

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

This the 09th day of July 2019

ORIGINAL APPLICATION NO. 146 of 2011

HON'BLE Mr. RAKESH SAGAR JAIN, MEMBER (J)

Smt. Anita Devi widow of Late Narendra Prakash, Resident of 6/333, Khandari, Police Chauki, Agra.

..... Applicant

By Advocate: Sri Vikas Budhwar

Versus

1. Bharat Sanchar Nigam Ltd., Corporate Office (Personnel) 4th Floor, Bharat Sanchar Bhavan Janpath, New Delhi through its Chairman-cum-Managing Director.
2. Assistant General Manager (Administration) in the office of General Manager, Telecom District Bharat Sanchar Nigam Ltd., Shahjadi Mandi, Agra.

..... Respondents.

Advocate: Sri D.S. Shukla

ORDER

1. The present O.A. has been filed by applicant Smt. Anita Devi under Section 19 of the Administrative Tribunal Act seeking the following reliefs:-
"(i) Issue suitable order setting aside order dated 25.08.2010 (Annexure A-1 to Compilation No.1 passed by respondent No.2).

- (ii) Issue a suitable order or direction commanding the respondents to forthwith consider claim of applicant for her compassionate appointment consequent to death of her husband Narendra Prakash in harness ignoring order dated 25.08.2010.
- (iii) Any other order or direction as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (iv) Award cost of this application to the applicant".

2. Applicant's case is that on the death of her husband Narendra Prakash on 08.07.2008, while serving in the respondent-department, she filed an application on 17.08.2009 for appointment on compassionate ground which was rejected by respondent No. 2 vide impugned order dated 25.08.2010 (Annexure No. A1). At the time of death of Narendra Prakash, his legal heirs were applicant and minor son and daughter. It is the case of applicant that even the pension is insufficient to serve the living expenses of the family of deceased Narendra Prakash. It is the case of applicant that weightage point of 48 have been given to her and the same have not been calculated properly, as such, the present O.A. to set aside the impugned order and direct the respondents to consider the claim of applicant for appointment on compassionate ground.

3. In the counter affidavit, it has been averred that the applicant had secured 48 weightage points which is below the minimum point of 55 to be scored by an applicant, as per the Scheme governing appointments on compassionate ground in the respondent-department, as such, applicant was not entitled for consideration of her case for compassionate appointment and rightly rejected by the respondents.

4. I have heard and considered the arguments of the learned counsels for parties and gone through the material on record.
5. Looking to the stand of the parties coming out in their pleadings and arguments, I am of the view that O.A. is to be remitted back to the respondents for consideration, as per law.
6. It is a admitted case that CGA guidelines issued by BSNL, Corporate Office, New Delhi vide order No.273-18/2013 CGA/P-IV dated 01.10.2014 and fully approved by the Management Committee of BSNL, Board, cases of applicants who do not get compassionate appointment in the first instance, shall be consider for two more consecutive years of assessing their eligibility for CGA. This restriction has been made due to limited number of vacancies in CGA quota vis a vis number of deaths in different circle.
7. Indubitably, in the present case the application filed by the applicant was considered on one occasion only by the respondents. I may refer to the observation of the Hon'ble High Court of Allahabad in Special Appeal No.916 of 2009 titled Food Corporation of India Vs. Hari Ram decided on 31.5.2018 wherein the Hon'ble High Court has held that :-

"We have gone through the O.M. and find, when a candidate is not offered appointment, his name is carried forward for next year since quota is only 5 percent for compassionate appointment out of direct recruitment quota. A fresh review of financial status of family is taken and then again, for next year same exercise is repeated. We find it difficult to convince ourselves with any such analogy that such exercise should continue till appointment is given. There has to have some ceiling at some point of time and we find that two reviews in case of a candidate are genuine, reasonable and if a candidate's

financial status is found to be sound or that he has been denied appointment due to non availability of vacancy and has survived, then such candidate cannot be continued in the wait list for unlimited period or for longer than a reasonable period, What should be a reasonable period, it is for the Department or Employer to decide as a matter of policy. Considering entire policy of compassionate appointment in question we do not find any such thing which may be said to be vesting A, an arbitrary discretions. Court normally does not interfere with a policy decision unless probably it is arbitrary to hold that ceiling limit of three years provided/prescribed by department concerned is unreasonable or arbitrary is difficult to accept. Whether offer of appointment in the category of compassionate appointment shall be carried forward for three years or more is well within the domain of policy making body of concerned Department/ Corporation. Besides, we do not find circular/policy in any manner irrational."

"We may consider it from this angle as well that O.M. which has been placed before us and which is quoted herein above, that department itself has been considerate enough in case of compassionate appointment by bringing in enhancement of time limit from one year to three years. In totality of scheme, we find that there is nothing wrong or arbitrary and irrational in the instructions as contained in the scheme."

8. Based on the OMs and the law laid down by the Hon'ble High Court in the case of FCI (supra), it is clear that respondents are bound to consider the case of an applicant for compassionate appointment for two more consecutive years, therefore, the application is to be considered for three consecutive years in total. In the present case it is nobody's case that the case of

applicant was considered on more than one occasion only. Applicant has challenged the impugned order on the ground that the weightage points have not been correctly calculated by the respondents.

9. Therefore, irrespective of the fact that the application was considered and rejected, it was obligatory upon the respondents to consider the application for two more consecutive years, which however, the respondents failed to do so. In the facts and circumstances of the case, it is clear that the respondents failed to discharge their duty to consider the application for two more consecutive years. Accordingly, the case is remitted back to the respondents to consider the case of the applicant for two more consecutive years as per the OMs and the policy of the respondents -department and dispose of the matter by way of reasoned and speaking orders with intimation to the applicant. Applicant would be liberty to file representation with respondent No. 2 as to in what manner, the weightage points have been miscalculated within a period of ten days from today. OA is accordingly disposed off. No order as to costs.

(Rakesh Sagar Jain)

Member-J

Manish/-