

**Central Administrative Tribunal
Principal Bench**

OA No.4445/2017

MA No.907/2019

Orders Reserved on 24.05.2019

Pronounced on: 31.05.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Vivek Kumar Sarna, age 31 years,
Resident of Pocket-A4/43,
DDA Konark Apartments,
Kalkaji Extension,
New Delhi-110019.

-Applicant

(By Advocate: Shri Tanuj Agarwal)

-Versus-

1. Bharat Sanchar Nigam Limited,
Through its Chief General Manager,
5th Floor, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110001.
2. The Chief General Manager (Recruitment Section),
Bharat Sanchar Nigam Limited,
4th Floor, Telecom Circle,
Shastri Nagar Telephone Exchange,
Uttar Pradesh (West),
Meerut-250005.
3. General Manager,
Bharat Sanchar Nigam Limited,
District Telephone Exchange Building,
Sector-19, Noida (UP)-201301.

-Respondents

(By Advocate: Shri Amit Sinha with Shri R.V. Sinha,
Advocate)

ORDER

Applicant's mother had joined BSNL as a Group IV employee on 27.08.1982. She was promoted as Phone Mechanic on 29.11.2000. She was diagnosed with Cancer in the year 2011 and subsequently she unfortunately died on 29.07.2013 when she was about 57 years of age.

2. Applicant's father was already retired and a pensioner drawing Rs.9,310/- per month as pension. The applicant was 27 years of age and his younger brother was about 23 years of age. The younger brother was in receipt of family pension from his deceased mother.

3. The applicant applied for compassionate grounds appointment on 04.08.2014 after finding out the details and the procedure etc. This application was rejected vide orders dated 12.01.2017 on the plea that the applicant had secured 11 weightage points whereas cases with weightage points 55 and more are only to be considered, subject to availability of vacancies. The applicant made a representation on 09.03.2017 against this rejection. This appeal was again rejected on 23.06.2017. Feeling aggrieved, the instant OA has been filed. The applicant had sought relief as under:

“b) Allow the application directing Respondent Nos.1 to 3 to give employment under the Compassionate Ground to the Applicant;

4. The applicant pleads that the weightage points were awarded as per the scheme brought into force on 01.10.2014 and since he had applied prior to the date for this scheme, he cannot be covered under the weightage points.

In addition, the applicant pleads that he is staying in the house owned by his father and is at the mercy of his father; hence he ought to have been awarded more marks under the weightge points for accommodation whereas nil marks have been awarded under this head. Towards this end, the applicant relied upon the judgment by the Hon'ble High Court of Delhi in **Sachin & Anr. v. Jhabbu Lal & Anr.**, [2016 SCC Online Del 6098] where the Court has categorically directed that:

“.....where son does not have legal right to live in parental house, whether married or unmarried he can live in that house only at the mercy of his parents up to the time the parents allow.

5. The applicant is also aggrieved that the provisions of paras 5 & 6 of Scheme dated 01.10.2014, have also not been followed. The said paras read as under:

“(5) The Circle committee shall evaluate the cases as per Weightage Point System and in case it is found that some parameters like death in the militant attack, some family members suffering from serous ailment (like cancer, kidney etc) etc, are required to be quantified then such details should be sent to BSNL CO for quantification of these parameters.

(6) The parameters which needs to be quantified shall be considered by committee consisting of GM (Estt.) and two other officers of PGM/Sr. GM/GM level. The recommendations of the committee regarding

quantification of parameters will be approved by Director (HR/CMD), BSNL in order to maintain uniformity throughout India.”

6. The respondents opposed the OA. It was pleaded that the weightage point system was introduced vide instructions dated 27.06.2007, which in turn was issued as per the advice of National Commission of Scheduled Castes in their hearing on 20.11.2006. The weightage marks are awarded under various heads as follows:

“Weightage Point System for assessment of Indigent Condition

(A) Items with Positive Points

ITEM		WEIGHTAGE POINTS	
		Max. 30 points	
1. Dependent's weightage			
(a) @ 5 points per dependents			
(b) @ 5 points per handicap dependent			
(c) @ 5 points per minor child			
(d) @ 5 points per unmarried daughter (after 18 yrs. of age)			
Sum of total of points for (a) to (d) above shall be subject to maximum of 30 points.			
2. Basic Family Pension	Points	Max. 20 points	
(IDA pattern or CDA+50%)			
Upto 2000	20		
2001 to 2250	18		
2251 to 2500	16		
2501 to 2750	14		
2751 to 3000	12		
3001 to 3250	10		
3251 to 3500	08		
3501 to 3750	06		
3751 to 4000	04		
4001 to 4250	02		
4250 & above	Nil		
3. Left out service		Max. 15 points	
<1 year left out service	Nil		
>1 year left out service	@ 1 point for each year of left out svce subject to maximum of 15 points.		

*to be counted w.r.t. date of death/medical invalidation

4. Applicant's weightage **Max. 15 points**

Widow seeking CGA	15
Others (Son/Daughter/ Brother/Sister/Widower)	Nil

5. Terminal benefits including DCRG, **Max. 10 points**
GPF/EPF, Leave encashment, CGEGIS/
GSLI, LIC policies, ex-gratia payment etc.

<1.00 Lac	10
>1 Lac to <2 Lac	09
>2 Lac to <3 Lac	08
>3 Lac to <4 Lac	07
>4 Lac to <5 Lac	06
>5 Lac to <6 Lac	05
>6 Lac to <7 Lac	04
>7 Lac to <8 Lac	03
>8 Lac to <9 Lac	02
>9 Lac to <10 Lac	01
>10 Lac	Nil

6. Accommodation **Max. 10 points**

-Family living in rented house and not owning his own house	10
- Family living in own house	Nil

(B) Items with Negative points**7. Monthly income** (Except income from srl 2 & 5 above) of
earning member(s) including income from property/other
sources**Max. 20 points**

- if spouse is an earning member	Points
Income upto 4000/- p.m.	05
4001 to 6000 p.m.	10
6001 to 8000 p.m.	15
8001 p.m. & above	20
- If spouse is not an earning member	
income upto 4000 p.m.	Nil
4001 to 6000 p.m.	05
6001 p.m. & above	10

8. Belated requests **Max. 35 points**(Period to be counted from date of death/
medical invalidation till date for application
for CGA in prescribed format)

Period	Points
0 to < 5 yrs.	Nil
>5 to <6 yrs	05

>6 to <7 yrs	10
>7 to <8 yrs	15
>8 to <9 yrs	20
>9 to <10 yrs	25
>10 & above	35

NET POINTS=[A(1+2+3+4+5+6)]-[B(7+8)]

Assessment criteria

I. Cases with 55 or more NET POINTS shall be prima-facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate ground appointment.

II. Cases with NET POINTS below 55 (i.e.54 or less) shall be treated as non-indigent and rejected.”

It was pleaded that the scheme provides objective criteria to award weightage points as well as negative points and thereafter the assessment criteria are also specified therein.

7. It was also pleaded that this scheme dated 27.06.2007 was reiterated on 01.10.2014. Therefore the weightage point scheme is applicable to the instant applicant also.

8. It was also pleaded that the instant case falls under the territorial jurisdiction of Tribunal at Allahabad and the applicant has not preferred any transfer application for hearing of this matter at Principal Bench. Accordingly, Principal Bench does not have jurisdiction in the instant case.

9. It was pleaded that the scheme of compassionate appointment was issued by DoP&T OM dated 09.10.1998 and the objectives of the scheme is as follows:

“The object of the Scheme is to grant appointment on compassionate grounds to dependent family members of a Government servant dying in harness or who is retired on

medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitutions and to help it to get over the emergency.”

10. In the instant case, death of the employee occurred in July, 2013. The compassionate ground request was considered and not found justified. At present, it is a case of more than five years old and the case cannot now be covered under the objectives of this scheme as specified by DoP&T.

11. It was further pleaded that the father of the applicant is a pensioner. The retiral benefits amounting to Rs.15,64,100/- were paid. Applicant's younger brother was in receipt of family pension. The Welfare Officer of the MTNL had visited applicant's house on 06.12.2014 wherein it was reported that the applicant was employed in a private firm and was earning about Rs.7,000/- p.m. In view of this, the conditions warranting compassionate appointment were not found applicable and as such the applicant's case did not merit consideration.

