

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00063/2017

This, the 04th day of December, 2018

Reserved on 29.11.2018

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CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Pradhuman Singh S/o Late Shri Jethu Singh, aged about 24 years, R/o 12/23, Ashok Colony, Magra Punjla, Jodhpur. His father was working under Sub-Divisional Officer, West Patel Nagar, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. Manoj Bohra

VERSUS

1. Bharat Sanchar Nigam Limited, A Government of India Enterprises, Harish Chandra Mathur Land, Janpath, New Delhi-110001 through Chief Managing Director.
2. Chief General Manager, Telecom, Rajasthan Telecom Circle, C-Scheme, Sardar Patel Marg, Jaipur.
3. Assistant General Manager (Recruitment & Establishment), Telecom, Rajasthan Telecom Circle, C-Scheme, Sardar Patel Marg, Jaipur.
4. General Manager, Telecommunication, Subhash Nagar, Pal Road, Jodhpur.

RESPONDENTS

BY ADVOCATE : Mr. Kamal Dave

ORDER

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The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) *By an appropriate writ, order or direction, the impugned order dated 19.02.2016 (Annexure-A/1) may kindly be quashed and set aside and*
 (ii) *By an appropriate writ, order or direction, the respondents may be directed to provide appointment to the applicant on any suitable post on the ground of Compassionate Appointment in accordance with his qualification.*
 (iii) *Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.*
 (iv) *Costs of the application may kindly be awarded in favour of the applicant.”*

2. The brief facts of the case as stated by the applicant are as under:-

Applicant's father Late Shri Jethu Singh was serving as T.M. with the respondent department and he expired on 05.05.2012 leaving behind him widow namely Smt Santosh Kanwar, one daughter namely Puja and one son namely Pradhuman Singh i.e. applicant herein. After the demise of deceased employee, the respondent department contacted the family of the deceased employee and asked them to submit application for compassionate appointment. In pursuance of which, the applicant submitted his application in the prescribed proforma through proper channel on 01.06.2013 (Annexure-A/3). The applicant was also asked to submit requisite affidavit, which has also been supplied by the applicant. It has been averred by the applicant that at the time of submitting his application for appointment on compassionate grounds, he possessed the qualification of Senior Secondary and is also having a certificate of RIIT as well as National Trade Certificate. It has also been averred that at the time of death of the deceased employee, his mother was granted family pension to the tune of Rs.9005/- per month and the GPF amount of Rs.1,32,323/- have also been paid to the deceased family. He further

averred that there is no other income except the salary of his father on which the house would run. On 16.08.2013, the respondents sent a communication to the deceased employee for curing some defects and accordingly the mother of the applicant vide letter dated 17.10.2013 supplied all the requisite documents as well as application. However, on 03.12.2013, the respondents again asked some information from the applicant, which the applicant replied on 22.02.2014 and provided the same. Thereafter, the respondents considered the case of the applicant for appointment on compassionate grounds. On 19.02.2016 (Annexure-A/1), the respondents rejected the case of the applicant on the ground that he has secured only 33 points, whereas for the purpose of providing appointment on compassionate grounds, the applicant is required to get minimum 55 points in pursuance to the notification dated 27.06.2007. It is the case of the applicant that he is entitled to get more points than awarded by the respondents. According to him, he is entitled to get 58 points in pursuance of the amended guidelines dated 20.01.2010 (Annexure-A/13). It is the case of the applicant that after death of his father, his family is living in harness and in penurious condition without any means of livelihood and there is no justification on the part of the respondents for rejecting the case of the applicant for appointment on compassionate grounds. The action of the respondents is clearly an outcome of colourable exercise of power and with malafide intention. Therefore, he approached this Tribunal for the reliefs quoted above.

3. The respondents after issue of notice have filed their reply on 17.05.2017 and have stated that the instant OA preferred by the applicant is mainly on the ground that he has been awarded only 33 points while considering the indigent condition of the applicant's family on the basis of old guidelines dated 27.06.2007, which is erroneous as the amended Weightage System introduced vide order dated 20.01.2010, entitles him to get 58 points. It is further submitted by the applicant in the OA that the rejection of the case of the applicant is on failure on the part of the respondents to consider his case in consonance with the Scheme or rather defecting the very object of the scheme indicating colourable exercise of power in favour to abide by the statutory duties. In reply, the respondents denied the averments made in the OA and also submitted that the applicant has no *prima facie* case in his favour as the respondents have rightly passed the speaking and detailed order which explains the manner in which the points have been awarded to the applicant as per the Scheme dated 27.06.2007. It has been further submitted that it is the case of the applicant that his case should be considered as per the amendment brought about in the Weightage Point System vide order dated 20.01.2013 (Annexure-A/13). In this regard, it is specifically averred in the reply filed by the respondents that the said amendment Scheme is not applicable to the BSNL employees, because from perusal of the said scheme itself, it clearly discloses that the same is issued by the Department of Personnel and Training, Government of India, whereas the BSNL has its own independent Scheme under which the consideration for compassionate appointment is made for its employees. The case of the

