

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/138/2016

Date of Reserve: 01.02.2019
Date of Order: 01.03.2019

CORAM:
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Namita Dhal, aged about 44 years, S/o. Late Subrat Mohapatra, at present residing Near South Point Nursing Home, C/o. Fanidra Kumar Mallick, At-Rajabagicha, PO-Telenga Bazar, Town/Dist-Cuttack.

...Applicant

By the Advocate(s)-M/s.S.Behera
A.Mishra

-VERSUS-

Union of India represented through:

1. The Secretary, Government of India, Ministry of Communications & Information Technology, Department of telecommunication-42, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 001.
2. The Chief General Manager, BSNL, B&E Cell, Room No.325 (3rd floor), Orissa Circle, Bhubaneswar-761 001, District-Khurda.
3. General Manager, Telecom District, BSNL, Cuttack, At/PO-Arunodaya Market, District-Cuttack.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty
Mr.K.C.Kanungo

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant's husband while working as Junior Telecom Officer under the Respondent-BSNL, untimely passed away on 21.09.2001 leaving behind the applicant, 4 years old son and his parents. Applicant submitted an application dated 6.8.2002 seeking compassionate appointment. Her request was turned down vide communication dated 19.10.2012 as endorsed to the applicant vide Endt. No. E-6(15)/106 dated 3.11.2012 (A/3), inter alia on the ground that taking into account the assets, liabilities of the family of the deceased official, support arrangements, involved time period, long term commitment/responsibility, over all indigent condition and other required

parameters, the High power Committee (HPC) did not find the applicant fit for Compassionate Ground Appointment (CAG). This consideration of the HPC is based on DoP&T guidelines issued vide O.M.No.14014/6/1994(D) dated 09.10.1998 and BSNL Corporate Office guidelines on Weightage Point System (SPG) issued vide No.273-18/2005.IV dated 27.06.2007. Challenging the legality and validity of the communication dated 19.12.2012 (A/3) and with a prayer for direction to respondent-BSNL to reconsider her case for compassionate appointment, the applicant had approached this Tribunal in O.A.No.963 of 2012. This Tribunal, while disposing of the said O.A. in its order dated 11.02.2015 observed that since the applicant's case has been rejected once, the same needs further consideration twice more in terms of the DOP&T instruction dated 05.05.2003 and accordingly, Respondent Nos. 2 and 3 were directed to consider the case of the applicant twice more against the vacancy meant for appointment under compassionate ground in the next CRC whenever convened and communicate the result of such consideration in a reasoned order to the applicant. Complying with the aforesaid direction of this Tribunal, the respondent-BSNL passed a speaking order dated 9.10.2015 (A/5) rejecting the request of the applicant for compassionate appointment. In the fitness of things, the relevant part of the order dated 9.10.2015 is extracted hereunder:

"BNSL since its inception on 01.10.2000 follows the Compassionate Ground Appointment policy based on Govt. Of India instructions issued by DoPT, vide its OM No.14014/94/6/Estt.(D) dated 09.10.1998. The main objective of policy is to grant appointment on compassionate grounds to a dependent family members of a Govt. Servant who died in harness or retired on medical grounds thereby leaving his family in penury and without any means of livelihood to relieve the family of the Govt., servant concerned from financial destitution and to help him get over the emergency. The number of vacancies is limited to CGA quota and is offered to the candidate found more needy.

The case of Smt.Namita Dhal for CGA was placed before the CHPC on 24.03.2010 on completion of all departmental formalities. Keeping in view the assets/liabilities of the family of the deceased official, support arrangement, constitution of family and overall assessment of the condition of the family, the competent authority of BSNL decided that the case is not found fit for Compassionate Ground Appointment and rejected the request of the applicant for Compassionate Ground under provisions of the scheme laid down in DoPT O.N.No.14014/6/94-Estt.(D) dated 09.10.1998 and BSNL weightage point system guidelines vide No.273-18/2005-pers. IV dated 27.06.2007. Fact of rejection of request has already been intimated to her vide GMTD Cuttack letter No.E-6(15)/106 dated 03.11.2012.

