

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

Pronounced on 30th July, 2019

Original Application No.330/00138/2011
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

1. Shail Kumari Pandey w/o late Markandey Pandey.
2. Srikant Pandey son of late Markandey Pandey,
(Both resident of Plot No. 936, New basti Phulwaria, Post
Phulwaria, Post Phulwaria, P.S. Cantt. District- Varanasi.)

..... **Applicants**

By Advocate: Sri Jawant Singh

Versus

1. Bharat Sanchar Nigam Limited, through its Chief
Managing Director, New Delhi.
2. Chief General manager (Recruitment Section), U.P. East
Telecom Circle, Lucknow.
3. Assistant General Manager, Bharat Sanchar Nigam
Limited (BSNL), Varanasi.

..... **Respondents**

By Advocate: Sri Anil Kumar

ORDER

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

The applicants, Shail Kumari Pandey (mother), Srikant Pandey (son) of late Markandey Pandey (deceased employee) have filed this Original Application (O.A.) for challenging the impugned order dated 28.6.2006, whereby respondent No. 2 has rejected the belated request for relaxation for compassionate appointment.

2. The facts of this O.A. are that late Markandey Pandey was working on the post of Assistant Clerk in the office of Mahaprabandhak, Door Sanchar Nigam Limited at District-Varanasi, who died in harness on 26.11.1995, leaving behind widow, two sons and two daughters.

3. On 19.1.2004 i.e. after 9 years of death of late Markandey Pandey, applicant No.1 Shail Kumar Pandey moved an application for appointment of her son Srikant Pandey (applicant No.2) under dying in harness rules, which was dismissed vide impugned order dated 28.6.2016. The relevant portion of this order is reproduced as below:-

"The Chief General Manager,
Bharat Sanchar Nigam Limited,
U.P. (East) Telecom Circle,
Lucknow-226001.

Sub: Compassionate ground appointment –Case
of Srikant Pandey, ex-SSO, GMTD, Varanasi.

I am directed to refer your office letter No. Rectt/M-42/Vividh dated 24.5.2005 on the subject noted above and to state that the compassionate appointment case of Shri Srikant Pandey, son of late Shri Markandey Pandey has been considered by the High Power Committee of BSNL Corporate Office in its meeting held on 10.5.2006. The Committee after careful consideration, has decided to reject the request as below:-

"The case forwarded by the Circle for relaxation of belated request. The official expired on 26.11.1995 at the age of 43 years survived by his wife, two sons and two daughters. All the children were minor at the time of death of their father and the elder son applied after becoming eligible for it. **The eldest daughter is married in the year 2001.** The family pension is Rs. 2256/- + Dearness Relief and other terminal benefits, paid to the family, were Rs., 1,86,224/-. The object being to provide immediate assistance to enable the family to get over the financial crisis, which it faces at the time of death of the sole bread winner, the compassionate employment cannot be offered after the lapse of reasonable period. **Keeping in view that the family is managing for the last 10 years, the committee did not find it a fit case for appointment on compassionate ground and rejected the request in accordance with the scheme for the purpose."**

2. The above may be conveyed to the applicant.

3. This issues with the approval of CMD, BSNL."

4. Primarily, this order is under challenge before this Tribunal.

5. Learned counsel for the applicants has submitted that applicant No. 2 Srikant Pandey was minor at the time of death

of his father. As such, there is no way, he could be applied for compassionate appointment earlier and that his mother had informed the department about the intent of family to seek appointment as soon as applicant No. 2 attains the majority. This disputed letter dated 4.9.1997 (MA-1) has been filed by the applicant along with Misc. Application No. 1999/2017 on 12.10.2017. This letter is not acceptable to respondents.

6. Counsel for respondents has denounced this piece of paper as fabrication and after thought.

7. Respondents have filed their counter affidavit and Supplementary Counter affidavit refuting the claim of applicants. Their argument is that late Markandey Pandey died in the year 1995 leaving behind widow and four children. Family has been managing their affairs reasonably well. More than 24 years have elapsed. Even this O.A. was filed on 1.2.2011 i.e. after 16 years of death of his father.

8. The submission of respondents is that both daughters of late Markandey Pandey are married. In fact, an affidavit filed by the applicant No. 1 indicates that elder daughter Rubi Pandey got married in the year 2001, prior to 6.1.2004.

