

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00529/2018

Friday, this the 6th day of September, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Akhila T., D/o. Late Venugopalan P., aged 20 years,
 residing at Thekkiniyedathkundil House, Eravimangalam PO,
 Thrisur, Pin – 680 751.

Applicant

(By Advocate : Mr. K.T. Shyam Kumar)

V e r s u s

1. The Assistant General Manager (R&E),
 Bharat Sanchar Nigam Limited, Office of the Chief General
 Manager Telecom, Kerala Circle, Thiruvananthapuram,
 Pin – 695 033.
2. The Bharat Sanchar Nigam Limited, Corporate Office,
 Bharat Sanchar Bhavan, Harish Chandra Mathur Lane,
 Janpath, New Delhi – 110 001 represented by its Chairman and
 Managing Director.
3. Union of India, represented by its Secretary to Government,
 Ministry of Personnel and Training, New Delhi,
 Pin – 110 001. **Respondents**

**[By Advocates : Mrs. Girija K. Gopal (R1&2) and
 Mr. P.R. Sreejith, ACGSC (R3)]**

This application having been heard on 04.09.2019 the Tribunal on
 06.09.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) Set aside Annexure A7 order issued by the 1st respondent rejecting
 the application of the applicant for grant of appointment under the
 compassionate grounds.

(ii) Set aside Annexure A9 order to the extent it prescribes weightage marks based on the amount of terminal benefits received by the family of the deceased and based on the fact of own residence of the family of the deceased.

(iii) Direct the 1st respondent to reconsider Annexure A4 application for appointment on compassionate grounds afresh on the basis of the financial condition of the family of the applicant on the date of application.

(iv) Grant such other reliefs this Honourable Tribunal may deem fit in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant is the daughter of Late Venugopalan P., who died in harness while working as Telecom Mechanic. The deceased was survived by his wife and the applicant the only daughter. Since the treatment expenses and liabilities with banks incurred by the deceased were a huge financial liability for the family, the applicant applied for employment under the scheme for employment of dependents of Government servants dying while in service. The application of the applicant was considered by the Circle High Power Committee and the same was rejected by order Annexure A7. The applicant submits that the committee considered the application applying the system of weightage point system and found that the applicant is entitled to obtain only 29 points as against the minimum of 55 or above points which is considered for grant of appointment. The respondents while rejecting the application of the applicant considered the item relating to terminal benefits and for which the applicant has not been granted any point under the head of terminal benefit. Further, Annexure A8 had not prescribed any cutoff mark of 55 for consideration of the application for compassionate appointment. Therefore, the action of the respondents is arbitrary and illegal. Aggrieved the

applicant has approached this Tribunal with the present OA.

3. Notices were issued to the respondents. They have entered appearance through Smt. Girija K. Gopal, learned counsel appearing for respondents Nos. 1 & 2 and Shri P.R. Sreejith, learned ACGSC appearing for respondent No. 3. It is contended by respondents 1 & 2 that the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without any means of livelihood and to relieve the family of the Government 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 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, presence of earning member, size of the family, age of the children and all other relevant factors of the case, especially in view of the fact that in number of occasions the Hon'ble apex court has pronounced that granting of appointment on compassionate grounds without assessing the financial position of the family is impermissible. The deceased official was survived by his wife and one daughter. The family was paid terminal benefits amounting Rs. 12,46,432/- in addition to a monthly family pension of Rs. 9,200/- plus DA. The application of the applicant was placed before the Circle High Power Committee in its meeting held on 29.3.2017. It

examined all aspects of the case in accordance with the weightage point system for compassionate grounds appointment in BSNL. In the instant case the net points came to be only 29 and hence the application was rejected. Further '0' points are given for those cases that received more than Rs. 10 lakhs as terminal benefits. The respondents have relied upon the following judgments of the Hon'ble apex court:

- i) ***Life Insurance Corporation of India v. Mrs. Asha Ramachandra Amberkar and other*** – JT 1994 (2) SC 183
- ii) ***Union Bank of India & Ors. v. M.T. Latheesh*** – 2006 (7) SCC 350
- iii) ***State of Himachal Pradesh & Anr. v. Shashi Kumar*** – (2019) 3 SCC 653

Respondents have also relied upon the order passed by this Tribunal in OA No. 180/166/2018 dated 16th August, 2019 wherein this Tribunal after considering the judgment of the apex court in ***Shashi Kumar***'s case (supra) dismissed the OA.

4. Heard Shri K.T. Shyam Kumar, learned counsel appearing for the applicant and Mrs. Girija K. Gopal, learned counsel appearing for the respondents 1 & 2 and Mr. P.R. Sreejith, learned ACGSC appearing for respondent No. 3. Perused the record.