applicant has rightly been considered in consonance with the Scheme of BSNL dated 27.06.2007, however subsequent to which the modified scheme applicable for BSNL employees came into force in the year 2016 only. It has been further averred that the applicant is rightly awarded 33 points and the scheme referred as amended Weightage Point System dated 20.01.2010 (Annexure-A/13) as submitted above is no way concerned with the BSNL employees and no benefit can be derived with reference to the said scheme. The case of the applicant has rightly been considered in accordance with the Scheme of BSNL dated 27.06.2007 and therefore, no interference is called for and the OA deserves to be dismissed.

4. Heard Shri Manoj Bohra, learned counsel for the applicant and Shri Kamal Dave, learned counsel for the respondents.
5. Learned counsel for the applicant has argued his case as per the pleadings made in the OA and further submits that the respondents have not considered the case of the applicant for compassionate appointment in accordance with the latest guidelines issued by the authority on 20.01.2010 (Annexure-A/13). The respondents ought to have considered the case of the applicant on the basis of indigent condition and acute financial crisis of the deceased family but despite of the fact that the applicant being most indigent candidate and suffering from acute financial crisis, his case was rejected. He further submitted that the respondents have only awarded 33 points to the applicant on the basis of old guideline dated 26.07.2010 (Annexure-A/12), whereas the applicant

is entitled to get 58 points in pursuance to the amendment made in the weightage point system by the authority vide order dated 20.01.2010 (Annexure-A/13). Learned counsel for the applicant further submitted that it is the duty of the respondent authority to consider the case of the applicant while applying the amended provision made in weightage point system by the authority vide letter dated 20.01.2010, but the respondents have not applied the same and considered the case of the applicant in pursuance of the old Scheme dated 27.06.2007. Since the respondents authority have not considered the case of the applicant in accordance with the rules and for this reason, the applicant could not get appointment on compassionate grounds. He further submits that the case of the applicant could not be denied on the ground of family assets and retiral benefits only received by the widow and children of the deceased Government employee. In support of his arguments, he relied upon the judgment of Hon'ble Supreme Court in the case of *Maharani Devi & Ors. Vs. Union of India & Ors*, [Civil Appeal No.3581/2009 (arising out of SLP (C) No.16263/2006)] decided on 15.05.2009 and the judgment of Hon'ble High Court of Rajasthan passed in *Mukesh Kumar Soni vs. General Manager, Punjab National Bank & Anr*, reported in 2018 (3) WLN 8 (Raj.). Learned counsel for the applicant submitted that the case of the applicant has not been rightly considered by the respondent authorities and therefore the impugned order dated 19.02.2016 (Annexure-A/1) is *per se* illegal as the same has been passed without applying the amended weightage point system dated 20.01.2010. Therefore, the impugned order deserves to be quashed and set aside.

6. Learned counsel for the respondents has argued his case as per pleadings made in the reply and has also stated that the object of the scheme for appointment on compassionate grounds is to grant appointment to a dependent family member of a BSNL employee dying in harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of BSNL employee concerned from financial destitution and to help him to get over the said emergency. As per this scheme, the family living in indigent condition and deserving immediate assistance from financial destitution is eligible for Compassionate Ground Appointment. In order to bring uniformity in assessment of indigent condition of the family for offering Compassionate Ground Appointment, Weightage Point System was issued by BSNL as per letter No.273-18/2005 Pers-IV dated 27.06.2007. As per the said scheme of the BSNL, there is a provision for awarding positive as well as negative points for appointment on compassionate grounds. Learned counsel for the respondents submitted that no negative points have been awarded/granted to the applicant. He further submitted that the Scheme for Compassionate Appointment-Relative Merit and Procedure for Section issued by the Government of India, Ministry of Communication & IT, Department of Posts dated 20.01.2010 (Annexure-A/13) has no relevancy in respect of the employees of the BSNL office on the subject of compassionate appointment of their wards because the BSNL has its own independent Scheme dated 27.06.2007. He further submits that the case of the applicant was examined in consonance with the Scheme applicable to the

