

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/01423/2017

**Reserved on : 19.12.2018
Pronounced on : 08.01.2019**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Ajay Kumar Sharma, aged 36 years, son of Late Kamlesh Kumar Sharma (XEN Civil Wing-612), resident of Village and Post Office Pushp Nagar, Tehsil Martingang, District Ajamgarh, Pin-223226 (Uttar Pradesh), Group-C.

....APPLICANT

(Present: Mr. G.P. Vashisht, Advocate)

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Harish Chander Mathur Lane, Janpath, New Delhi, 110001, through its Chairman-cum-Managing Director.
2. The Chief General Manager, Bharat Sanchar Nigam Limited, Sector 34-A, Chandigarh.
3. The Chief Engineer (Civil), Bharat Sanchar Nigam Limited (BSNL), Punjab Zone, Telephone Exchange Building, Sector 17, Chandigarh.
4. The Executive Engineer (Civil), Bharat Sanchar Nigam Limited, Civil Division, Ferozepur.

....RESPONDENTS

(Present: Mr. Rajesh Gupta, Advocate.)

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER (A) :-

1. The father of the applicant was working as an Executive Engineer (Civil) in Bharat Sanchar Nigam Limited (BSNL), Civil Division, Ferozepur. He expired on 16.10.2006, after serving 30 years. The deceased employee is survived by his wife two sons and one daughter. The children of the deceased employee were unmarried and dependent on him. The applicant in the OA applied for compassionate appointment. The applicant has a Post Graduate Diploma in Computer Applications and is also a Graduate. Applicant made an application for compassionate appointment with all requisite documents in the year 2006. On approaching the competent authority, he was informed that the case would be considered as per the Rule position.
2. On 29.05.2017, applicant sought information under the RTI Act regarding the status of his application. Applicant was informed that the case was considered by the Circle High Power Committee, chaired by the CGMT, Punjab Circle and applicant was not recommended as he had a low score of 29 points against a minimum of 55 points prescribed. Applicant submits that he has received no information regarding his non-recommendation. He also alleges that the case was not considered as per Weightage Point System for Assessment of indigent condition.
3. Prayer of the applicant is for quashing the Annexure A-8 passed by the second respondent vide which the claim of the

applicant for appointment on compassionate ground has been rejected. The second prayer of the applicant is for considering the case of the compassionate appointment as per instruction dated 09.10.1998 (Annexure A-9).

4. The respondents argue that the case of the applicant alongwith accompanying documents was placed before the Circle High Power Committee and meeting held on 22.06.2010. The case of the applicant alongwith other cases were considered in the light of DoPT guidelines and compassionate appointment policy guidelines of respondent-department, and was not recommended as he did not score the required minimum score of 55 points on the parameters for compassionate appointment.
5. The applicant cites the judgment in Civil Appeal No.260 of 2008 passed by the Hon'ble Apex Court, in support of his contention. In the said order, the Hon'ble Apex Court draws our attention in the case of **Sushma Gosain & Ors. V. Union of India & Ors., (1989) 4 SCC 468**, wherein the court had held that it is improper to keep such case pending for years. The applicant's case is not one for which was kept pending but rejected for not attaining the benchmark 55 points. In **MGB Gramin Bank v. Chakrawarti Singh, 2013 (4) S.C.T. 541**, the Hon'ble Apex Court had held that the court should not stretch the provisions by a liberal interpretation beyond permissible limits on humanitarian grounds. While laying down the criteria to be born in mind for compassionate appointment the Hon'ble Apex Court in the

above judgment had clearly laid down, that the compassionate appointment cannot be made in violation of rules and regulation issued by the Government or a Public Authority. In this case, the BSNL on the lines of the Govt. of India orders and instructions have laid down a benchmark of 55 points. The court had also laid down that compassionate appointment cannot be granted as a matter of course but only by way of mitigating the financial distress of the deceased in the matter under consideration. The applicant's father during the time of demise was working as an Group-A, Executive Engineer. The applicant has managed without compassionate appointment from 2006 to 2017, and then he filed the OA for compassionate appointment. Hence, the most crucial period post death of the applicant's father has been crossed and the immediate indigency condition also not in the picture. The citation therefore, does not come to the aid of the applicant.

6. Heard the learned counsel for the applicant and respondents perused the written submission.
7. The respondents deny the allegation of the application that he was not considered for appointment on the ground that some persons belonging to SC category had to be accommodated. In the weightage point system, there is no provision for allotting marks on the basis of SC / ST category. Applicant had obtained a copy of the minutes of High Power Committee and placed it on record as Annexure A-3, which was perused. The High Power Committee considered the case

of 42 persons for compassionate appointment. Of 42 cases, including the applicant 18 cases of persons, who had scored 55 and more points, were recommended for compassionate appointment. Applicant's allegation that the SC candidates were favoured is not borne out by facts. We find that SC applicants at serial no.2, 5 to 7, 11 & 20 were not recommended. 11 OC candidates, 1 OBC candidate and 6 SC candidates were recommended by the High Power Committee to the BSNL Corporate Office. Hence, the contention of the applicant that SC's were favoured is not borne out by facts and the minutes of the High Power Committee. Whereas 11 OC candidates have been recommended, in comparison only 6 SC candidates have been recommended.

