

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/798/2014

Date of Reserve:19.07.2019

Date of Order:26.08.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Prakash Kumar Mallici, aged about 30 years, S/o. Late Dinabandhu Mallick, resident of Vill/PO-Parbatipur, Via-Balikuda, PS-Simulia, Dist-Balasore, Odisha-756 166.

...Applicant

By the Advocate(s)-M/s.P.K.Padhi

M.P.J.Ray

Smt.J.Mishra

-VERSUS-

Bharat Sanchar Nigam Limited represented through:

1. The Chief Managing Director, Corporate Office, 102-B, Statement House, New Delhi-110 001.
2. Chief General Manager, Telecom Bharat Sanchar Nigam Limited, At/O-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. Dy.General Manager, Microwave Project, Bhubaneswar, Dist-Khurda, Odisha-751 007.

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

“...to quash Annexure-A/18, direct the respondents to consider the case of applicant afresh in the old scheme and provide compassionate appointment to applicant in any suitable post in B.S.N.O. as soon as possible”.

2. Brief facts of the matter are that the applicant's father while working as LI(O) under the Respondent-BSNL passed away on 3.10.2001. In the above backdrop, the applicant submitted an application for consideration of his case for compassionate appointment. Since there was no action taken, the

applicant approached this Tribunal in O.A.No.14 of 2010 and this Tribunal, vide order dated 15.3.2010 disposed of the same, the relevant Paragraphs of which are as follows:

- "2. After getting instruction from the Respondents, Mr.Jena submits that the case of the applicant will be considered in the next C.H.P.C. meeting, which is likely to be held shortly.
3. In view of the above fact, the O.A. can be disposed of at the stage of admission itself, with direction to Respondent No.2 to ensure that the case of the applicant will be considered within three months in the next C.H.P.C. meeting. Ordered accordingly".

3. Thereafter, the applicant had filed M.A.No.568/2010 (arising out of O.A.No.14/2010), which this Tribunal disposed of vide order dated 14.12.2010 in the following terms:

- "2. By filing the present M.A.No.568/10, Sri Padhi, Ld.Counsel appearing for the applicant submits that although this Tribunal, while disposing of the O.A.No.14/10 vide order dated 15.03.2010 directed Respondent No.2 to consider the case of the applicant within three months in the next C.H.P.C. MEETING; but the C.H.P.C. is going to consider the case of the applicant as per the new scheme. It is the case of the applicant that while cases of similarly situated persons have already been considered by the Respondents much earlier, the case of the applicant is not being considered since 2001. In the circumstances, Sri Padhi further prays for a direction to the Respondents to consider the case of the applicant pursuant to the old scheme prevailing at the time of the death of the applicant's father.
3. Having regard to the submissions made by both the sides, the Respondents are hereby directed to consider the case of the applicant as per the old scheme prevailing at the time of the death of the father of the applicant and pass a reasoned order within a period of 45 days from the date of receipt of the copy of this order".

4. While the matter stood as such, the Respondent-BSNL considered the case of the applicant for compassionate appointment and regretted the same vide communication dated 12.5.2011. Aggrieved with this, the applicant again

approached this Tribunal in O.A.No.901 of 2011. This Tribunal, after considering the matter on merit, vide order dated 18.12.2013 disposed of the said O.A. as under:

"7. In so far as application of rules governing compassionate appointment, this Bench has consistently been taking a view that the rules in force at the time of the death of the employee shall be the determining factor for considering the compassionate appointment. Since it is apparent that the Respondent-BSNL have not applied the rules governing compassionate appointment as on 3.10.2001 when the father of the applicant passed away, in my considered view, the prayer of the applicant for compassionate ought to be considered again. In effect, the impugned communication dated 12.5.2011(Annexure-A/14) is liable to be quashed and accordingly the same is quashed. Accordingly, the Respondent-BSNL are directed to reconsider the case of the applicant having regard to rules governing compassionate appointment at the time of the death of his father and pass a reasoned and speaking order in that behalf. Ordered accordingly".

5. In compliance of the above direction of this Tribunal, the Respondent-BSNL issued a speaking order dated 14.10.2014 (A/8) rejecting the request of the applicant for compassionate appointment, the relevant part of which reads as follows:

"Taking into account the assets, liabilities of the families of the deceased official, support arrangements, involved time period, long term commitments/responsibilities, over all indigent condition of the family as mentioned above, the CHPC decided that the case is not found fit for Compassionate Group Appointment and recommended for rejection of the request under provision of the scheme for purpose in accordance with the instructions of the aforesaid OM of DOP&T.

In view of the above, your request for compassionate ground appointment is rejected by the competent authority of BSNL".

6. Aggrieved with this, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as mentioned above.

7. Opposing the prayer of the applicant, respondent-BSNL have filed a detailed counter. While justifying their action, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. Heard the learned counsels for both the sides. It is an admitted position that although this Tribunal vide order dated 18.12.2013 in O.A.No.901 of 2011 had directed the respondent-BSNL to reconsider the case of the applicant having regard to rules governing compassionate appointment at the time of the death of his father, in the impugned order the respondents, have taken into account the following facts/information, while reconsidering the request of the applicant for compassionate appointment.

- i) Sri Paresh Kumar Mallick is the youngest son of late Dinabandhu Mallick. His age was 22 years as on the date of application for CGA. All other five sons and daughters of the deceased employee were above 25 years at that time.
- ii) Family pension @ the Rs.2310 + IDA per month has been paid to Sri Paresh Kumar Mallick from 04.10.2001 to 04.10.2008 and an amount of Rs.446441/- paid towards terminal benefits.
- iii) The Ex.official was expired at the fag end of his service. Only 8 months of service was left at the time of his death.
- iv) The applicant along with other members of the family of the deceased employee are living in their own house. They have some agricultural land at their native place.

9. Considering all the above mentioned points, the CHPC decided that the case is not found fit for compassionate appointment and accordingly, rejected the same.

10. From the above recital of facts, it is clear that the respondent-BSNL have taken into account the terminal benefits while determining indigent condition of the family. Law is well settled by the Hon'ble Supreme Court in Balbir Kaur vs. Steel Authority of India (AIR 2000 SC 1598) that introduction of family

benefit scheme cannot be a ground to refuse benefit of compassionate appointment. Besides, the point considered by the Respondent-BSNL in order to assess the degree of indigent condition of the deceased family that the family of the deceased has some agricultural land is based on conjecture and surmises. In view of this, the case of the applicant for compassionate appointment deserves to be reconsidered by the Respondent-BSNL. Accordingly, the impugned speaking order dated 14.10.2014(A/18) is quashed and set aside. Respondent-BSNL are directed to reconsider the case of the applicant in the light of the observations made above and pass appropriate orders within a period of 90 (ninety days) from the date of receipt of this order.

In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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