BSNL employees i.e. Scheme dated 27.06.2007 and he has rightly been awarded 33 points by bifurcating the marks/points given to the applicant strictly in consonance with the Scheme dated 27.06.2007. He further submitted that compassionate appointment cannot be claimed as a matter of right and the marks allotted to the applicant is just and proper as per the Scheme in vogue. In support of his arguments, he relied upon the judgment of Hon'ble High Court of Rajasthan in *Mohisin Khan vs. Bharat Sanchar Nigam Ltd. & Ors.* (DB Civil Writ petition No.6636/2013) decided on 17.10.2013 and the order of the CAT, Ernakulum Bench passed in *E.K. Sanoj vs. BSNL & Ors* (OA No.188/2012) decided on 10.07.2015. Learned counsel for the respondents contended that since the respondents have rightly considered the case of the applicant as per the BSNL Scheme dated 27.06.2007, and there is no arbitrariness or unreasonableness in the Weightage Point System of the respondent department. Therefore, the claim of the applicant for appointment on compassionate grounds deserves to be dismissed.

7. Considered the rival contentions of both the parties and perused the pleadings available on record as well as the judgments cited by both the counsels. I have also perused the Original Record pertaining to the case of the applicant vis-à-vis other candidates for appointment on compassionate grounds.

8. After hearing both the parties, it is undisputed fact that the father of the applicant has expired on 05.05.2012 and the applicant had made an

application for compassionate appointment on 01.06.2013. The respondents have decided the case of the applicant as per the Scheme of Compassionate Appointment of BSNL dated 27.06.2007. The applicant has secured 33 marks, which is less than the minimum requirement of marks (i.e. 55 marks) for appointment on compassionate grounds as per the Scheme of BSNL dated 27.06.2007. Therefore, his case has not been recommended for appointment on compassionate grounds by the competent authority and the same was rejected on 19.02.2016 (Annexure-A/1).

9. It is clear that the object of the Compassionate Grounds Appointment Scheme is to grant appointment on compassionate grounds to a dependent family member of a BSNL employee dying in harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of BSNL employee concerned from financial destitution and to help him to get over the emergency. As per this scheme, the family living in indigent condition and deserving immediate assistance from financial destitution is eligible for Compassionate Ground Appointment. In order to bring uniformity in assessment of indigent condition of the family for offering Compassionate Ground Appointment, Weightage Point System was issued by BSNL as per letter No.273-18/2005 Pers-IV dated 27.06.2007. It is seen that as per the said scheme, the respondents have awarded marks/points to the applicant vis-à-vis other candidates for appointment of compassionate grounds and the applicant has rightly been awarded 33

points. There is no illegality or irregularity in awarding the said marks to the applicant.

10. It is seen that the main contention of the applicant is that his case ought to have been considered as per the amended Weightage Point Scheme for compassionate Appointment introduced by the authority vide order dated 20.01.2010 (Annexure-A/13). This contention of the applicant has been denied by the respondents stating that the same is not applicable for the BSNL office, because the BSNL has its own Scheme for Compassionate Grounds Appointment dated 27.06.2007, which is annexed as Annexure-A/12 wherein Weightage Points System for assessment of indigent condition has been mentioned and in which Scheme, positive as well as negative points are granted under the head of dependent's weightage, basic family pension, left out service, applicant's weightage, terminal benefits, accommodation and etc. and the same has been provided to the applicant. From perusal of the Annexures-A/12 and A/13, it is clear that the BSNL has its own Policy Guidelines for Compassionate Grounds Appointment dated 27.06.2007, whereas the Annexure-A/13 dated 20.01.2010 has been issued by the Director (Staff), Government of India, Ministry of Communication & IT, Department of Posts, which has no relevancy to the BSNL employees. Therefore, I find that the amended Weightage Point Scheme dated 20.01.2010 is not applicable for the employees of BSNL department.

11. I have also perused the original records produced by the respondents. From perusal of the original records, it is clear that the case

of the applicant vis-à-vis other candidates under the Scheme for Compassionate Appointment has been considered. It is seen from the original record that the meeting of the Circle High Power Committee was held on 31.07.2015, 20.08.2015 and 06.11.2018, and they recommended 48 candidates for appointment on compassionate grounds after considering overall assessment of the condition of the family and awarded the marks. The points awarded to the applicant are absolutely in accordance with the Policy of Weightage Points System of BSNL dated 27.06.2007. There is no illegality or injustice done to the applicant while awarding the marks. The applicant has rightly been awarded 33 marks/points by the Circle Relaxation Committee. The Committee after considering the overall assessment of the condition of the applicant's family did not find the case of the applicant more deserving in comparison to other cases for appointment on compassionate grounds and therefore, they have not recommended the case of the applicant for appointment on compassionate grounds.

