

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01216/2018

Dated *Tuesday* the 3rd day of September, Two Thousand Nineteen

PRESENT

Hon'ble Mr.T.Jacob, Administrative Member

G. Vijaya Prasanna
No. 12, Nethaji Nagar
St. Thomas Mount
Chennai – 600 016.

... Applicant

By Advocate M/s. A. Ilangovan

Vs.

1. Union of India rep. by its
Assistant General Manager (Per-IV)
Bharat Sanchar Nigam Limited (BSNL)
Govt. of India Enterprises
5th Floor, Bharat Sanchar Bhawan
Janpath, New Delhi – 110 001.

2. The High Power Committee
Bharat Sanchar Nigam Limited
New Delhi.

3. The Assistant General Manager (Estt)
Bharat Sanchar Nigam Limited
Chennai Telephones
No. 89, Millers Road
Chennai – 600 010.

... Respondents

By Advocate Mr. S. Udayakumar



ORDER

Pronounced by Hon'ble Mr. T. Jacob, Member (A)

This OA has been filed by the applicant seeking the following reliefs:-

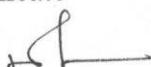
“to issue a direction calling for the records of the 3rd respondent in his proceedings Lr.No.ASR/CGA/CTO/091/ 2003/8 dated 01.06.2016 with covering letter Lr.No. ASR/CGA/CTO/ 091/2013/12 dated 28.07.2018 and quash the same and further directing the respondents 2 and 3 to confer the compassionate appointment of the applicant forthwith.”

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

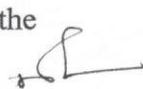
The applicant's father K. Gajendran while working as a Telegraph Man under the 3rd respondent died on 13.12.2003. After his death all the benefits were settled to applicant's mother G. Geetha and the family pension was also allotted in the name of his mother for a sum of Rs. 5770/- on the very next day.

The applicant's mother submitted a representation to the 3rd respondent on 12.05.2004 seeking appointment for the applicant on compassionate grounds.

After receipt of the said representation, the 3rd respondent neither gave any appointment nor any reply. Thereafter the applicant's mother directly approached the 3rd respondent to enquire about her son's job and got a reply that the representation would be considered. Based on the oral submission in the year 2004, the applicant was appointed as an Office Assistant under the Contract Labour. Since 2004, for seven years he was working under the Office of the 3rd respondent. Thereafter on 19.03.2013, the applicant gave a representation along with relevant documents particularly the certificate



issued by the Thasildar dated 16.03.2012 and disability certificate to the 3rd respondent seeking appointment for any post under the compassionate ground. Inspite of lapse of 10 years, the application was pending before the 3rd respondent without any progress and only on 17.10.2014 the 3rd respondent sent a reply to the applicant stating that the application must be made in the new format. After receipt of the same in the month of December 2014 the applicant submitted another application along with necessary particulars in the prescribed new format. However, the 3rd respondent without considering the above facts and the supporting documents rejected the request of the applicant vide order dated 01.06.2016 on the ground that "in view of the assets/liabilities of the family of the deceased, official support arrangement, constitution of the family and over all assessment of condition of the family, the circle High Power Committee did not agree to recommend the compassionate ground appointment and rejected the request under provision of the scheme." On 03.09.2016 the applicant filed an appeal before the Chief General Manager, BSNL against the impugned order passed by the 3rd respondent. On 21.10.2016 the 3rd respondent rejected the applicant's appeal stating that on 01.06.2016 itself, the application was rejected for appointment on compassionate ground, thus the appeal cannot be entertained. The applicant filed OA.629/2018 and the same was dismissed as withdrawn on 06.06.2018. Thereafter the applicant gave a representation dated 11.07.2018 to the 2nd and 3rd respondents as per the direction given in the above said O.A. Again the 3rd respondent without considering the request of the



applicant rejected the representation mechanically in a three line order dated 28.07.2018. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:

- a. The impugned order passed by the 3rd respondent is against law, arbitrary and unsustainable.
- b. The 3rd respondent failed to note that no other members of the applicant is under employment and the applicant is only eligible for appointment under compassionate ground.
- c. The 3rd respondent failed to note that the applicant and the legal heirs of the deceased were indigent from the time of death of the applicant's father to till date.
- d. The 3rd respondent erred in coming to a conclusion that the condition of the applicant's family is good enough to service their livelihood.
- e. The 3rd respondent failed to consider the certificate issued by the Tahsildar recommending the applicant's appointment and the disability certificate also.
- f. The 3rd respondent failed to consider that the son of the deceased is a disabled person and eventually the daughter of the deceased also living separately from her husband.
- g. The 3rd respondent failed to consider that the applicant comes under the prescribed norms and having sufficient qualification to get appointment

in the office of the 3rd respondent. Thus the 3rd respondent ought to have appointed him in the said post.

h. The 3rd respondent failed to note that the applicant's mother and the other legal heirs had given consent to appoint the applicant under compassionate ground. Therefore, rejecting the claim of the applicant on the ground that the family is not in indigent condition, cannot be justified.

i. The rejection of the application by the 3rd respondent is violation of ingredients of the rules of appointment under the compassionate ground.

j. The 3rd respondent without application of mind, again rejected the request vide impugned order dated 01.06.2016 without giving proper explanation sought in the applicant's representation.

k. The 3rd respondent is duty bound to furnish proper information to the applicant, but wantonly neglected his duty. Therefore the said act of the respondent is against law.

3. Per contra, the respondents in their reply have stated that after death of the Government employee on 13.12.2003. the applicant's mother submitted an incomplete application seeking compassionate ground appointment to the applicant on 12.05.2004 without enclosing the required documents. She submitted a revised application on 02.08.2014. The Circle High Power Committee after considering all positive and negative aspects including Dependents Weightage, Family Pension, Left out service and terminal benefits granted 18 points which is below the stipulated 55 points necessary for

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consideration to get compassionate appointment and hence rejected the application of the applicant based on the policy guidelines dated 27.06.2007 and the same was communicated to the applicant vide letter dated 01.06.2016. As per available records, the applicant has not worked as contract labour under the third respondent. The applicant has not enclosed any material evidence like letter in support of his contract engagement such as copy of wages paid, copy of the end of the contract engagement etc., to show that he has worked as contract labour. If he had worked as contract labour in the same station, he would not have kept silent for 7 years without pursuing his case. Compassionate appointment is to be considered strictly as per the Scheme in a transparent manner. It is to be construed as violation of Art.14 & 16 of the Constitution of India and is only in the nature of concession and therefore, does not create a vested right in favour of the claimant. Compassionate appointment is not automatic right vested on the applicant and he cannot have a differential preference over others which is against equality and discrimination. Hence the respondents pray for dismissal of the OA.

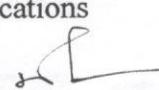
4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get



over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

6. The BSNL is following a weightage point system from the year 2007 to judge the indigent condition of the family in an objective manner for qualitative and non arbitrary assessment and to bring uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment under the overall policy guidelines of the Department of Personnel and Training vide OM dated 09.10.1998. As per the policy guidelines, all the applications



will be considered by the Circle High Power Committee consisting of three senior level officers and cases with net points below 55 (ie.,54 or less) shall be treated as non-indigent and rejected while the cases of net point 55 or above shall be *prima facie* treated as eligible for further consideration by Corporate office High Power Committee.

7. On the facts of this case, admittedly this is the second round of litigation before this Tribunal. Earlier the applicant had filed OA.629/2018 seeking the same relief. However, the applicant sought to withdraw the OA with liberty to file a fresh OA after obtaining certain information from the respondents under the RTI Act. On the basis of the endorsement made therein, the OA was dismissed as withdrawn on 06.06.2018.

8. The applicant has thus filed this OA seeking the above reliefs. Undisputedly the applicant's father K. Gajendran died while working as Telegraph Man in the Central Telegraph Office, St.Thomas Mount in 13.12.2003 leaving behind his wife, two sons and one daughter. The applicant is the second son, disabled, suffering from 40% physical impairment in his right lower limb. The mother of the applicant had sought for compassionate appointment to the applicant herein. Since the application submitted by the applicant was incomplete he was asked to submit a revised application and accordingly the applicant submitted a revised application dated 02.08.2014 seeking appointment on compassionate ground. However, his application was rejected as per the policy guidelines dated 27.06.2007 by the Circle High



Power Committee as he had obtained only 18 points as against 55 points, which is below the benchmark and the same was communicated to him on 01.06.2016.

