

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.180/00813/2016

Wednesday this the 24th day of July 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

M.P.Leema,
S/o.Late Michael.V.G.,
Marakkassery House,
Ochanthuruth P.O.,
School Muttam – 682 508.

...Applicant

(By Advocate M/s.Dandapani Associates)

v e r s u s

1. Bharath Sanchar Nigam Ltd.,
represented by the Chairman-cum-Managing Director,
Telecom, New Delhi – 110 001.
2. The Asst. Director General,
Bharath Sanchar Nigam Ltd., Telecom,
New Delhi – 110 001.
3. Asst. General Manager (Admin),
Office of the Principal General Manager,
Telecom, Bharath Sanchar Nigam Ltd.,
Telecom, Ernakulam, Kochi – 682 016.

...Respondents

(By Advocate Mr.V.Santharam)

This application having been heard on 17th July 2019, this Tribunal on 24th July 2019 delivered the following :

ORDER

The O.A has been filed by Smt.M.P.Leema aggrieved by Annexure A-2 order dated 16.4.2016 issued by the 3rd respondent rejecting her application for grant of compassionate appointment on the ground that the BSNL Circle High Power Committee did not find the family living in

indigent condition under provision of the scheme in accordance with the instructions of Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Govt. of India under Letter No.14014/6/94-Estt.(D) dated 9th October 1998. The reliefs sought by the applicant is as follows :

1. Call for the records pertaining to Annexure A-2 and set aside the same declaring that the applicant is fully eligible and entitled for compassionate ground of appointment on the death of her husband late Michael ie., 28.11.2009.
2. To direct the 1st respondent to consider the appeal Annexure A-3 keeping in view of the fact that the applicant is entitled to get 15 more marks while allocating weightage points to the applicant for dependency and calculating the pension at the correct rate.
3. To grant such other appropriate order or direction as the Tribunal deemed fit and proper in the facts and circumstance of the case.

And

4. Award costs.

2. The brief facts of the case are :

The applicant is the wife of late V.G.Michael. Shri.V.G.Michael died in harness on 28.11.2009 while serving as Telecom Mechanic (Group C) at Ernakulam SSA, BSNL leaving behind his mother and his wife. It is submitted that the deceased employee was the only source of income to the family. At the time of death the deceased employee had completed 18 years 2 months and 6 days of service. The applicant has submitted application for compassionate appointment on 22.11.2011. It is submitted that the BSNL has adopted weightage point system to bring uniformity in assessment of

indigent condition of the family. The applicant alleges that points have not been allotted properly under different heads like dependents' weightage, family pension granted, terminal benefits granted etc. as also the liabilities that the deceased employee has incurred while in service. The applicant submits that if all these have been taken into account she would be entitled for more points. The applicant has submitted an appeal against the rejection of her request before the 1st respondent, the Chairman-cum-Managing Director on 19.7.2016.

3. The applicant has pointed out that the respondents have granted compassionate appointment to one Shri.Vivid Ramesh who got 55 points as per order dated 15.4.2016, a copy of which is available at Annexure A-4. She submits that if the weightage points had been properly allocated she would have got 56 points and she is entitled for the appointment under compassionate grounds.

4. As grounds the applicant cites her poor health condition and the fact that employment under compassionate ground at this stage would help her to great extent. It is submitted that the appeal preferred by her has not been considered yet by the appropriate authority.

5. The respondents have filed their reply statement wherein it is stated that the objective of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Govt. servant dying in harness or who is retired on medical grounds thereby leaving his

family in penury and without any means of livelihood, to relieve the family of the Govt. servant concerned from financial destitution and help to get over the emergency. As per the rules, provision of appointment under the scheme is limited to 5% of vacancies falling under Direct Recruitment quota in any Group C or Group D post and as such while considering a compassionate appointment request, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities and all other relevant factors of the case. It is submitted that the BSNL Corporate Office is the authority competent to take decision on compassionate appointment requests. As per the provision of the weightage points system adopted by the BSNL, cases with 55 or more net points shall be prima-facie treated as eligible for consideration by the Circle High Power Committee for compassionate ground appointment which has to be forwarded by the respective Telecom Circles after carefully assessing each case to the BSNL Corporate Office, New Delhi with all relevant documents for final disposal. The weightage point system takes into account various items viz., number of wholly dependent family members of the ex-official, including special weightage to handicapped, minor members and unmarried daughters in the family, special weightage to the widow if seeking compassionate appointment for herself, left out service of the ex-official, financial condition of the family based on pension and terminal benefits, negative points for presence of earning members in the family and belated request as applicable in each individual case.

6. With regard to the averments of the applicant for not allocating proper points the respondents submitted that only the spouse and children are included in the definition of 'dependent family member' and accordingly the wife was given 5 points under this factor. With regard to weightage points under 'pension' factor, it is submitted that a total amount of Rs.459993/- was paid to the family towards terminal benefits. Moreover, the wife, who is living in her own house, is in receipt of Rs.6750/- + DA as pension. Thus, the family pension received at enhanced rate immediately after the death of the official is the criterion for the allotment of weightage points. The financial liabilities incurred by the deceased employee is not a criterion for allotment of weightage points under the Scheme.