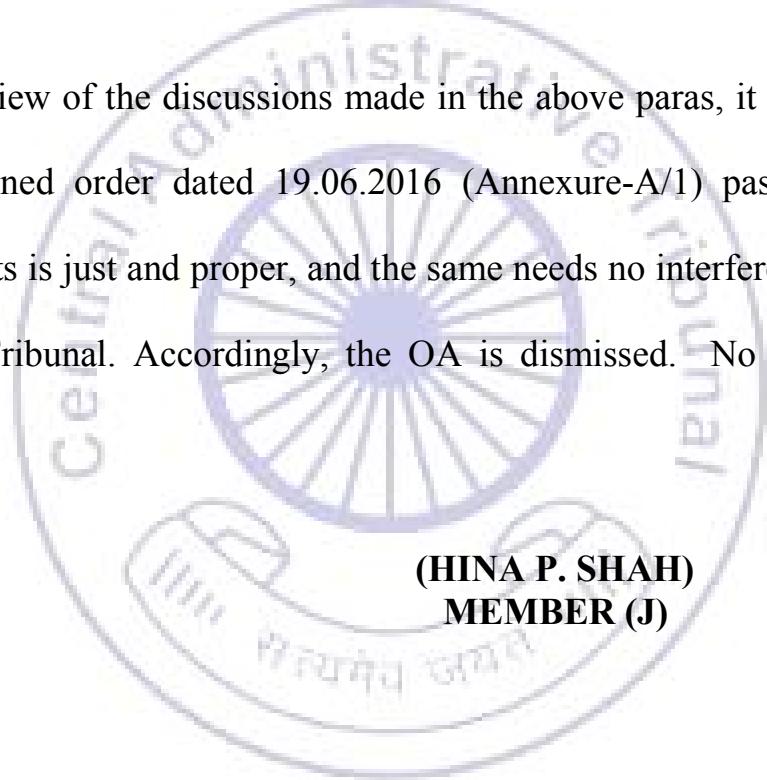
12. Learned counsel for the applicant has also failed to point out that the person who secured less marks in comparison to the applicant, has been given appointment on compassionate grounds. It is also seen that in the instant case the applicant has not challenged the Scheme of BSNL dated 27.06.2007, by which the marks have been allotted to the applicant. Further, the prayer of the applicant in the instant OA is that the respondents may be directed to provide him appointment on compassionate ground in accordance with his qualification, is also not acceptable because the Tribunal can merely direct the respondents to

consider the case for appointment on compassionate grounds. It is clear that the Tribunal can interfere if there is any discrimination in awarding of marks or any illegality or irregularity is committed while considering the case for appointment on compassionate grounds. But in the instant case, I find that there is no illegality and discrimination in awarding of marks to the applicant.

13. I have also perused the judgment cited by the learned counsel for the applicant. As far as judgment of Hon'ble Apex Court passed in Maharani Devi (supra) and the judgment of Hon'ble High Court of Rajasthan passed in Mukesh Kumar Soni (supra) are concerned, the facts of both the cases are different from the facts of the present case. In the instant case, the applicant's case has not been rejected on the ground of family assets and retiral benefits received by the widow and children of the deceased Government employee, whereas the same has been rejected on the ground that the applicant has not secured minimum 55 points in pursuance to the policy of BSNL dated 27.06.2007. It clearly reveals from the record that the applicant has got 20 marks under the head of Dependents, 04 marks for family pension (considering his basic family pension as 3,923/- per months), 09 marks for left out service and 0 marks for terminal benefits (considering terminal benefits of Rs.11,66,274/-) and accordingly he got 33 marks, which is admittedly less than the minimum marks i.e. 55 for appointment on compassionate grounds as per the Policy Guidelines of Weightage Point System of BSNL dated 27.06.2007. Therefore, his case has rightly been rejected by the respondents.

14. It is clear that compassionate appointment cannot be claimed as a matter of right. The object of compassionate appointment is to enable the deceased family to get over the sudden financial crisis. It is not a source of recruitment but to provide source to the family of the employee who die in harness. In the instant case, the applicant has failed to establish any illegality or irregularity in awarding the marks to the applicant as per the Policy Guidelines for appointment on compassionate grounds for BSNL dated 27.06.2007 (Annexure-A/12).

15. In view of the discussions made in the above paras, it is clear that the impugned order dated 19.06.2016 (Annexure-A/1) passed by the respondents is just and proper, and the same needs no interference by this Hon'ble Tribunal. Accordingly, the OA is dismissed. No order as to costs.



(HINA P. SHAH)
MEMBER (J)