8. From the above facts, it does not appear any favours were extended to the SC candidates. We perused the case of the applicant. The applicant had earned only 29 points under the Weightage Point System, whereas a minimum of 55 points was required to be eligible for consideration for compassionate appointment. Despite this, the third respondent recommended the case of the applicant. This may be on the ground that the applicant's father was an Executive Engineer and the official to whom applicant's recommendation was made was the Superintendent Engineer. While considering the case for compassionate appointment the indigent condition of compassionate applicant would be a logical and reasonable way of assessing the viability of each case for appointment. Whereas, the applicant himself admits that his

father had expired in 2006, he seeks information about the status of his compassionate appointment under RTI Act in May 2017. Applicant has slept over the matter for 11 years. The terms and conditions of the compassionate appointment are laid down in the scheme issued by the DoPT vide OM dated 09.10.1998 (Annexure A-9) produced by the applicant. In order to ensure uniformity in the assessment of indigent condition of the family of the deceased, a Weightage Point System was introduced. The Weightage Point System has not changed the criteria to be considered for assessing the indigency. As a matter of facts the indigency has only been calibrated into criteria required to be considered and assessed, before a case is considered fit to extend compassion for appointment. Thus there is only a qualitative change in making the weightage point system more objective as observed by the Ahmedabad Bench of the Tribunal in OA No.377/2009. The weightage point system introduced a yardstick for measurement of indigency. It has been merely introduction of a Weightage Point System has introduced an openers in a proper numerical assessment of indigency on the basis of various proclaimed parameters. Whereas the 55 points is cut off being considered for compassionate ground, any persons obtaining even 55 points need not necessarily be offered an appointment as there may be persons in more indigent circumstances, and who have attained more points, making them eligible for appointment. Whereas all the persons who died in service have a right to be considered for

compassionate appointment, appointment can only be made to those who are most indigent and come under the 5% quota fixed for compassionate appointment. Those who get the maximum number of points under the Weightage Assessment System would find a place for appointment. So even if the applicant's contention that he deserves 55 points is accepted, we observe that persons given appointment in the select list where the applicant was also considered, had got 72, 71, 70, 64, 60 etc. marks, and the applicant therefore, does not have a chance of being selected. Further, we also note that above dependants who have been offered compassionate appointment are dependants of official lower in rank, than the applicant's father, and hence more indigent applicant's father was an Executive Engineer and a middle management officer.

9. It is not a case where different weightage system was applied to those appointed and a different weightage system was applied to the applicant. The weightage system was drawn up on the basis of information submitted by the compassionate appointee candidates in the prescribed and identical application form. The weightage system also ensure that a uniform yardstick will apply when compassionate appointment in public service is considered should be made strictly on the basis of application made and the comparative merit drawn up. We also do not note any violation of Articles 14 & 16 of the Constitution of India, as the same parameter & criteria has been applied to all applicants compassionate

appointment is by now a well recognised contingency in which rules & criteria have been carved out as exceptions to the general rule of recruitment to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service. Applicant in this OA appears to have slept over the matter of his compassionate appointment from 2006 to 2017. It is only when he files a RTI he is alerted to file the matter in the Tribunal. Compassionate appointment can neither be claimed as a matter of right, nor be granted, unless the applicant meets the conditions and criteria laid down for appointment under the scheme. The fact that the family was able to tide over the financial difficulties due to the death of the earning member of the family for 11 years post death shows that the family was able to tide over the sudden crisis of death of breadwinner. The applicant having slept over the matter and cannot now revive his claim for appointment. The request for appointment on compassionate ground should be proximate to the time of the death of the bread earner.

10. The Hon'ble Apex Court judgments in **Eastern Coalfields Ltd. v. Anil Badyakar**, (2009) 13 SCC 112, adequately covered the delay in approaching the authorities for such appointment, it was held as follows:-

"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on 12.9.1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply

for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable."

This was also considered by Apex Court in **Union of India v. Bhagwan Singh**.

In **Haryana SEB v. Naresh Tanwar**, the Apex Court held that:

"9. It has been indicated in the decision of Umesh Kumar Nagpal¹ that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case², it has been also indicated that the very object of appointment of department of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

In **State of U.P. v. Paras Nath** the Court has held that:

"5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

The purpose of providing compassionate appointment to a dependent of a government servant dying in harness is to mitigate the hardship of unexpected death. The purpose is to

provide immediate financial assistance to the family. None of these considerations operate if the matter is taken up after 17 years.

11. The case of applicant in this OA is not a case of financial indigency, but one of seeking employment with the respondent-department. It was not a financial crisis of the family, as the financial need is long past. As the financial need and compelling circumstances are long past and the family survived for a substantial period of 17 years after demise of employee, the ground of indigency does not hold. Further the applicant not having secured the benchmark of 55 points is a clear indication that his case for appointment is not merited. Compassionate appointment cannot be claimed and offered, after a lapse of time when the crisis is long over.
12. Both on grounds of lack of merit of applicant and delay the OA is devoid of merit, and is dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh
Dated: 08.01.2019

'rishi'