

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

O. A. No. 50 of 2013.

1. Smt. Kalawati Devi, widow of late Somaru Prasad, aged about 62 years, House-wife, residing at Hatiara (Naskarpara), P.O. Ghuni, P.S. New Town, Kolkata- 700 157.
2. Sri Subhas Prasad, son of late Somaru Prasad, aged about 36 years, unemployed youth, residing at Hatiara (Naskarpara), P.O. Ghuni, P.S. New Town, Kolkata- 700 157.

... Applicants.

-Vs-

1. Union of India through the Secretary to the Govt. of India, Ministry of Communications & IT, Department of Tele-Communications, Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110001.
2. Bharat Sanchar Nigam Ltd., through the Chairman & Managing Director, Bharat Sanchar Nigam Bhawan, Harish Chandra Mathur

Lane, Janpath, New Delhi- 110
001.

3. The Chief General Manager, West
Bengal Telecom Circle, 1, Council
House Street, Kolkata- 700 001.

4. The Chief General Manager,
Telecom Factories, Kolkata, 3A,
Chowringhee Place, 7th Floor,
Kolkata- 700 013.

5. The General Manager, Telecom
Factory, 248, A.J.C. Bose Road,
Alipore, Kolkata- 700 027.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.50/2013

Date of order : 30-8-19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

**KALAWATI DEVI & ANOTHER
VS.
UNION OF INDIA & OTHERS(B.S.N.L.)**

For the applicant : Mr. S.K. Datta, counsel

For the respondents : Mr. A.K. Gupta, counsel

ORDER

This application is taken up in Single Bench with consent of the parties since the subject matter falls under Appendix-VIII(Rule 154) and as no complicated question of law is involved. A widow and her son have preferred this O.A. to seek the following reliefs:-

- "a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals(Procedure) Rules, 1987 to move this application jointly;*
- b) An order quashing and/or setting aside the impugned communication of rejection dated 22.10.2010 as communicated to the applicant No.2 by a communication dated 18.4.11;*
- c) An order directing the respondents to reconsider the case of the applicants and to extend the benefits of compassionate appointment to the applicant No.2;*
- d) An order directing the respondents to produce/cause production of all relevant records;*
- e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."*

2. Their case in a nutshell is as under:-

Late Samaru Prasad who was an employee of the Telecom Factory, Alipore died in harness on 24.12.2000. The deceased employee left behind widow, two sons, three daughters and although one of the said daughters is married and

living at her matrimonial house and although another daughter has been deserted by her husband and living with the applicants with her minor son and inspite of having all such information on record the case of the applicants regarding compassionate appointment has been rejected. The applicant No.2 registered an objection whereafter he was asked to furnish further details for consideration by filling up a form supplied to him and furnishing further documents. The applicant No.2 complied with the said request but till date the applicants have not been favoured with any further consideration/reconsideration.

3. The respondents have contested their claim through their reply as well as written notes of arguments. They would aver that the instant O.A. is time barred and alleged that the applicants have not filed any application for condonation of delay, as such the O.A. is not maintainable either in law or in fact and is liable to be dismissed.

That a High Power Committee which considered the case rejected the appeal for compassionate appointment of the applicant No.2 vide letter No.268-458/2009-Pers. IV dated 25.10.2010 and the said rejection was communicated to the Respondent No.4 vide letter No.SF/TC/C-24/08/Dated 22.12.2010 and subsequently the same was communicated to the applicant vide letter No.TFAP/Staff/CGA/66/2009/12 dated 18.04.2011.

That the applicants have received following payments without any objection:-

A.	Immediate relief	Rs.5000/-
B.	DCRG	Rs.2,00,310/-
C.	CGEGIS	Rs.41,241/-(Insurance Fund =Rs.30000/-+Savings Fund=11,241)

D.	GPF Balance	Rs.56,101/-
E.	DLI	Rs.30,529/-
F.	LIC	Rs.6,667/-
G.	Total	Rs.3,84,848/-(Rupees Three Lacs Eighty Four Thousand Eight Hundred Forty Eight only)

That apart the applicant is in receipt of a pre-revised basic family pension of Rs.2,153/- per month upto 23.05.2007 and Rs.1,292/- per month w.e.f. 25.05.2007 and revised family pension of Rs.4,868/- per month upto 23.05.2007 and Rs.3,500/- per month w.e.f. 24.05.2007 as per chart form of VIth CPC. Apart from this the applicant is in receipt of DR of 72 percent and the dearness relief comes to Rs.2,520/- per month. The applicant is in receipt of Rs.6,020/- per month on account of family pension and dearness relief.

Further that a minimum pension of Rs.9000/- per month is payable w.e.f. 1st January, 2016.

4. The respondents have averred that the sons of deceased employee namely Late Somaru Prasad are adult and have already attained 25 years of age and no document was submitted by the applicant that Smt. Kanchan Das(daughter) was driven out of from her in-law's house. That both the sons of Late Samaru Prasad are major and cannot be treated as dependent of the ex-employee.