However, as per the order of Hon'ble CAT Cuttack dated 11.02.2015 in O.A.No.963/12 the request for CGA was placed before the CHPC of BSNL, Odisha Circle held from 02.07.2015 to 10.07.2015. The following points were taken into account to judge the indigent financial condition of the family of the deceased employ (i) Number of dependents, (ii)left out service of the deceased employee (iii)Monthly basic pension paid to the spouse/dependent family member (iv) Total terminal benefits paid (v) Income of the family from other source except pension, (vi) Accommodation – family living in their own house/rented house, (vii)Belated request if any. Keeping in view the assets/liabilities of the family of the deceased official, support arrangement, constitution of family and overall assessment of the condition of the family, the High Power Committee of BSNL, Odisha Circle, Bhubaneswar found that case is below the criteria required for CGA and decided that the case is not fit for Compassionate Ground Appointment and rejected the request of the applicant for CGA under provisions of scheme laid down in DoPT O.M.No.14014/6/94-Estt.(D) dated 09.10.1998 and BSNL weightage point system guidelines vide 273-18/2005-pers. IV dated 27.06.2007 and No.273-18/2013/CGA/P-IV dated 01.10.2004.

Further the settled legal proposition on Compassionate Ground Appointment has been pronounced by the Hon'ble Supreme Court of India in various cases time and again that appointment under CGA cannot be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances, i.e., eligibility and financial condition etc. The same stand has been reiterated by the Hon'ble Apex Court in a recent case in CA No.634/2013 arising out of SLP (C) No.13957/2010 on dated 7.8.2013.

In view of the above, your request for appointment under compassionate ground is rejected by the competent authority of BSNL".

2. Hence, this Original Application praying for the following reliefs:

"Under the circumstances, it is humbly prayed therefore that this Hon'ble Tribunal may graciously be pleaded to quash the order of rejection dated 09.10.2015 under Annexure-A/5 issued by the Respondent No.2 for appointment of the applicant under compassionate ground.

And further be pleased to direct the Respondents to reconsider the case of the applicant for appointment under compassionate ground taking into account the death of her husband i.e., on 212.09.2001 and the rule was then in vogue at the point of time.

And further be pleased to direct the Respondents to give all consequential service benefits to the applicant.

Or pass any other order/orders as this Hon'ble tribunal may think fit and proper int he facts & circumstances of the case may be passed.

And allowed this Original Application with cost".

3. The grounds taken by the applicant in support of her claims are that since her husband passed away in the year 2001, the rejection of request for compassionate appointment after a lapse of 14 years vide order dated 9.10.2015 is *non est* in the eye of law. Secondly, the applicant has urged that the Weightage point System Guidelines in BSNL came into force with effect from the date of issue of the said guidelines, i.e., on 27.06.2007. According to applicant, the date of death of her husband in the year 2001 being the crucial date when the cause of action for compassionate appointment arose, it was imperative on the part of the respondent-BSNL to adhere to the rules/instructions then in force governing compassionate appointment. In other words, it is the categorical submission of the applicant that the guidelines the guidelines issued by the BSNL on 27.06.2007 ought not to have been applied while considering her case for compassionate appointment. In the end, the applicant has submitted that since the family is in a state of penury deserving compassionate appointment.

4. Opposing the prayer of the applicant, respondent-BSNL have filed a detailed counter. They have submitted that after the death of her husband in the year 2001, all the dues like, DCRG, GPF, CGEIS, Leave Encashment, Welfare Assistance, LIC and monthly pension were released in favour of the applicant. Thereafter the applicant applied for compassionate appointment on 29.05.2002 and on completion of departmental formalities, the same was placed before the Circle High Power Committee Meeting held on 24.03.2010. The recommendation of the Committee was submitted to BSNL Corporate Office, New Delhi for further examination and consideration. After taking into account the assets, liabilities of the deceased officer, support arrangements, involved time period, long term commitment/responsibility, overall indigent condition and other required parameters, the High Power Committee of BSNL Corporate Office, New Delhi regretted the request of the applicant for compassionate appointment vide order dated 19.10.2012. The applicant challenged this rejection order before this Tribunal in O.A.No.963 of 2012 and in pursuance of direction of this Tribunal in disposing of the said O.A. vide order dated 11.02.2015, the case of the applicant was placed before the Circle High Power Committee (CHPC), Odisha Circle for consideration and taking into consideration all aspects of the matter, the CHPC rejected the request for compassionate appointment vide communication dated 09.10.2015. The case of the applicant was further placed before the CHPC for the third time and her case was also rejected and the rejection letter dated 24.09.2016 was communicated to the applicant. Respondents have pointed out that the applicability of BSNL Weightage Point System, 2007 was the subject matter of consideration by this Tribunal in the earlier O.A.No.963/2012 filed by the applicant to which a counter-reply had been filed. This Tribunal while noting