7. The respondents admit that Shri.Vivid Ramesh and others referred to in Annexure A-4 were given appointment under the scheme as all those cases received 55 or more points whereas the applicant could get only 51 points even after allotting 10 additional points under 'family pension' factor. And since the Circle High Power Committee can recommend only those cases that score 55 and above points the case of the applicant was not recommended. Lastly, the respondents submitted that it is settled law that compassionate appointment is not a regular method of recruitment. There is no vested right for any person to claim compassionate appointment.

8. A rejoinder has been filed by the applicant reiterating her contentions in the O.A and it is submitted that as per Annexure R-1(a) Note 1 dependent father or mother of the deceased official is not eligible for Compassionate Ground Appointment but all dependents are entitled for weightage points as per Annexure R-1(b) subject to the maximum of 30 points. Further as per Item 2 of Annexure R-1(b) the weightage point system is for basic family pension which means normal rate/ordinary rate family pension and not enhanced rate family pension. With regard to assets and liabilities, applicant has pointed out at para 16(c) of Annexure R-1(a) wherein column, namely, "IV – Brief particulars of liabilities if any" is also provided, which if taken into account will fetch her more points.

9. Two additional reply statements and a rejoinder to the additional reply statement has also been filed in the O.A.

10. We have heard learned counsel for the parties at length and perused the records available on record. The main objective of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Govt. servant dying in harness so as to provide relief to the family of the Govt. servant concerned from financial destitution and to help it get over the emergency. It may be very pertinent to note that the number of vacancies available for appointment under the scheme is very few compared to the number of dependents and only the most indigent cases can be given appointment. Further, it is not an avenue for a regular appointment. The weightage point scheme that is followed in BSNL for

assessing the applications for compassionate ground appointment strictly follows the broad guidelines issued by DoPT. The learned counsel for the respondents relied on the judgment of the Hon'ble Apex Court in **State of Himachal Pradesh and Ors. v. Shashi Kumar (Civil Appeal No.988/2019)**. The relevant portions are extracted below :

21. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependant member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

11. The Hon'ble Apex Court further added that :

38. We find merit in this submission, for the simple reason, that it is in accord with the express terms of the Scheme of 18 January 1990, as modified by the State. **The Scheme contemplates that payments which have been received on account of welfare measures provided by the State including family pension are to be taken into account. Plainly, the terms of the Scheme must be implemented.**

39. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma (supra) in issuing a direction to the State to act in a manner contrary to the express terms of the Scheme which require that the family pension received by the dependants of the deceased employee be taken into account.

(emphasis supplied)

12. It is also found that even after the applicant was allotted 10 additional points she could only manage to get 51 points which is below the bench mark score of 55 required by Circle High Power Committee for recommending the case for compassionate ground appointment.

13. In the light of what is stated above, the O.A is found to be lacking in merit and accordingly the same is dismissed. No costs.

(Dated this the 24th day of July 2019)

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00813/2016

- 1. Annexure A-1** – A copy of the Policy Guidelines No.273-18/2005-Pers.IV dt.27.6.2007 for compassionate appointment with Annexure indicating point system.
 - 2. Annexure A-2** – A copy of the impugned order No.R&E/ENK-60/LMP/22 dt.16.4.2016.
 - 3. Annexure A-3** – A copy of the appeal memo submitted before the 1st respondent dt.19.7.2016.
 - 4. Annexure A-4** – A copy of the relevant portion of order No.Admn./EK 257/4/2011-16/35 dt.15.4.2016.
 - 5. Annexure A-5** – A copy of the order bearing No.273-18/2005-Pers.IV dtd.22.10.2013.
 - 6. Annexure R-1(a)** – A copy of the instructions issued by the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Govt. of India under letter No.14014/6/94-Estt.(D)-dated 9th October 1998.
 - 7. Annexure R-1(b)** – A copy of the letter No.273-18/2005-Pers.IV dated 27.6.2007.
 - 8. Annexure R-1(c)** – A copy of the letter No.268-79/2002-Pers.IV dated 27.12.2006.
 - 9. Annexure R-1(d)** – A copy of the speaking order dated 16.4.2016 issued to the applicant.
 - 10. Annexure R-1(e)** – A copy of the communication dated 1.10.2014.
 - 11. Annexure R-1(f)** – A copy of the judgment dated 7.6.2012 in O.A.No.546 of 2010.
 - 12. Annexure R-1(g)** – A copy of the letter No.268-Gen.Corr/2010-Pers.IV dated 13.2.2014 issued by the BSNL Co.
 - 13. Annexure R-1(h)** – A copy of the BSNL Co. Letter No.273-18/2005-Pers.IV dated 22.10.2013.
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