The break up of weightage points reads as follows:-

Items of positive points

Dependents	- 2 persons	10 points
Family Pension	- Rs.2885/-	12 points
Left out service	- 13 Y & 3 M	13 points
Terminal Benefits	- Rs.2,24,697/-	08 points
Total		43 points

Items with Negative Points

Belated request more than 9 years - 25 points

Net points - 43- 18 points

Even if the negative points are not taken into consideration, the applicant would obtain only 43 points and would not meet the required 55 points necessary for consideration of appointment on compassionate grounds. It is the contention of the applicant that 10 points ought to have been granted for the item 'not owning own house' and 20 points ought to have been granted for the item 'Left out service' as against 13 points granted.

9. I have considered the matter. The respondents have produced a copy of the EB service connection in the name of Geetha, the information taken from the website of EB that the permanent address of the family of the applicant is 12, Nethaji Nagar, St.Thomas Mount, Chennai 600 016 and the EB service connection for the said address is 242-055-352 and the said address belong to

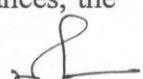


Geetha, the mother of the applicant. Hence the the applicant has not been awarded points with regard to item 'not owning own house'. With regard to the

item left out service' the applicant was born on 04.03.1957 and his normal date of retirement was 03.03.2017. He died on 13.12.2003. His left out service is 13 years and 3 months and was rightly granted 13 points for the said item.

10. Learned counsel for the respondents produced a copy of the Circular issued by the Corporate Office of the BSNL dated 09.04.2019 conveying the decision of the Board to keep in abeyance the policy of implementation of compassionate ground appointment for three years for vacancies arising after 01.04.2018 including unfilled vacancies, if any, after conducting Circle High Power Committee meeting for vacancies upto 31.03.2018, which means there would be no compassionate ground appointment upto 2021 for vacancies arising after 01.04.2018.

11. The learned counsel for the applicant submitted that the applicant's request has been rejected due to incorrect evaluation of his so called 'assets' by the visiting officer of the respondent department, which further led to his receiving less weightage points (18 as against the required 55). The property mentioned in the report is not owned by the mother of the applicant. He further submitted that a monthly amount of Rs.5770/- as family pension is certainly not sufficient to maintain the family. He submitted that in these circumstances, the



intervention of the Tribunal was a must to undo the injustice meted out to the applicant.

12. I find that the case of the applicant largely hinges on the fact that the totality of the circumstances have not been evaluated properly by the respondent department and the fact that the weightage points given to him (18 as against the stipulated 55) cannot be made applicable to him. Undoubtedly, the family of the deceased was struck by misfortune on account of the untimely demise of the Government employee in the year 2003. Thereafter, the respondents rejected the case of the applicant in tune with the norms and guidelines of the Government on the subject. It was decided by the respondents that the family is not living in indigent condition and his case was accordingly rejected by way of a speaking order dated 28.07.2018. As laid down by the Hon'ble Supreme Court in the case of State Bank of India & Anr. v. Raj Kumar, reported in 2011 (1) SCC (L&S) 150, the fact remains that :

"the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

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Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not



the scheme that was in force earlier when the application was made, will be applicable."

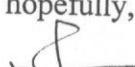
13. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 had held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

14. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Limited (TANGEDCO) in W.P.3882/2014 dated 06.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

"28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the question of providing compassionate appointment to the writ petitioner does not arise at all."

15. In my view, the respondents are correct in applying the methodology of weightage points while considering the case of the applicant for compassionate appointment. I also feel that immediate need of the assistance to the family, which is envisaged under the compassionate appointment scheme, hopefully,



does not exist after a period of almost 16 years having elapsed between the date of death of the applicant's father and hearing of present OA. Further, a stale claim cannot be got resurrected under the garb of fresh representation. The decision of the Circle relaxation committee cannot be faulted with. The ratio in the case of C. Jacob vs Director of Geology and Mining (2008) 10 SCC 115 wherein, it has been held as under:

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

16. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court and High Court (supra), I find no reason to interfere with the impugned order of the respondents dated 01.06.2016. The OA is liable to be dismissed and is accordingly dismissed. No costs.