5. In OA No. 180/166/2018 dated 16th August, 2019 this Tribunal after considering the judgment of the apex court in ***Shashi Kumar***'s case (supra) dismissed the OA holding as under:

“9. Heard Shri P.A.Kumaran and Shri Nirmal V.Nair on behalf of the applicant and Smt.K.Girija, learned Standing counsel for BSNL. Admittedly, the Scheme for compassionate ground appointment is meant

to lessen the burden cast upon a bereaved family on account of the death of an Government employee 'in harness'. In view of the 5% limit on DR vacancies set apart for this category, the authorities are required to be diligent while considering all factors relating to the eligibility of an applicant for appointment under the Scheme. The applicant has fallen short of required 55 marks by 5 marks and if she had been awarded more marks on the ground that her son had been a minor, which he was at the time of death of the Government employee, she would have qualified. However, the respondents have pointed out that on the date the applicant chose to file her application her son had attained majority and was 18 years of age. We see no impropriety in the stand taken by the respondents in this regard. The claim of the applicant becomes live only when she has filed the application, on which date her son was not eligible for the additional marks as a minor. The contention of the applicant in this regard is thus not valid.

10. Whether the terminal benefits are to be considered as part of factors that are going into assessment of eligibility under the Scheme is another point disputed by the applicant. According to her, these are rightful dues to which her husband and after his death his legal heirs are eligible. To state that the receipt of the same would lift the bereaved family out of indigence is an unreasonable conjecture made by the respondents, the applicant claims. She assails the Scheme on this aspect. However, we see that the Apex Court has considered this specific issue in considerable detail in **State of Himachal Pradesh & Anr. Vs. Shashi Kumar in Civil appeal No.988 of 2019 (Arising out of SLP (C) No.7079 of 2016)**, wherein the policy underlying the Scheme for compassionate ground appointment has been upheld stating as below:

“.... 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.”

On the basis of the above, we see that the OA is devoid of merit. It is dismissed. No costs.”

6. In the present case also the claim of the applicant is that the system of weightage marks being granted based on the amount of terminal benefits and considering the fact that the family has a house of their own is irrational. The apex court in **Shashi Kumar's** case (supra) held as under:

“32. The learned Senior Counsel appearing on behalf of the appellants has sought to distinguish the above observations, in the judgment in **Canara Bank v. M. Mahesh Kumar** – (2015) 7 SCC 412 by submitting that it is not the case of the State of Himachal Pradesh that mere receipt of family pension would disable an applicant from submitting an application for compassionate appointment or preclude consideration of the claim. On the contrary, the submission which is urged is that the scheme requires consideration of all relevant sources of income and hence, receipt of family

pension would be one of the criteria which would be taken into consideration in determining as to whether the family of the deceased employee is in indigent circumstances. We find merit in this submission for the simple reason that it is in accord with the express terms of the scheme of 18.1.1990 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.”

7. Compassionate appointment is an exception to the general rule and 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. The dependents of a deceased employee 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 respondents to allow the benefit of compassionate appointment. The terms on which such applications would be considered are subject to the policy which is framed by the respondents. In the instant case the policy for compassionate appointment mandated that receipt of benefits received by family on account of welfare measures including family pension and death gratuity was required to be considered while assessing requirement of immediate means of sustenance. Therefore, as per the judgment of the apex court in *Shashi Kumar*'s case (supra) the policy for compassionate appointment should be strictly adhered to by the respondents while considering the claim for compassionate appointment. Hence, in the present case the action of the respondents in granting weightage '0' points to the applicant relating to receiving of terminal benefits more than Rs. 10 lakhs

i.e. Rs. 12,46,432/- is justified.

8. Taking stock of the above and in view of the judgment of the apex court in ***Shashi Kumar***'s case (supra), this Tribunal do not find any merit in the OA. Accordingly, the OA is dismissed. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00529/2018**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the certificate dated 17.10.2012 issued by the Amrita Institute of Medical Sciences.

Annexure A2 - True copy of the death certificate issued by the Nadathara Grama Panchayat.

Annexure A3 - True copy of the relationship certificate dated 21.11.2015 issued by the Tahasildar, Thrissur.

Annexure A4 - True copy of the proforma submitted by the applicant for employment under the compassionate appointment scheme.

Annexure A5 - True copy of the certificates issued by the banks and financial institutions showing the respective amounts due to them from the deceased.

Annexure A6 - True copy of the income certificate dated 8.10.2015 issued by the Tahasildar, Thrissur.

Annexure A7 - True copy of the order No. ES/9-9/2016/4 dated 25.7.2017 issued by the 1st respondent.

Annexure A8 - True copy of the official memorandum No. 14014/6/94-Estt(D) dated 9.9.1998.

Annexure A9 - True copy of the order No. 273-18/2013-Estt-IV dated 21.4.2016 issued by the Corporate Office, BSNL Ltd.

RESPONDENTS' ANNEXURES

Annexure R1(a)- True copy of the said 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.

Annexure R1(b)- True copy of the letter No. 273-18/2005-Pers.IV dated 27.6.2007.

Annexure R1(c)- True copy of the letter No. 268-79/2002-Pers.IV dated 27.12.2006.

Annexure R1(d)- True copy of the check list.

Annexure R1(e)- True copy of the letter dated 2.6.2016.

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