

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 349 of 2014

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

Ashok Kumar Routray, aged about 41 years, S/o Late Muralidhar Routray, At-Tiranpada, PO-Kothapatna, PS-Baliana, Dist-Khurda.

.....Applicant

VERSUS

1. Chief General Manager, Bharat Sanchar Nigam, Limited, Orissa Telecom Circle, Bhubaneswar-751001.
2. Divisional Engineer, Telecom (Admn), Office of the GMTD, BSNL, At-Link Road, Cuttack, Pin-753012.

.....Respondents.

For the applicant : None

For the respondents: Mr.K.C.Kanungo, counsel

Heard & reserved on : 30.8.2019 Order on : 13.9.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

By filing this Original Application (in short OA), the applicant seeks the following reliefs:-

"Under these circumstances it is most humbly prayed therefore that this Hon'ble Tribunal may graciously be pleased to quash the rejection order in respect of the applicant at Annexure A/8 and direct the respondents to give appointment to the applicant under rehabilitation assistance scheme considering his case basing on the guidelines of 2005 instead of 2007 within a specific period.

Or pass any other order/orders as this Hon'ble Tribunal deem fit and proper in this case.

Allow this original application with cost."

2. The facts of the case as mentioned in the OA under the head *Synopsis* are as under:

"The applicant has filed this Original Application challenging the order dated 6.8.2012 passed by respondent No.2 wherein the prayer of the applicant for considering his case for engagement on compassionate ground has been rejected. The father of the applicant died while continuing in the service in the year 2004 and immediately thereafter the applicant applied for appointment under rehabilitation assistance scheme in the year 2005. The respondents slept over the matter for years and finally in the year 2012 hs rejected the

prayer of the applicant considering his case basing on guidelines issued in the year 2007 which otherwise is not applicable to the case of the applicant who had applied for appointment in way back in 2005. Challenging the order of rejection of the case of the applicant for consideration for appointment under rehabilitation assistance scheme the applicant has preferred the present original application.

3. The grounds as mentioned in the OA are as under:-

- “5.1 For that the action of the respondents in rejecting the case of the applicant for giving him appointment under rehabilitation assistance scheme is nothing but colourable exercise of power and the same is not sustainable in the eye of law.
- 5.2 For that the respondents have acted in an illegal manner and reconsidered the case of the applicant basing on the 2007 order even though the same is not applicable to the case of the applicant.
- 5.3 For that the respondents have been showing a very step motherly attitude to the applicant in considering his case for appointment under rehabilitation assistance scheme even though his family is continuing under a very distressed condition.
- 5.4 For that the respondents have not kept in mind the criteria for considering one's case for rehabilitation assistance scheme and even though the applicant's case fulfils all the criteria as has been fixed in the year 2005 have rejected the case of the applicant basing on 2007 order which is not acceptable in the eye of law.”

3. Counter filed by the respondents, stated in para 3 and 5 of the that inquiry was conducted regarding financial condition of the family and the case was considered by the Circle High Power Committee (in short CHPC) in accordance with the guidelines of the BSNL dated 27.6.2007 (Annexure-R/2) and the OM dated 9.10.1998 of the DOPT (Annexure-R/1) and the vacancies available under the compassionate appointment quota was offered to more needy persons than the applicant. It is stated that the BSNL Board has approved a point system for assessment of the indigent condition, which was circulated vide the circular at Annexure-R/2 and it was decided by the authorities that the cases with 55 or more points are to be treated as eligible for consideration of the CHPC. It is stated that the guidelines dated 27.6.2007 aimed to achieve uniformity in assessment of the indigent condition of the family. As per the above guidelines, the applicant could get 45 points basing on the facts and the inquiry report, for which his case was not accepted by CHPC. In the counsel, the following judgments have been referred to –

1. H.C.Patel –vs- Union of India & Others [OA No. 377/2008 (CAT, Ahmedabad Bench)]
2. State Bank of India –vs- Raj Kumar [(2010) 11 SCC 661]
3. State Bank of India & others-vs-Jaspal Kaur [2007(2) SCC (L&S) 578]

5. Heard learned counsel for the respondents on 30.8.2019 in absence of the applicant's counsel, who was allowed to when the matter was posted for

hearing. The applicant's counsel was allowed to file his written submissions, which was furnished by him subsequent to the hearing.

