

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 20/320/2017

**Reserved on: 20.02.2019
Pronounced on: 21.02.2019**

Between:

K. Masthanvali, S/o. late Sri K. Lalusahab,
Aged about 30 years, R/o. H. No. 3-5B, 1-2 to 1-148,
West Bazar, Lankela Purapadu Village,
Muppala Mandal, Guntur District.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
Department of Telecommunications,
Ministry of Communications and IT,
Sanchar Bhavan, 20 Ashoka Road, New Delhi – 1.
2. The Bharat Sanchar Nigam Limited,
Rep. by its Chairman cum Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi -1.
3. The Chief General Manager,
Karnataka Telecom Circle, BSNL,
No.1, Swamy Vivekananda Road,
Halasuru, Bangalore – 560 008.
4. The General Manager Telecom District,
Bharat Sanchar Nigam Limited,
Raichur – 584 102, Karnataka.

... Respondents

Counsel for the Applicant ... Mr. B. Pavan Kumar

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC
Ms. B. Deepa, Advocate for
Mrs. P. Yasasvi, SC for BSNL

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for not considering the request of the applicant for
Compassionate appointment.

3. Brief facts of the case are that the applicant's father who worked for the respondents as Telecom Mechanic passed away on 18.6.1996 while in harness. The family pension to the mother of the applicant was granted in 2010 and that too, with the intervention of this Tribunal. Applicant on becoming major in 2005 applied for compassionate appointment which was considered in 2012 and rejected vide Impugned order dt 9.11.2015. Applicant represented for reconsidering his case on 12.5.2016 but there being no response the OA has been filed.

4. The contentions of the applicant are that the family is surviving on a very meagre family pension which was granted after 14 years of the death of the employee. Given the indigent circumstances their family is placed in, there cannot be any scope for obtaining marks less than 55.

5. Respondents state in their reply statement that compassionate recruitment is considered based on wieghtage points awarded to the prospective applicants. The minimum points to be scored is 55 and since the applicant got less than 55 his case was not considered by the High power committee constituted to select candidates on compassionate grounds. The respondents explain that there was delay in processing the family pension as the deceased employee was prone to frequent long periods of unauthorized absence and for this reason he was removed from service but reinstated later on 8.10.1986. Even after reinstatement, the deceased employee absconded for a period exceeding 6 years till his death on 18.6.1996. These developments led to delay in grant of family pension. In fact, an officer was directed to visit the family of the deceased employee to examine the request for compassionate appointment.

6. Heard both the counsel. Respondents counsel submitted written arguments. Learned counsel claimed that the family members of the applicant are living in indigent circumstances and hence the need for compassionate appointment to the applicant is of utmost need to eke out a decent living.

7(I) The impugned order issued by the respondents at para 3 brings out the fact that the deceased employee died at the age of 48 years and is survived by two dependents. Family is living in a rented house and the family pension granted is Rs.2063. Other terminal benefits released were Rs.33,000. Applicant applied for compassionate appointment on 3.8.2011. As per wieghtage points system circulated vide respondents lr. dt 27.6.2007 the marks to be awarded taking the above facts would be 60 as presented in the table given hereunder.

S.No.	Attribute	Points	Total
1	dependents	5/dependent X 2	10
2	Family pension	Rs 2063	18
3.	Years of service left	1/year X 12	12
4	Terminal benefits	Rs 33,000	10
5	Accommodation	Rented	10
6		Total	60

II. Points scored being more than 55, the case of the applicant requires consideration. When questioned as to whether there were any reduction of points due to delay in making the representation for compassionate recruitment, the learned counsel for respondents did mention that there is a reduction but could not specify as to how many marks. The reasons for submitting belated

application should also be gone into as to whether they are valid, otherwise Principles of Natural Justice will be violated. The applicant attained age of majority only in 2005 and hence applied in the said year. He could not have applied earlier. Mother was struggling for getting family pension which was granted in 2010. Without the family pension being granted, the right of the applicant to apply for compassionate appointment would have been questioned. Hence the reason for the respondents to consider the case of the applicant by the High Power Committee in 2015. It is also to be noticed that there is delay on part of the respondents to examine the request of the applicant for compassionate recruitment. To cut it short, in all fairness, delay in submitting the application is because of the circumstances he is placed in. Hence the question of any negative marking does not arise. Besides, the respondents have not indicated as to how they have arrived at the marks which are less than 55 anywhere in the reply statement. Therefore they cannot improve their reply at this stage. Honourable Supreme Court judgment in *State of Orissa and anr vs Mamata Mohanty* in CA No.1272 of 2011 reported in 2011 (3) SCC 436 in support of this argument is as under:

Para 37 – “It is a settled legal proposition that if an order is bad in its inception it does not get sanctified at a later stage. A subsequent action /development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceeding consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.”

Taking the above observation into consideration, albeit learned counsel for the respondents, on being questioned, submitted that there could be negative marking but it would be bad law to accept the same without the specific details

and there being no mention of the fact in the reply statement. Therefore based on the aforesaid facts the applicant has made out a case which fully succeeds. The action of the respondents is arbitrary and against rules.

III. Therefore, the respondents are directed as under:

- (a) To reconsider the case of the applicant for compassionate appointment based on the points he scored as per paramenters cited at para 3 of the impugned order of the respondents.
- (B) Time calendared for implementation is 3 months from the date of receipt of this order
- (C) OA is allowed accordingly, with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 21st day of February, 2019

evr