

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00166/2018

Friday, this the 16th day of August, 2019

CORAM:

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

Smt. Bindu K.N.,
D/o Narayanan,
Aged 41 years,
residing at Kunnath House,
Neernamukku, Vadakkethara,
Pazhayannur P.O.,
Thrissur -680 587.

....Applicant

(By Advocate Mr.P.A.Kumaran)

V e r s u s

1. The Bharath Sanchar Nigam Ltd.,
 represented by its Chairman and Managing Director,
 Sanchar Bhavan,
 New Delhi – 110 011.
2. The Chief General Manager,
 Telecom, BSNL,
 Kerala Circle,
 Trivandrum – 695 033.
3. The Principal General Manager Telecommunication,
 Bharat Sanchar Nigam Ltd.,
 Thrissur – 680 022.
4. The Deputy General Manager (HR),
 O/o CGMT, BSNL, Kerala Circle,
 Thiruvananthapuram – 695 033.
5. The Assistant General Manager (R&E),
 O/o CGMT, BSNL, Kerala circle,
 Thiruvananthapuram – 695 033.

....Respondents

.2.

(By Advocate Mrs.Girija K. Gopal, for Respondents)

This application having been heard on 7th August, 2019, the Tribunal on 16th August, 2019 delivered the following :

ORDER

OA No.166/2018 is filed by Smt.Bindu K.N., who is aggrieved by the rejection of appointment on compassionate ground, having fallen short of the benchmark on the Weightage points-scale. A copy of the order dated 25.07.2017 issued by the 5th Respondent is at Annexure A1 and a copy of the order dated 24.10.2017 issued by the 4th Respondent is at Annexure A2, both of which are impugned. The reliefs sought in the OA are as follows:

- i. to call for the records leading to Annexure A1 and A2 and quash the same;
- ii. To declare that the applicant's case for compassionate appointment ought to be considered based on O.M.No.14014/6/94-Estt.(D) dated 09.10.1998 and order F.N.14014/02/2012-Estt.(D) dated 16.1.2013 issued by the Department of Personnel and Training.
- iii. To declare that the applicant is entitled to be granted an additional 5 points under the head dependent's weightage by reckoning the age of the applicant's son at the time of death of the applicant's husband and to direct the respondents to consider the applicant's application for compassionate appointment afresh by granting an additional 5 weightage marks in accordance with such declaration;
- iv. to declare that the applicant is entitled to have her case for compassionate appointment considered for consecutive times irrespective of the time elapsed from the date of death of the applicant's husband or the date of application for compassionate appointment and to direct the respondents to consider the applicant's request according to such declaration;
- v. To declare that Annexure A5 to the extent it does not grant points for the liabilities and debts of the deceased employee's family is unconstitutional and ultra vires the scheme for compassionate appointment promulgated by the DOPT vide G.I.Dept. Of Pers. & Trg.

.3.

O.M.No.14014/6/94-Estt.(D) dated 09.10.1998;

vi. To direct the respondents to consider the applicant's application afresh for appointment on compassionate grounds by granting points for the liabilities owed by her husband in addition to the points entitled as per A-5 and also to grant points accordingly;

vii. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

viii. Grant the costs of this Original Application.

2. The applicant's husband, Shri K.V.Ajithkumar, who was working as Telecom Mechanic in the BSNL when he passed away on 10.06.2014, left behind the applicant, his aged mother and elder sister and two children. A copy of the Death Certificate is at Annexure A3. As per legal heirship certificate, copy of which is at Annexure A4 issued by Talapilly Tahsildar, the applicant, her mother-in-law, her sister-in-law and her two children are legal heirs of the deceased.

3. The Scheme for compassionate appointment in Central Government and its instrumentalities are governed by the consolidated instructions contained as in the OM dated 09.10.1998 issued by DOPT. The first respondent by a circular dated 27.06.2007 has brought into force a Weightage Point System within the DOPT guidelines for uniform assessment of indigent condition of the families of the deceased employees (Annexure A5). As the DOPT Scheme includes only the spouse, children and brother/sister, in the case of unmarried Government servant, in the present case only applicant and minor children of the Government servant were

.4.

included as eligible beneficiaries under the Scheme. On the date of death of the husband of the applicant, both the children were minor, aged 17 years and 14 years respectively and were entitled for total of 25 points under the dependent's weightage itself, the applicant claims. She filed an application under the Scheme on 20.07.2015, copy of which is available at Annexure A6. The Circle High Power Committee only considered the applicant's request in its meeting held on 29.03.2017. Thereupon, the applicant was served with Annexure A1 order informing her that she could not be considered for the requisite weightage marks of 55, as she had been awarded 50 marks as against the 55 marks. As per her representation filed on 10.10.2017 (Annexure A7), the applicant pointed out that the High Power Committee ought to have considered the applicant's son's age at the time of death of the employee rather than at the time of the meeting. If it had been done so, the applicant would have been eligible for additional 5 marks as the son was a minor at that time. But Annexure A7 was also rejected by Annexure A2 on the ground that as on the date of application i.e., 20.07.2015, the applicant's son had crossed 18 years of age.