12. It was pleaded that the weightage point system was upheld by the Tribunal at Allahabad in OA No.377/2009 vide decision dated 28.08.2009. Similar judgments were passed by the Hon'ble Apex Court in **Sanjay Kumar v. State of Bihar & Ors.**, [JT 2000 (10) SC 156] where the Hon'ble Court again reiterated that the purpose of the rules providing for

compassionate employment is only to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury without any means of livelihood and that there cannot be a reservation of a vacancy for the dependents of deceased Govt. Servant who died in harness. The Apex Court held that direction cannot be issued to appoint a person on compassionate ground in contradiction to the scheme framed by the employer and the Court does not have power to modify the scheme or rules framed in this regard. Similar view has been reiterated in the **Divisional Manager, A.P.S.R.T.C. v. Radha Krishna**, [2001 AIR SCW 5190] while deciding a case of appointment on compassionate ground under Re-employment children quota provided under the Circular issued by the Corporation.

Reliance was further placed on the decision of the Hon'ble High Court of Kerala in Original Petitions (CAT) Nos.458, 828, 855, 883 of 2010 and 325 & 360 of 2011 where referring the case to the Full Bench the Hon'ble High Court made the following observations:

“For one thing, it is the settled position of law that compassionate appointment is not a regular method of recruitment. There is no vested right in any person to claim compassionate appointment. Provision of compassionate appointment is a legitimate device founded to compassion and therefore on essentially, whereby the employer extends a helping hand to provide succor to the unfortunate dependents of an employee who dies in harness. When such a precise relates to public

employment governed by Articles 14 & 16 of the Constitution, such extension of succor is essentially one that reduces the source of employment for the open market candidate legitimately meeting with expectation to enter public service. That is why, it has been laid as law that such a measure of help shall be extended only to the really needy.”

Reliance was also placed on the decision of the Hon’ble Apex Court in **Umesh Kumar Nagpal v. State of Haryana & Ors.**, [(1994) 4 SCC 138]. It was pleaded that OA is without merit and is required to be dismissed.

13. The matter has been heard. Shri Tanuj Aggarwal, learned counsel represented the applicant and Shri R.V. Sinha with Shri Amit Sinha, learned counsel represented the respondents.

14. The scheme for compassionate grounds is not a vested right but a benevolent consideration to be extended by the department to take care of immediate needs of the family of the deceased employee to avoid condition of penury. This consideration was extended by the department.

The department follows a system of weightage point to consider all such cases on an objective basis and as per the said scheme the applicant could secure only 11 points. He has not been able to point out any major flaw in award of marks, except pleading that since the applicant is residing with his father in a house owned by him and he is at the mercy of his father, therefore he ought to have been awarded

more marks under the head of accommodation whereas nil marks were awarded.

The applicant also pleaded that if the widow seeks compassionate appointment she is awarded 15 marks whereas the other dependents, including sons are awarded nil marks. In addition, if the plea raised in para-5 supra would have been followed, he may have secured more weightage points.

15. These pleas have been considered. The award of marks is uniformly given by the department as per the scheme in force since 27.06.2007. The purport of para-5 and 6 of Scheme dated 01.10.2014 (para-5 supra) is to assess whether the weightage point scheme dated 27.06.2007 needs any more criteria to be added as a policy and not to award marks in individual cases.

At the time of inspection by the Welfare Officer, the applicant was already employed in a private job earning about Rs.7,000/- p.m. His father was also a pensioner and his younger brother was also getting family pension. The pleas put-forth in respect of his living with his father and for award of less weightage points if compassionate ground request is for someone other than widow of deceased employee, are taken to be unacceptable to say the least. And especially so

since the weightage scheme dated 27.06.2007 has not been challenged.

He was awarded total 11 weightage points. The scheme to award weightage point is an objective criteria and is taken to be fair to assess relative merit of all candidates.

16. Under these circumstances, the assessment by the department cannot be faulted. The pleadings by applicant are not gaining acceptability. The OA is dismissed being devoid of merit. No costs.

17. Consequently, MA No.907/2019 filed by the respondents for permission to file sur-rejoinder also stands disposed of.

(Pradeep Kumar)
Member (A)

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