 5 (Terminal benefits): Rs. 4 lakhs received for mortgaging the house of deceased in 2004 has been included in sum of terminal benefit, which cannot be done, in any manner, whatsoever since the sum is not part of terminal benefits. Therefore, the respondents would correct the points awarded by deducting the amount of Rs. 4 lakhs from the calculation of Terminal benefits.

B. Item No. 6 (Accommodation): Respondents have given 10 points on the ground that deceased or his family did not own any residential house. The appraisal of the condition of deceased and his family is to be made with reference to the situation existing at the time of death of concerned Government Official. In the present case, the deceased at the time of his death in 2003 owed a residential house which was mortgaged in the year 2004. Therefore, the points given to applicant on this count are

palpably wrong. Respondents have given 10 points on item pertaining to 'Accommodation' but ought to have given Nil points since deceased was having a residential house in his name at the time of his death.

8. In the circumstances of the case as discussed above, respondents went wrong on the allotment of points with regard to the aforementioned Items (A and B). Therefore, in view of the above position, the matter is remanded back to the respondents to reconsider and re-calculate the points to be awarded to the applicant for purposes of compassionate appointment and dispose of the application within a period of two months from the date of receipt of copy of this order by way of a speaking and reasoned order and the same be intimated to the applicant. O.A. is accordingly disposed of. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-