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CALCUTTA BENCH  
KOLKATA

TA No.39 of 2009  
(WP No. 6616 of 2004)

Reserved on: 27/04/2016  
Pronounced on : 02.05.2016

PRESENT:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....  
Basudeo Mondal, Son of Late Sureshdeo Mondal, Mehidi  
Bagan, Durgatala, Police Station and Post Office.  
Bardwan, Dist. Bardwan. ....Applicant

For the Applicant: MR.J.K.Chaurasia & Mr.A.K.Das, Counsel

-Versus-

1. Union of India service through the Secretary, Ministry of Telecommunication, New Delhi.
2. The Chief General Manager, Bharat Sanchar Nigam Limited, West Bengal Circle, 1, Council House Street, Kolkata-700 001.
3. Asst. Director, Telecom (AS-II), B.S.N.L, W.B.T.C., 1, Council House Street, Kolkata-700 001.
4. The D.E.(Administration), B.S.N.L, Burdwan Telecom Division, PO & District: Burdwan.
5. Sub Divisional Officer (S.E.O), Telegraph B.S.N.L, PO & District: Burdwan.
6. The Dy. General Manager, B.S.N.L, West Bengal Circle, 1, Council House Street, Kolkata-700 001. ....Respondents

For the Respondents: Mr.Sanojit Kumar Ghosh, counsel

ORDERJUSTICE V.C.GUPTA, JM:

The brief facts of this case are that the Applicant Shri Basudeo Mondal, Son of Late Sureshdeo Mondal applied for appointment on compassionate ground under the Respondents after the death of his father in harness on 17/07/2002. His father was working as Telephone Mechanic in the Telecom Department. His application was considered but he same was rejected vide order dated 12/01/2004. An excerpt of it would run thus:

"I am directed to intimate you that your prayer for employment on compassionate ground has been considered by the High Power Committee in its meeting at Circle level on 17-11-2003 and the aside committee after carefully examining the case, it is regretted, has rejected the request for employment on compassionate ground in relaxation of Recruitment Rules due to the following reasons:

"The family consists of four sons and two married daughters. Candidate is the youngest son. The Committee after carefully examining the case has noticed based on the amount of family pension and all other terminal benefits that the family is not in indigent condition and did not find it a fit case for appointment on compassionate ground and rejected the request."

Thereafter, the applicant filed Writ Petition No. 6616 (W) of 2004 before the Hon'ble High Court of Calcutta challenging the aforesaid order of rejection. As the disputes was in between the BSNL and the applicant and falls within the exclusive jurisdiction of the Tribunal at the first instance to decide, the Hon'ble High Court

of Calcutta, vide order dated 11.8.2009, transferred the writ petition to this Tribunal with direction to dispose of the same on merits and renumbered as TA No. 39 of 2009. Thereafter, the matter was heard and decided by this Tribunal vide order dated 22.02.2012. The relevant portion of the order is quoted hereunder for ready reference:

"8. In view of the above, OA is allowed the impugned order dated 12.01.2004 is hereby quashed. The respondents are directed to consider and provide for compassionate appointment to the applicant in pursuance of his application dated 04.07.2003 within a period of 3 months from the date the certified copy of the order is produced."

The BSNL authorities again carried the order of this Bench dated 22.02.2012 to the Hon'ble High Court of Calcutta in WPCT No. 174 of 2012 and the Hon'ble High Court of Calcutta, vide order dated 3<sup>rd</sup> November, 2014 set aside the order of this Bench dated 22.02.2012 and remitted the matter back to this Bench for deciding the matter afresh.

Accordingly, this matter has been listed today for final hearing and disposal. We have heard the learned counsel appearing for the respective parties and perused the records.