1. H.C.Patel –vs- Union of India & Others [OA No. 377/2008 (CAT, Ahmedabad Bench)]
2. Civil Appeal No. 6348 of 2013 in MGB Gramin Bank –vs- Chakrawarti Singh
3. State Bank of India –vs- Raj Kumar [(2010) 11 SCC 661]
4. State of Gujarat & Orts. –vs- Arvind Kumar Tiwary & Anr. [Civil Appeal No. 6468/2012]
5. State Bank of India & others-vs-Jaspal Kaur [2007(2) SCC (L&S) 578]
6. Learned counsel for the applicant has filed his written note of arguments stating that the cases cited by the learned counsel for the respondents are not applicable to the facts and circumstances of the present case. Regarding the issue of delay, it is stated that the applicant has filed MA for condonation, explaining the delay which may be considered. Applicant first applied in 2005, which was rejected vide order dated 6.8.2010 (Annexure A/8). The applicant has approached this Tribunal in April 2014 with the MA No. 323/2014 explaining the reasons of delay. It is stated that inspite of the application submitted by the applicant, respondents kept silent over the matter from 2005 to 2012, when basing on the weightage system introduced in 2007, respondent No.2 rejected the case of the applicant. It is stated that the respondents have not explained properly the reasons for delay of about 7 years in taking a decision.

7. The applicant in his written argument has enclosed the copy of the following judgments :

1. Surendra Prasad –vs- Union of India [OA No. 122/2012, CAT, Cuttack Bench]
2. Bhupinder Batra –vs- Union of India & Others [OA No. 247/2016 CAT, Chandigarh Bench]
3. Union of India & Others –vs- E.Bharat [WP(C) No. 25164/2013, High Court of Judicature of Madras]
4. Shamimul Haque Safari –vs- Union of India & Others [OA No. 1003/2011, CAT, Allahabad Bench]
8. Learned counsel for the respondents has also cited the following judgments :

1. Civil Appeal No. 2425/2019 (Government of India & Another –vs- P.Venkatesh), judgment dated 1.3.2019.
2. Civil Appeal No. 1577/2019 (Union of India & Another –vs- C.Girija & Others), judgment dated 13.2.2019.
3. WP(C) No. 15392/2011 (Ajay Kumar Behera –vs- State of Odisha & Others), judgment dated 5.4.2018.

4. FAO No. 86/2013 (State of Odisha -vs- Smt. Bishnupriya Routray), judgment dated 22.4.2014.

5. OA No. 138/2016 (Namita Dhal -vs- Union of India & Others), order dated 1.3.2019.

9. Having considered the pleadings on record as well as submissions made by both the parties, the question that is to be decided in this case is whether the delay in filing the OA can be condoned and whether the plea of the applicant that the circular dated 27.6.2007 (Annexure R/2) of the respondents prescribing point based merit system, will be applicable to the case of the applicant. The applicant's case is that the death of the applicant's father expired in 2004 and he had applied for the compassionate appointment in the year 2005, for which he claims that his case was required to be considered as per the circular which was in force prior to the circular dated 27.6.2007.

10. The case of the respondents is that the case of the applicant has been duly considered, but his merit point as per the circular dated 27.6.2007 (Annexure R/2) was below 55 which is the cut off merit point fixed for deciding the cases for compassionate appointment. It is stated that there is no difference between the DOPT guidelines dated 9.10.1998 (Annexure R/1) and the circular dated 27.6.2007 (Annexure R/2), except for the fact that to bring uniformity in assessment of indigent condition of the family the point system has been specified vide the guidelines in circular dated 27.6.2007. It is further argued by the respondents that the said circular has also been upheld by the Tribunal in OA 377/2008 of Ahmedabad Bench of this Tribunal.