9. Heard Sri Jaswant Singh learned counsel for applicant and Sri Anil Kumar, learned counsel for respondents.

10. Before considering the claim of rival parties, it would be appropriate if the authenticity of said letter dated 4.9.1997 allegedly written by Shail Kumari Pandey annexed as MA-1 is discussed.

11. The applicants claim that Shail Kumari Pandey has written a letter dated 4.9.1997 within two years of death of her husband to the Manaprabandhak, Door Sanchar Nigam Limited, Varanasi, claiming that she will move an application

for compassionate appointment of her elder son as soon as he attains majority. Unfortunately, the respondents have denounced this piece of paper as act of forgery and fabrication.

12. Authenticity of this letter can be judged by several tell-tale science emanating from record. Firstly this fact was never mentioned in the O.A. filed on 1.2.2011. Secondly, the applicants have relied upon a letter dated 19.1.2004 written by Shail Kumar Pandey (applicant No.1) to the Manaprabandhak, Door Sanchar Nigam Limited, Varanasi. This letter is available on record as Annexure -4.

13. This letter is very important because it says that his son has attained the age of majority. Therefore, she is seeking compassionate appointment for her son. In this letter also, no mention was made about letter dated 4.9.1997 (Annexure MA-1). Thereafter, applicants have again moved an application before the aforesaid authority submitting the explanation for not seeking job by the widow of late Markandey Pandey. This letter dated 23.12.2004 is also available on record as Annexure -6. Even in this letter, no reference has been made about Annexure MA-1.

14. As soon as the respondents raised this objection in their pleadings, Misc. Application No. 1999/2017 was moved annexing letter dated 4.9.1997 (MA-1). The authenticity of this letter is highly suspect. This Tribunal is in agreement with the counsel for respondents on this score. This Tribunal cannot rely upon on this suspicious piece of paper.

15. The scheme of compassionate appointment has been promulgated in the year 1998 and the same has been corrected/amended from time to time, but the objects and requirements of the scheme remains same. Three years time

limit has been reviewed and changed vide O.M. dated 26.7.2012.

16. It is pertinent to point out that request of applicants Srikant Pandey has not been rejected merely on the ground of delay. The submission is that widow Shail Kumari Pandey is getting family pension and received other terminal benefits. They are living in parental house. The elder daughter of applicant No. 1 was married way back in 2001 i.e. 3-4 years prior to the request of compassionate appointment.

17. It is also pertinent to mention that object of compassionate appointment is predominantly related to the need of immediate financial assistance to the family of deceased government employee in order to relieve them from economic distress. If family is able to manage 10 years without any compassionate appointment, then it can be taken as a proof that family had some reasonable means of substance. It is pertinent to point out that elder daughter of applicant No. 1 get married in the year 2001 i.e. 3 years prior to the application for compassionate appointment. During the course of arguments, the marriage of second daughter was also referred. Now, almost 24 years have elapsed and family has been managing their affairs quite reasonably.

18. Hon'ble Apex Court in the case of **Bhawani Prasad Sonkar Vs. Union of India and others reported in 2011 (4) SCC 209** has held as under:

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:
(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left

with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

19. As per dictums of Hon'ble Apex Court, it is settled position of law that compassionate appointment is granted to meet the sudden crisis on account of death of breadwinner while in service. While considering the claim for compassionate appointment, financial condition of family of deceased employee must be taken into consideration. The object to grant compassionate appointment is to provide immediate help to the dependents of deceased employee, so that they may not die in starvation.

20. It is settled position of law that compassionate appointment is not a Rule and cannot be sought, as a matter of right. The compassionate appointment is a concession and exception to public appointment provided under Articles 14 and 16 of the Constitution of India, therefore, to seek a concession of compassionate appointment, claimant must prove his financial condition and must prove that in the event of non grant of compassionate appointment, claimant would face financial crisis.

21. In the circumstances of this case, this Tribunal does not believe that applicant No. 2 is entitled for compassionate appointment after 24 years of death of his father. O.A. is devoid of merit and is accordingly dismissed. No order as to costs.

(Justice Bharat Bhushan)
Member (J)

HLS/-