

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/962/2017

Date of Order: 18.06.2019

Between:

Syed Shaheen, W/o. Syed Ahmed,
Aged about 45 years,
R/o. H. No. 16/4, Gandhinagar,
Devarakonda Mandal, Nalgonda District.

... Applicant

And

1. Union of India, Rep. by
The Chief General Manager,
Telangana Telecom Circle (BSNL),
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad – 500 001.

2. The General Manager Telecom District,
Nalgonda District, BSNL Bhavan,
Panagal Road, Nalgonda – 508 001.

... Respondents

Counsel for the Applicant ... Mr. B. Pavan Kumar

Counsel for the Respondents ... Ms. B. Deepa, Advocate for
Mrs. P. Yasasvi, SC for BSNL

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed for not considering the applicant for compassionate appointment.

3. Applicant's husband while working for the respondents organisation as Telecom Mechanic passed away on 7.1.2008. Application was made for compassionate appointment immediately but it was rejected on 30.6.2017, by issue of a non-speaking order.

4. Contentions of the applicant are that the impugned order does not specify reasons for rejection and that less meritorious candidates have been considered.

5. Respondents intimate that the applicant got 51 points against 55 weightage points required to be selected. Courts cannot give directions to respondents for appointments to be made on compassionate grounds and can only order consideration, citing Hon'ble Supreme Court verdict in Life Insurance Corporation v Mrs. Asha Ramchandra Amberkar & Ors. [JT 1994(2) SC 183]. Cases once rejected cannot be reopened. Application was received only on 4.10.2014 and not earlier as alleged. Due to lack of vacancies in 2014 -15, the request was processed in 2016. The impugned order is a reasoned and a speaking order.

6. Heard both the counsel and perused the documents on record.

7. I) The impugned order of the respondents reads as under:

“ It is regretted to inform that your request for Compassionate Ground Appointment under Relaxation of Recruitment Rules dated 12.10.2009 is **REJECTED**. ”

On the face of it, impugned order is not a speaking and a reasoned order as it does not spell out the context, contention, consideration and the conclusion in clear terms as are required to be contained in a speaking order. Any administrative decision which adversely affects the vested right has to be in accordance with the Principles of Natural Justice, as has been observed by the Hon'ble Apex Court in Union Of India & Ors vs E.G. Nambudiri on 23 April, 1991, [1991 AIR 1216, 1991 SCR (2) 451] as under:

“Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. ”

On the death of the deceased employee, the applicant has acquired the vested right to be considered for compassionate appointment as per the rules and regulations governing compassionate appointment.

II) Further, DOPT Memo dated 16.1.2013, as extracted here under, has also stated that the Committee formed for the purpose may meet the applicant if required to make a proper assessment and decide the issue.

“The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case”

Applicants are following the DOPT guidelines and hence the aforesaid proviso applies to them.

III) Recently, as on 26.4.2019, Hon'ble High Court of the Jharkhand in Jit Lal Ray v. State of Jharkhand, WP(C) No. 469 of 2019, reiterated that an order which is not reasoned is invalid as under:

“It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice.”

Therefore, the impugned order issued is null and void.

IV) Respondents spelt out the reasons only in the reply statement which they ought to have done in the Impugned order. Respondents, as per law, cannot improve the impugned order through a reply statement. It has been clearly held so by the Hon'ble Apex Court in Mohinder Singh Gill & Anr vs The Chief Election Commissioner, on 2 December, 1977, reported in 1978 AIR 851, 1978 SCR (3) 272, as extracted below.

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of

those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

V) The impugned order does not indicate the candidates selected and the marks scored by them as well as those rejected with marks so that the order is transparent and objective, for the applicants to get convinced of they being rejected. In the particular case the applicant is alleging that less meritorious candidates have been selected. Details have not been furnished by the respondents even in the reply statement countering the allegation, for the Tribunal to take a view. Hence, there is ground to have a second look at the case.

VI) Besides, respondents claiming that closed cases cannot be reopened does not hold water since every order has to stand the scrutiny of law. The impugned order is invalid in the eyes of law as explained. It is true that Tribunal should not direct respondents to issue compassionate appointments. Orders of the Tribunal are framed, in consonance with the Hon'ble Supreme Court verdict cited by the respondents, directing them to consider cases keeping the rules and law in view.

VII) Therefore, in view of the above, the action of the respondents is against the principles laid down by the higher judicial forums and is not in tune with the rules on the subject. The impugned order dated 30.6.2017 is thus quashed. Consequently, respondents are directed to consider calling the applicant for personal appearance before

the High Power Committee, to know for themselves the ground reality and decide after re-examining the case as per extant rules. Time granted to comply with the order is 3 months from the date of receipt.

VIII) OA is allowed with the above directions. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 18th day of June, 2019

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