2. It is relevant to state that compassionate appointment in Telecom Department is being governed by the orders of the DoP&T. It is apt to quote the relevant portion of the order issued, in this respect, by the DoP&T vide OM No. 32/4/98 dated 29<sup>th</sup> July, 1998 which is extracted hereunder for ready reference:



**"Recommendations**

1. The Department of Personnel and Training should revise its instructions so as to define the term 'near relative' and to include a wife or husband or brother or sister of the deceased Government servant as a beneficiary of the scheme of compassionate appointments.
2. The power to relax limit of 5% of direct recruitment vacancies for making compassionate appointments should be vested with the Secretary in the Ministries/ Departments of Government of India.
3. The Ministries/Departments should ensure that the compassionate appointments are made on means-cum-merit basis;
4. The Welfare Officer in each Ministry/Department should meet the members of the family of the deceased Government servant immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him;
5. A time norm of 6 to 8 weeks should be fixed for making compassionate appointments;
6. The Department of Personnel and Training should make arrangements for a periodic review of cases of compassionate appointments dealt with the Ministries/Departments with a view to reduce delay and to get feedback on the problems faced by Ministries/Departments in the implementation of the scheme of compassionate appointments;
7. The officer dealing with compassionate appointments should be made to understand the scheme of compassionate appointments and its objectives so that they take a more humanitarian approach towards processing the case of compassionate appointment;
8. Wherever the cases are screened by a Board/Committee of officers, the frequency of the meeting of such Board/Committee should be increased



to once a month so that the applications do not remain unattended for long;

9. The Ministry of Defence should allow candidates selected for compassionate appointment to join on a provisional basis pending detailed verification of their character antecedents. Such candidates may, however, be given some non-sensitive charges till completion of detailed verification of their character antecedents.

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#### 3,16,3. Appointments on need-cum-economic status basis.

It is provided in the instructions/guidelines issued by the Department of Personnel and Training that the appointing authority should be selective in its approach and economic status of the family and benefits received by the family of the deceased Government servant should be kept in view while considering the cases of compassionate appointment. It was observed that some of the Ministries/Departments/Organisations are not considering this aspect at all. There appears to be a lot of discretion in this regard which may be exercised in favour or against the applicant. The Department of Personnel and Training should consider providing some guidelines for ascertaining the need and economic status of the family of the deceased Government servant. Some of the parameters which can be considered in this regard are (i) income of the family of deceased Government servant; (ii) educational qualifications of the members of the family of the deceased Government servant; (iii) number of dependants and (iv) assets and liabilities left by the deceased Government servant. The Department of Personnel and Training should also reiterate its instructions from time to time to ensure that appointments are made on need-cum-economic status basis and that the latter factor is not ignored by the appointment authority."

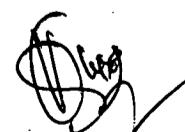
Certain guidelines were issued with regard to appointment on need cum economic status basis. However, the scheme of compassionate appointment was changed vide OM dated 19<sup>th</sup> January, 2007 but prior to 2007 the relevant scheme holding the



field was of 1998, referred to above. In 2007 the weightage point system was introduced by the DoP&T for making appointment on compassionate ground.

3. Reply has been filed by the Respondents wherein it has been contended that after examining carefully the financial status of the family by the authorities, the benefit of compassionate appointment was declined. The basis for judging the financial status is on the amount of family pension and all other terminal benefits granted to the family after the death of the employee concerned. It has been averred that after the introduction of point system, the application of the applicant was in active consideration for compassionate appointment but the same has not been disposed of due to pendency of the litigation and that the applicant on 3<sup>rd</sup> of August, 2009 made a representation for granting him appointment. Therefore, he has no right to challenge the order dated 12.01.2004 rejecting his prayer for providing him appointment on compassionate ground.

4. The learned counsel for the applicant vehemently argued that introduction of point system for deciding the application for appointment on compassionate ground is not relevant for deciding this matter because the order impugned is of 2004 when there was no such rule. He further submits that even if Scheme of compassionate appointment was changed in 2007 the same has no application, as no decision was taken on the

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application of the applicant despite no prohibition for considering the application of the applicant. The pendency of litigation cannot create any impediment in deciding the application in absence of any interim order stopping consideration on the application of the applicant. Further placing reliance on the decision of the Hon'ble Apex Court rendered in the case **Govind Prakash Verma Vs Life Insurance Corporation of India and others**, reported in (2005) 10 Supreme Court Cases 289, the learned counsel for the applicant would submit that the Respondent authorities ought not to have rejected the application of the applicant taking into consideration the terminal benefits received by the family. The relevant portion of the aforesaid decision of the Hon'ble Apex Court is quoted hereunder for ready reference:

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as



a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. **The terminal benefits received by the widow and the family pension could not be taken into account."**

(emphasis added)

He also relied upon another decision of the Hon'ble Apex Court in the case of **All India Reserve Bank Retired Officers Association and others Vs Union of India and others**, reported in AIR 1992 SC 767 to submit that whenever any rule or regulation having statutory flavour is made by an authority which is a state within the meaning of Art.12 the choice of the cut off date which has necessarily to be introduced to effectuate such benefit is open to scrutiny by the court and must be supported on the touch stone of Art. 14 otherwise the same cannot be allowed to sustain. If the classification is not based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof in the members of a homogeneous group it cannot be sustained.

On the strength of the above decisions, it has been submitted by the learned counsel for the applicant that as the



impugned order is solely based upon the receipt of terminal benefits by the deceased family the same is not at all tenable.

It has been submitted that the Respondents granted appointment on compassionate ground to Shri Rathin Kumar Shee even after rejecting the claim once on 12.01.2004 on similar ground on which the claim of applicant was rejected.

The orders rejecting the claim of Shri Rathin Kumar Shee <sup>and</sup> granting appointment were placed on record. On this ground it has been further submitted that the authorities while granting appointment on compassionate ground are not acting in a bona fide manner and exercising the power in an arbitrary manner.

5. Per contra, the learned counsel appearing for the Respondents, in support of the stand of the Respondents, relied upon several judgments of the Hon'ble Apex Court which are as under:

- i. **State of Haryana Vs Nresh Kumar Bali, 1994 SCC Vol. 4, page 448;**
- ii. **Punjab National Bank Vs Ashwini Kumar Taneja, AIR 2004 SC 4155;**
- iii. **Commissioner of Public Instructions Vs. K.R.Vishwanath, AIR 2005 SC 3275;**
- iv. **Union of India Vs M.T.Latheesh, AIR SCW 2006 page 4626;**
- v. **Mgb Gramin Bank Vs Chakrawarti Singh, AIR 2013 SC 3365**

6. In the case of Naresh Kumar Bali (supra), the Hon'ble Apex Court, placing reliance on another decision in the case of Life Insurance Corporation of India v. Asha Ramchhandra Ambekar ruled that Court can direct the respondents to consider the case of an individual but cannot straightaway direct for appointment as it does not fall within the scope of mandamus. Similarly in the case of Ashwini Kuamr Taneja (supra), Their Lordships have categorically held as under:

"3.....The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations, or administrative instructions taking into consideration the financial condition of the family of the deceased."

In the case of K.R.Vishwanath (supra), the Hon'ble Apex Court made certain observation while disposing of the matter of compassionate appointment relying upon the judgment rendered in the case of Umesh K umar Nagpal v. State of Haryana and others and ruled that in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception of the aforesaid requirement taking into consideration the fact of the death of the employee while in serving leaving his family without any means of



livelihood. The relevant portion of the judgment is quoted hereunder for ready reference:

"5.....It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. (1994 (4) SCC 138), that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

6.....Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased-employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

In State of U.P. and Ors. v. Paras Nath(1998 (2) SCC 412), it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments."



The decision in the case of M.T.Latheesh (supra) is concerned, almost similar ratio, as stated herein above in other cases, has been propounded by the Hon'ble Apex Court. The relevant portion of the decision is quoted hereunder for ready reference:

"It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full fact should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities the Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new scheme because the financial status of the family is much above the criterion fixed in the new scheme."

In Chakrawarti Singh's case (supra), after examining several judgments rendered on the subject, the Hon'ble Apex Court in paragraphs 8 & 9 held as under:

"8. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar



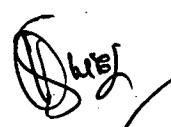
AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570) Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldip Singh v Government, NCT Delhi AIR 2006 SC 2652). A scheme containing an *in pari materia* clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

**"14. Date of effect of the scheme and disposal of pending applications:**

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfil all the terms and conditions of this scheme."

9. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

7. On the strength of these authoritative pronouncements, it has been submitted that the application of



compassionate appointment was pending on the date of commencement of the new scheme, and, therefore, the same shall be disposed of in accordance with the new scheme.

So far as the case of Rathin Kumar Shee is concerned, the learned counsel for the respondents would submit that when the matter was again taken into consideration on account of changed circumstances the orders were passed granting appointment to Shri Rathin Kumar Shee on 21.07.2005 that is after about a year after rejecting the claim on 12.01.2004.

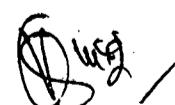
After perusal of the orders of rejection of Shri Rathin Kumar Shee on 12.01.2004 and granting appointment on 21.07.2005, we find that as a special case the matter was taken and appointment was given. But no reasons were assigned for passing order of appointment on 21.7.2005 for ignoring or superseding the earlier order of rejection dated 12.01.2004.

8. After giving due consideration to the rival submissions of the respective parties, the undisputed facts emerge as under:

9. The Applicant is the son of the deceased employee who died in harness on 17.07.2002. The scheme of compassionate appointment was available in the Department when the father of the applicant died. According to the scheme it is an obligation on the part of the employer to immediately approach the family of the deceased for sponsoring name of one of the legal heir of the deceased for appointment on compassionate



ground. The authorities while considering the case of the applicant ought to have taken into consideration the relevant scheme and the guidelines issued in that respect in which it was made incumbent upon the department to make an enquiry with regard to the income of the family of the deceased government servant, educational qualification of the members of the family, number of dependent family members, liability of the family etc. From the record, we find that while deciding the application of the applicant the authorities concerned did not make any enquiry regarding the income of the family etc. They have only taken into consideration the terminal benefits granted to the deceased family members after the death of the government servant. It is not in dispute that the mother of the applicant died during the life time of the deceased employee. So the family pension was granted only to the age of 25 years to the applicant because he was the youngest son of the deceased which was stopped after attaining the age of 25 years as is evident from the record of the respondents itself. The representation dated 3<sup>rd</sup> August, 2009 categorically reveals that due to illness of the deceased employee lot of terminal benefits were utilized for clearing the loans. It has categorically been stated therein that the family has no other source of livelihood except the terminal benefits received by the family. In view of the decision rendered by the Hon'ble Apex Court, as mentioned above, the application of the applicant ought not to have been rejected based

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on receipt of terminal benefits and family pension treating it to be sufficient for survival of the applicant and other family members of the deceased. It is incumbent upon the employer to enquire into about the other source of livelihood of the family members of the deceased at the relevant time as to whether the family has any other source of income either from Business trading, employment in private or PSU sector. They must also enquire into the income of the applicant and other members of the family who come within the category of family in terms of the scheme. Enquiry should also be made by the employer whether the deceased died leaving any liabilities to be cleared up by the family members or not. Whether the terminal benefits was utilized for clearing up the outstanding debts of the deceased.

10. It is also relevant to state that at the time when the application of the applicant was considered the new scheme was not available and no such application was pending. The representation which has been referred to and is of dated 3<sup>rd</sup> August, 2009 is virtually an application made during the pendency of this litigation seeking compassionate appointment. There is nothing on record to establish that no other application in the prescribed format was given by the applicant after 2003. The application given on prescribed format in 2003 was accordingly disposed of by the impugned order.



11. In view of the discussions made above, the impugned order dated 12.01.2004 rejecting the application of the applicant is hereby quashed and the Respondents are hereby directed to consider and decide the case of the applicant for appointment on compassionate ground within a period of two months from the date of communication of this order in the light of the observations made hereinabove. It is also directed that after compliance of the order, the same shall be communicated to the applicant within the time stipulated above.

12. In the result, this OA stands allowed. There shall be no order as to costs.

(Ms.Jaya Das Gupta)  
Member (Admn.)

(Justice V.C.Gupta)  
Member (Judl.)

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