4. It is pointed out that under Clause-5 of Annexure I of Annexure A5 Scheme, various items are mentioned as terminal benefits. However, the terminal benefits as such have not been defined anywhere. It is forcefully argued that considering the amount under GPF, DLI, CGEGIS, leave encashment, etc., while determining points to be awarded to the applicant

.5.

under the terminal benefits is illegal and arbitrary. These are rightful dues of the deceased employee and his legal heirs and cannot be put under the head of 'terminal benefits' as that includes only pension and gratuity.

5. The respondents have filed a reply statement wherein the claim of the applicant has been opposed. It is submitted that the very object of the Scheme for compassionate appointment is to alleviate the distress of the family of the deceased employee. The purpose is to relieve the family of the Government servant from financial destitution and help to get over the emergency, brought on by the death of the employee. As only 5% of the vacancies fall under the Direct Recruitment quota of any Group C or Group D, set apart to be filled up under the Scheme, there is a need to assess the financial condition of the applicant as a measure of their financial indigence. It was with this purpose that a Weightage Point Assessment has been formulated by the respondent organisation for assessing indigent condition of the family (Annexure R1(b)).

6. In respect of the husband of the applicant, it is stated that when he expired on 10.06.2014, he was survived by his wife, mother, sister, daughter and son. On his death, terminal benefits amounting to Rs.13,16,037/- were paid to the family of the deceased official in addition to a monthly family pension of Rs.9085 + DA. While it is true that the children of the applicant were minors at the time of death of the official, the status as on date the

.6.

application was made, is considered while awarding weightage points. Thus the applicant's son had crossed 18 years of age on the date of application which was 20.07.2015 and was eligible only for 5 points which was granted.

7. As per guidelines for compassionate ground appointment circulated vide Annexure R1(b), only those applications which receive 55 or more points are considered to be living in indigent condition, as per the check list, copy attached at Annexure R1(b). The applicant could be awarded only 50 points, hence her claim was rejected.

8. It is necessary as per the policy that all terminal benefits are required to be indicated in the application form and this is the pattern followed by other agencies such as LIC and the said benefits include DCRG, GPF/EPF, LIC policies including PLI, CGEGIS/GSLIS, leave encashment, ex-gratia payments if any etc. These are also of receivables due to the bereaved family and are factors which are to be considered while assessing their financial condition. In view of the limited number of vacancies available under the Scheme, it is necessary that appropriate rigour is applied to the assessment exercise.

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

.7.

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

.8.

(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.”

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

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00166/2018

1. **Annexure A1:** True copy of the Order No.ES/9-50/2015/5 dated 25.07.2017 issued by the 5th respondent.
2. **Annexure A2:** True copy of Order No. ES/9-50/2015/8 dated 24.10.2017 issued by the 4th respondent.
3. **Annexure A3:** True copy of death certificate of the applicant's husband.
4. **Annexure A4:** True copy of the legal heirship certificate dated 12.11.2014 issued by the Talapilly.
5. **Annexure A5:** True copy of the circular No.273-18/2005-Pers.IV dated 27.06.2007 issued by the Corporate Office of the 1st respondent.
6. **Annexure A6:** True copy of the application for compassionate appointment.
7. **Annexure A7:** True copy of the representation dated 10.10.2017.
8. **Annexure R1(a):** True copy of the letter No.14014/6/94-Estt(D)- dated 9th October, 1998.
9. **Annexure R1(b) :** True copy of the letter No.273-18/2005-Pers.IV dated 27.06.2007.
10. **Annexure R1(c):** True copy of the letter No.268-79/2002-Pers.IV dated 27.12.2006.
11. **Annexure R1(d):** Copy of the check list is attached at for reference.
12. **Annexure A8:** True copy of order F.NO.14014/02/2012-Estt.(D) dated 16.1.2013 issued by DOPT.
13. **Annexure A9:** True copy of the certificate dated 12.02.2015 issued by the Trichur District PT & BSNL Employee's Co-operative Society Ltd., No.4092.
14. **Annexure A10:** True copy of the statement of loan account of Sri Ajith Kumar with Union Bank of India.
15. **Annexure A11:** True copy of the certificate issued by the Union Bank of India, Thrissur Branch dated 23.07.204.
16. **Annexure A12:** True copy of order No.99/EV/RTI/2015 dated 30.04.2015 issued by the Under Secretary to Government, Department of Expenditure, Ministry of Finance.
17. **Annexure A13:** True copy of the judgment dated 25.5.2016 in O.P.(CAT)

.10.

191/2015 on the files of the Honourable High Court of Kerala.

18. Annexure A14: True copy of letter No.CCA/KRL/GPF/FP/15-16 dated 6.7.2015 issued by BSNL.