5. In support of their contention that the applicants do not deserve any consideration, the respondents have relied upon the following decisions:-

(i) **Umesh Kumar Nagpal vs. State of Haryana [(1994)4 SCC 138]** where it was propounded that the compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future;

(ii) **Union of India & Another vs. Shashank Goswami & Another[(2012)11 SCC 307]** where it has been held that in case the family of the deceased had received terminal benefit of more than 3,00,000/- excluding GPF the dependant of the deceased would not be eligible for compassionate appointment.

In the instant case, the family of the deceased having received Rs.3,84,848/- and excluding GPF the family having received an amount of Rs.3,28,747/- the respondents would submit that it cannot be said that the applicants "suffered penury as alleged by them".

(iii) Hon'ble Supreme Court's decision in **State of Jammu & Kashmir & Ors. vs. Sajad Ahmed Mir(AIR 2006 SC 2743)** that, *"where there was three years delay on the part of the applicant claiming appointment on compassionate to challenge the order of rejection of the said appointment", that "compassionate appointment cannot be granted after lapse of fifteen years from the death of the deceased employee, and the said fact is in a relevant fact which show that the family survived inspite of death of the employee,"* to contend that challenging the order/communication in rejection of his claim for compassionate appointment, dated 22.10.2010 the applicant in the year 2013 filed the instant original application i.e. near about three years later. Further, the deceased employee died on 24.12.2000 and their family had survived for more than 18 years and thus it is not in need of immediate financial assistance;

(iv) Hon'ble Supreme Court in **Santosh Kumar Dubey vs. State of Uttar Pradesh [(2009) 6 SCC 481]** while rejecting the appeal filed by the appellant held that compassionate appointment is to provide immediate financial assistance to the family who has lost its breadwinner and the same cannot

be claimed as a matter of right and the same is not a bonanza or another source of recruitment.

Drawing parity respondents would claim that "here also the applicant is not at all eligible to be appointed on compassionate ground since the family is in no need of immediate financial assistance and have survived well for 18 years after expiry of the ex employee."

(v) **Union of India & Others Vs. Sima Banerjee** being **Special Leave to Appeal@No.1683/2013** where the Hon'ble Apex Court, by its judgment dated 05.01.2012, allowed the appeal filed by the Union of India and agreed to the view taken by the Hon'ble Supreme Court in **Umesh Kumar Nagpal vs. State of Haryana & Others, 1994(4) SCC 138** and in **State of U.P. & Others vs. Pankaj Kumar Vishnoi reported in 2003(11) SCC 178**. It held that direction to give compassionate appointment after several years of the death of the employee is not justified.

6. By way of rejoinder the applicants have refuted the allegations and repelled the contentions of the respondents, as summarised hereunder :-

(i) Although at that time the applicant No.2 was 24 years old, surprisingly the case of the applicant was rejected vide communication dated 22nd December, 2010(Annexure A-12 of the O.A.) stating inter alia that the wife of the deceased employee expired on 24.12.2000 at the age of 54 years leaving behind his wife and a son and the family pension of the widow is Rs.2153/-, which was totally arbitrary as the family was not consisting only a widow and her son, therefore, it is a clear case of rejection of the case of the applicants without proper application of mind to the materials on record in a cryptic manner.

(ii) At the time of death both the sons were below 25 years and daughters were 21 years and 18 years and R-10 has no relevance as there is no reference or disclosure of its full text to indicate in what context it has been issued. As such, the said annexure is irrelevant and reference to the said annexure is totally misconceived and motivated when it is settled law that the pleadings cannot improve upon the communication and/or order assailed before a court of law.

(iii) The applicants have expressed surprise at the contention that the applicants could not give any documents in support of the fact that Smt. Kanchan Das was driven out by her husband, as it is a matter of enquiry which was to be conducted by the respondents through a Welfare Inspector or by deputing an officer as per procedure and in fact an inquiry was conducted and, as such it was improper for the respondents to contend that there was no proof in support of the fact that Smt. Kanchan Das, daughter has been living with the applicants. Moreover, even excluding the said Smt. Kanchan Das there are four members namely, two sons, another daughter and the widow and, as such, the communication wherein it was stated that the deceased employee left behind the widow and one son had no legs to stand.

(iv) The consideration itself being totally arbitrary, the same cannot be improved upon by way of affidavit or written argument. The ceiling of Rs.3 lacs as emphasized by the respondents relying upon the decision of the Hon'ble Apex Court in the case of Shashank Goswami & Anr. has no manner of application in the present case, being issued considering a circular of CAG.

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7. The Id. counsels were heard and materials on record were perused.
8. Inasmuch as the date of death of the employee is 24.12.2000, date of application for employment assistance is made on 19.12.2001 i.e. within one year, while rejection order was issued only on 25.10.2010 and thereafter the BSNL authorities revived the consideration vide A/14 dated 04.11.2011 asking them to fill up proforma and had been sitting tight over the filled in proforma until filing of O.A., the application cannot be thrown away as time barred.
9. I discern that there exists a factual dispute about existence of number of dependent family members and given the meagre family pension of Rs.9000/-, I feel it appropriate in the interest of justice to quash the impugned order and direct the authorities to conduct an enquiry to ascertain the financial condition and number of dependants and then take appropriate decision in accordance with law, within 3 months from the date of communication of this order.
10. The O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)
Judicial Member