11. In the case of Surendra Prasad (supra) in OA No.122/2015 decided by this Bench vide order dated 29.4.2016, the father of the applicant expired on 2001. Enquiry about the indigent condition of the family was done on 28.3.2002. His case was considered as per the circular dated 27.6.2007 introducing the weightage system and it was rejected by the respondents on 19.11.2011. In that case, the respondents had taken the plea of delay on the part of the applicant. The Tribunal on the issue of delay held as under :

"13. In view of the foregoing, the consideration of the prayer for condonation of delay has to be done against the context of the facts of the case. The applicant has no doubt challenged the order of rejection passed by the respondents after some delay. But the application for condonation of delay cannot be rejected for a robotic or mechanical fashion. In this case, the scenario indicates that rejection of the MA filed for condonation of delay will defeat the course of substantial justice. In view of the delay and lack of promptitude on the part of the respondents' organization, I take a lenient view of the delay of the applicant in filing the OA. I, therefore, allow the MA No. 312 of 2015 filed for condonation of delay."

After discussing the pleadings as well as the cases cited by both sides, this Tribunal finally held on the merit of the OA No. 122/2015 as under :

"21. In view of the discussions made above, I am of the opinion that there is merit in the prayer of the applicant that his case should be considered as per the scheme of compassionate appointment that was existing at the time of the cause of action in the year 2002 when the applicant submitted the application for compassionate appointment. The respondents are accordingly directed to reconsider the case of the applicant as per the scheme prevailing earlier in 2002 and communicate their decision with a reasoned and speaking order to the applicant within a period of 120 days from the date of receipt of this order. The impugned order dated 19.11.2012 is quashed and the case is remanded."

12. A similar issue was also decided by Chandigarh Bench in the case of Bhupinder Batra -vs- UOI in which it was held as under :

"13. Accordingly, I have no hesitation in my mind to hold that impugned orders in both the O.As are non speaking and the respondents have travel beyond the policy of 1998 while rejecting their claim under compassionate appointment. Both these O.As are allowed and the impugned orders dated 12.05.2015 (Annexure A-7) in O.A No. 060/00247/2016 and order dated 04.03.2016 (Annexure 12) in O.A No. 060/00408/2016 are quashed and set aside. The matter is remitted back to the respondents to reconsider the case of the applicants by passing a reasoned and speaking order in the light of the policy dated 09.10.1998 by not considering the terminal benefits which were made available to the ward of deceased employee, within a period of two months from the date of receipt of a certified copy of the order. No costs."

It may be noted that the respondents in this case were also the same i.e. BSNL and the father of the applicant in that case had expired in the year 2002 and his case was also rejected applying the guidelines of 2007.

13. In the case of UOI -vs- E.Bharat (supra) the father of the first respondent died on 2.10.2004 and the BSNL had rejected the case on similar ground applying the point system of the circular dated 27.6.2007. In this case also it was held by Hon'ble Madras High Court as under :

"21. For the reasons supra, we are inclined to direct the petitioner to consider the case of the first respondent by applying the parameters of the scheme as they stood at the time of death of the employee in the year 2004, after affording an opportunity to the first respondent. Since the matter pertains to the year 2004, the petitioner shall dispose of the case, within a period of three months from the date of receipt of a copy of this order, in the light of the observations made by this Court."

14. In the case of Shamimul Haque Safari decided by Allahabad Bench of this Tribunal vide order dated 11.10.2018 in OA 1003/2011, the death of the concerned employee occurred on 27.7.2005 and the issue is similar, direction was given to re-consider the matter. The applicability of the guidelines dated 27.6.2007 was not raised or decided in that case. Hence, the decision will not be of any help for the applicant.