the same, disposed of the said O.A. with direction to consider the case of the applicant twice more. Respondents have pointed out that the DOP&T OM dated 09.10.1998 is still in vogue and the case of the applicant has been considered in the light of the provisions laid down therein. According to them, the Weightage Point System is nothing but an introduction of a guidelines within the scope of DOP&T guidelines of 1998 in order to bring uniformity in the assessment of indigent condition of the family. Therefore, it is the case of the respondent-BSNL that WPS-2007 is a part and parcel of DOP&T Scheme of 1998. Respondents have pointed out that the applicant in the assessment scored 47 points which is below the benchmark of 55 points and on this background, her request for compassionate appointment was rejected. Respondents have brought out in the counter the DOP&T guidelines dated 09.10.1998 vis-a-vis the Weightage Point System guidelines dated 27.06.2007 read with the guidelines dated 01.10.2014 and the marks assigned to the applicant against various classifications/attributes made therein. They have submitted that their action is within the four corners of the rules and therefore, the O.A. being devoid of merit is liable to be rejected.

5. Heard the learned counsels for the parties and perused the records. Also perused the written notes of submissions filed by the respective parties along with citations.
6. From the pleadings of the parties, the sole point needs to be determined is whether the respondent-BSNL were justified in considering the request for compassionate appointment of the applicant within the scope and meaning of BSNL WPS of 2007 instead of guidelines issued vide DOP&T OM dated 09.10.1998 since the cause of action arose in the year 2001 when her husband had passed away.

7. At this juncture, the Tribunal feels it proper to delve into the provisions of Section-20 and 21 of the A.T.Act, 1985, the relevant portions of which are as follows:

"20. Applications not to be admitted unless other remedies exhausted – (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to dredressal of grievances.

(2) For the purpose of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

- (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

Xxx xx xx xxx

21. **Limitation** – (1) A Tribunal shall not admit an application, -

- (a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section(2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months".

Xx xx xx

8. From the above, it is quite clear that the applicant's application for compassionate appointment made in the year 2002 was not considered by the respondent-BSNL within the time as stipulated in Section-21 (1)(b) above and in such an eventuality, as she should have approached this Tribunal within one year from the date of expiry of the period of six months of preferring such application for compassionate appointment. In other words, applicant's application having been made on 29.05.2002, she should have approached this Tribunal by January, 2003. For reasons best known, she remained silent and rose from the slumber when the respondents rejected her request for compassionate appointment and communicated the same vide letter dated 19.10.2012. Secondly, the applicability of BSNL Weightage Point System guidelines of 2007 was the subject matter of challenge in O.A.No.963/2012 filed by the applicant and this Tribunal taking note of the same, directed consideration of applicant's case for twice more. At this stage it is profitable to note that the object of providing compassionate is to relieve the family of sudden jerk arising out of the death of the sole breadwinner in the family and in such a situation, its purpose is defeated if consideration for compassionate appointment is unduly delayed. In the instant case, as it appears, the family could survive for more than a decade after the death of the employee and although an application for compassionate appointment had been submitted by the applicant in the year 2002, the matter was not pursued and only when in the year 2012 the impugned rejection order was communicated, the applicant challenged the same before this Tribunal in O.A.No.963/2012. Therefore, the element of immediate succour to the deceased family by way of providing compassionate appointment appears to be absent. Since the applicant has failed to take timely action, the

contention that the rules as were prevalent at the time of death of her husband should have been made applicable while considering her request for compassionate appointment, does not stand to reason. This apart, the respondent-BSNL have pointed out that consequent upon third consideration, a rejection order dated 24.09.2016 was communicated to the applicant which appears to be not under challenge in this O.A. Be that as it may, since the applicant has failed to exercise her remedy in the nick of the time and only approached this Tribunal in the year 2012 challenging the impugned order of rejection dated 19.10.2012 against a cause of action that arose in the year 2002 when she submitted her, application for compassionate on 29.05.2002, her claim that since the death of her husband occurred in the year 2001 the rules governing compassionate appointment at that time should have been made applicable is improper and irrational.

9. Having regard to what has been discussed above, the Tribunal answers the point in issue by holding that the respondent-BSNL were justified in considering the request for compassionate appointment of the applicant within the scope and meaning of BSNL WPS of 2007 instead of guidelines issued vide DOP&T OM dated 09.10.1998 even if the cause of action arose in the year 2001 when her husband had passed away.

10. In view of the above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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