15. Discussing the citations submitted by the learned counsel for the respondents on the issue of delay, it is seen that in the case of P.Venkatesh (supra), although the representations were rejected in January, 1997, but the applicant approached the Tribunal in the year 2007. The order does not mention whether the application for condonation of delay was filed and

considered by the Tribunal while disposing of the OA with direction to dispose of the representation. It was observed by Hon'ble Apex Court as under :

"The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable."

It is clear from the above that no application for condonation of delay was filed before the Tribunal while filing the OA belatedly. The facts of the present OA are different, since the MA No. 323/2014 has been filed for condoning the delay in filing the OA.

16. In the case of C.Girija (supra), the dispute pertains to vacancy and recruitment and it is factually distinguishable from the present OA. In the case of Ajay Kumar Behera (supra) decided by Hon'ble High Court of Orissa, the dispute related to delay in a dispute relating to a recruitment matter. In this case also no MA was filed for condonation of delay. Hence, the claim was held by Hon'ble High Court to be barred by limitation. In the case of Smt. Bishnupriya Routray (supra), the dispute before the Hon'ble High Court related to the Section 5 of the Limitation Act and the sufficiency of the cause shown by the petitioner for condonation of delay was held to be not enough and the case was accordingly dismissed. Hence, the cited case is factually distinguishable.

17. In the case of Namita Dhal (supra) decided by this Bench vide order in OA 138/2016, the husband of the applicant expired on 21.9.2001 and she made an application on 6.8.2002 which was rejected vide order dated 19.10.2012. The applicant challenged the said order by filing OA No. 963/2012 which was disposed of with the direction that the case of the applicant needs to be considered two more times in terms of the instructions of DOPT. Accordingly, the matter was considered and vide order dated 9.10.2015 and her case was rejected. That order dated 9.10.2015 was challenged in OA No. 138/2016. It is clear from the order that no MA was filed for condonation of the delay either in OA No. 963/2012 or in this OA No. 138/2016. It was also found that the BSNL earlier considered the case of the applicant again and vide order dated 24.9.2016 the case was rejected, but the second order had not been challenged by the applicant in OA No. 138/2016. Accordingly the said OA was found to be devoid of merit and was dismissed. No decision on the ground of delay has been recorded by the Tribunal in that case. Hence, the cited case is factually distinguishable.

18. In view of the circumstances as discussed in the preceding paragraph in this case the OA has been filed along with the MA No. 323/2014 explaining that the applicant is a poor person and due to financial exigencies, he could not challenge the rejection order dated 16.8.2012 within the time stipulated

under the law. The facts and circumstances of the case of Surendra Prasad (supra) in OA No. 122/2015 in which also similar delay was there and application for condonation of delay was filed and the same was condoned, are similar to the present OA. Hence the order dated 29.4.2016 passed in OA No. 122/2015 will fully cover the present OA. The grounds in the MA No. 323/2014 are considered to be satisfactory, particularly taking into account the fact that the respondents have failed to explain the delay of seven years in disposing of his case. The objective of the compassionate appointment is to address immediately the problems faced by the family due to death of the bread earner and it was necessary on the part of the respondents to take decision on the application for compassionate appointment as quickly as possible. But in the case of the applicant the decision was delayed by seven years by the respondents without explaining the reason for such delay. On the other hand, the respondents have objected to this OA on the ground of delay on the part of the applicant. Hence, taking into consideration the circumstances of the case the MA No. 323/2014 is allowed and delay in filing the OA is condoned.

19. Coming to the merits of the OA, I am of the considered view that the order dated 29.4.2016 in OA No. 122/2015 will squarely be applicable to this OA. As decided in the said OA, the case of the applicant is to be decided by the respondents not on the basis of the circular dated 27.6.2007 but as per the DOPT OM dated 9.10.1998 (Annexure R/1). The OA is, therefore, disposed of with a direction to the respondents to consider the case of the applicant once more in terms of DOPT circular dated 9.10.1998 and communicate the decision by a speaking order to the applicant within four months from the date of receipt of the copy of this order. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

