

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00996/2017****Dated , the day of November, 2019****PRESENT****Hon'ble Mr. T. Jacob, Administrative Member**

R. Rahul Gandhi,
S/o. M. Rajendran,
110/1, Gandhipuram Street,
Virudhunagar, PIN – 626 001.

....Applicant

By Advocate M/s. L. Chandrakumar

Vs

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Circle, Chennai – 600 006.

2. The General Manager,
Bharat Sanchar Nigam Limited,
Virudhunagar – 626 001.

..Respondents

By Advocate Mr. M. S. Velusamy

ORDER

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"I. To call for records relating to first respondent's order made in Proceedings in RET 31-35/2011 dated 29.03.2017, to quash the same and consequently direct the respondents to appoint the applicant to any eligible post with all benefits both service and monetary arising thereto and to pass such further or other orders as this Hon'ble Tribunal may deem and proper in the circumstances of the case with cost and thus render justice"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's father died in harness while working as Telecom Mechanic on 25.05.2009. Since the applicant acquired the eligible qualification, he submitted an application dated 07.10.2010 requesting for appointment on compassionate ground. Instead of considering his application as per the Scheme as was in existence, the respondents have placed his claim before the Circle High Power Committee with reference to the guidelines and that of the weightage point system which was introduced by proceedings dated 27.06.2007 for the purpose of assessing uniformity in the criteria for consideration of the indigent circumstances of the family and rejected his application on the ground that he did not satisfy the cut off 55 points. Aggrieved by the above, the applicant filed OA No.437/2016 before this Tribunal wherein by order dated 16.03.2016, this Tribunal directed the respondents to place the claim of the applicant before the ensuing Circle High Power Committee. However, his claim was examined and rejected by the respondents by proceedings in RET 31-

35/2011 dated 29.03.2017. Hence the applicant has filed this OA inter-alia on the following grounds:-

- i. The impugned order dated 29.03.2017 is against all canons of law, violative of settled principles and therefore liable to be quashed.
- ii. The Circle High Power Committee which is said to have gone into these types of aspirants seeking compassionate ground appointment miserably failed to apply its mind in regard to basic requirements for such consideration. Failure to consider the above in its proper perspective has resulted in grave injustice.
- iii. The respondents failed to note that before passing the impugned order the guidelines which are to be strictly followed and adhered to have been omitted to be considered in its proper perspective. Therefore, the same is liable to be quashed.
- iv. The non-consideration of the claim of the applicant or rather the reasoning that the applicant's claim cannot be termed to be under indigent circumstances suffers from the vice of inappropriate consideration, hence liable to be quashed.
- v. The impugned order is further liable to be quashed on the ground of the same being a non-speaking one because the communication would state that the High Power Committee had reconsidered and found that the criteria as laid down has not been satisfied by bald reason as the guidelines and that of the report coupled with the earlier Committee's recommendation has been omitted

to be taken into account.

vi. The report which is the basis for further process and consideration of the claim had reported on the basis of thorough scrutiny and verification that the family is under indigent circumstances. As it is evident that (a) family members are dependants (b) no earning through any property, much less immovable property, (c) there survives an unmarried daughter, (d) the special weightage extended to the widow (mother) does not also inure better prospectus, . The reasoning in the impugned order suffers for being tainted with arbitrariness and that of colourable exercise of power infracting Articles 14,16 & 21 of the Constitution of India.

3. The respondents have filed a detailed reply statement. As per the direction of this Tribunal, the applicant's claim was considered by Circle High Power Committee in the year 2016. The Circle High power Committee consisting of officers in the cadre of Sr. Administrative Grade (SAG) and Liaison Officer for SC/ST considered the representation/ application of the applicant in accordance with the BSNL Policy guidelines dated 27/6/2007 and evaluated the indigent condition of the family with all the documents submitted by him. Keeping in view the objective of the CGA scheme, the committee held a detailed scrutiny of documents of the applicant and dependent family members, their earnings, house property, revised family pension, special weightage to the widow (in case of widow applied), terminal benefits etc., and the committee observed in overall assessment that the family of the ex-employee did not meet the criteria laid down for deciding the family to be in indigent condition. Hence

the Circle High Power Committee 2016 rejected the claim of the applicant and the rejection was conveyed to the applicant vide order dated 29/03/2017. The family received the terminal benefits of Rs. 4,52,942 and drawing a monthly pension of Rs. 3110/-. For CGA purpose, the 2007 pre-revised basic pay has been taken into account which is Rs.3110/-, whereas the revised pension after implementation of 2nd PRC 2007 is Rs.17047/- (revised basic pay Rs. 7,600 + IDA @ 124.30% Rs.9447/-). Further, while considering a request for appointment on compassionate ground by a Committee, a balanced and objective assessment of financial condition of family is made taking into consideration its assets and liabilities and all other relevant factors such as studying children, long term family commitment, marital status of children and essential needs of the family like education, medical etc. As per the weightage point system specified in BSNL Scheme, the cases with 55 or more net points shall be prima facie treated as eligible for considering for compassionate ground appointment. The points are allocated on various grounds viz. number of wholly dependent family members of the ex-official including special weightage to handicapped, minor members in the family and unmarried daughters, special weightage to widow (if she is applicant), left out service of the ex-official, financial aspect of the family based on family pension, terminal benefits, persons of earning members in the family (if any) belated request etc. as applicable in an individual case. Accordingly, the awarding of points in the applicant's case was as per the BSNL guidelines framed for this purpose and it is followed in the whole of BSNL uniformly and the rejection of the claim is as per the prevailing rules and regulations of BSNL. Hence the respondents pray for

dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
5. It needs no emphasis that grant of Compassionate appointment practically deviating from the normal modes of recruitment, is primarily and principally with the object providing financial assistance to the family of a deceased Government servant in getting over the grave and serious financial crisis caused due to the sudden demise of the bread winner and to relieve the family of the deceased from financial destitution at the time of emergency. It is a non statutory scheme and is in the form of concession and hence, cannot be claimed as a matter of right. Again, in the absence of the financial crisis immediately on the demise of the Govt. Servant or any time thereafter, grant of compassionate appointment is seldom pressed into service. Mere demise in harness of a person does not automatically entitle any of his/her family members for compassionate appointment. It is only in the event of the family left in grave and serious financial crisis that such appointment is considered, that too, with limited percentage of posts in Group C carved out of from the Direct Recruitment quota and on a comparative merit (in relation to penury) basis.
6. With a view to ensuring that the BSNL is following a weightage point system from the year 2007 to judge the indigent condition of the family in an objective manner for qualitative and non arbitrary assessment and to bring uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment under the overall policy guidelines of the Department of Personnel and

Training vide OM dated 09.10.1998. As per the policy guidelines, all the applications will be considered by the Circle High Power Committee consisting of three senior level officers and cases with net points below 55 (ie, 54 or less) shall be treated as non-indigent and rejected while the cases of net point 55 or above shall be prima facie treated as eligible for further consideration by Corporate office High Power Committee.

7. On the facts of this case, admittedly this is the second round of litigation before this Tribunal. Earlier the applicant had filed OA.437/2016 and this Tribunal by order dated 16.03.2016 directed the respondents to place the claim of the applicant before the ensuing Circle High Power Committee. In pursuance of the above direction, the claim of the applicant was examined by the respondents but however, rejected the claim by proceedings in RET 31-35/2011 dated 29.03.2017 on the ground that the applicant did not meet the criteria of 55 points for becoming eligible for consideration of appointment on compassionate grounds. On perusal of the records, it is seen that points have been allocated on various attributes viz, the number of wholly dependent family members of the ex-official including special weightage to handicapped, minor members in the family and unmarried daughters, special weightage to widow (if she is applicant), left out service of the ex-official, financial aspect of the family based on family pension, terminal benefits, persons of earning members in the family (if any) belated request etc., as applicable in an individual case.

The break up of weightage points awarded to the applicant reads as follows:-

"(A) Items with Positive Points

Sl No.	Item	Details		Nos.	Points	Remarks
1	Dependents Weightage	a	Total no. of dependent(S) Out of from (a)	2	10	Sl.1 (a to d) Maximum points-30
		b	No. of Handicap dependent(S)			
		c	No. of minor dependent(S)			
		d	No. of unmarried daughter(S)			
		[For (b), certificate issued by competent authority be enclosed. For (c) & (d) status to be taken w.r.t date of CGA application in Proforma Part 'A']				
2	Family Pension	Amount of basic family pension (IDA or CDA+50%) Rs.- IDA Rs.3110/- PRP			10	Maximum points-20
3	Left Out Service	Left out service (to be counted w.r.t date of death/medical invalidation	13Y	13	Maximum points-15	
4	Applicant's Weightage	Widow Or Others (Tick, Whichever is applicable)	Others	0	Maximum points-15	
5	Terminal Benefits	Total terminal benefits-Rs.4,52,942/-			6	Maximum points-10
5	Accomodation	Family living in rented house & not owning his own house or family living in his house	Rented house	10	Maximum points-10	
Total Points (1+2+3+4+5+6)				=49		

(B) Items with Negative Points

7	Monthly Income	Income of Spouse – Rs.3000/-p.m	5	Maximum points- 20
8	Belated Request	Belated period, if any- (To be counted from date of death/medical invalidation till date of CGA application in Proforma Part 'A'	0	Maximum points-35
Total Points(7+8)				

NET POINTS={A(1+2+3+4+5+6)} – {B(7+8)}=49 - 5=44

8. I find that the grievance of the applicant hinges on the fact that the totality of the circumstances have not been evaluated properly by the respondent department

and the fact that the weightage points of 44 awarded to him as against the stipulated 55 points cannot be made applicable to him. Undoubtedly, the family of the deceased was struck by misfortune on account of the untimely demise of the Government employee in the year 2009. Thereafter, the respondents rejected the case of the applicant in tune with the norms and guidelines of the Government on the subject. It was decided by the respondents that the family is not living in indigent condition and his case was accordingly rejected by way of a speaking order dated 29.03.2017.

9. The learned counsel for the applicant would draw attention of the Court to the observation made by this Tribunal in OA.437/2016 to the effect that the terminal benefit should not be considered for negating compassionate appointment unless it is held the family is having sufficient means of livelihood. The learned counsel for the respondents on the other hand would contend that it is only an observation and not a dictum laid down by the Court and that the applicant ought to have challenged the Scheme itself if he is so aggrieved.

10. The Hon'ble Supreme Court in the case of State of Himachal Pradesh and another vs. Shashi Kumar (2019) 3 SCC 653 has held that:

"...there is no right to compassionate appointment- Compassionate appointment is exception to general rule that appointment to any public post in service of State must be made in accordance with Arts, Rule 14 and 16 of the Constitution- Basis for the policy is immediacy of need for financial assistance faced by family of deceased employee consequential to his untimely death - Terms on which such applications would be considered are subject to policy framed by the State.

In the instant case, 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 - High Court erred in issuing mandamus to Government to ignore family pension and other terminal benefits received by dependents of deceased and act contrary to express terms of policy - Terms of policy must be implemented ..."

11. The Hon'ble Supreme Court in the case of State Bank of India & Anr. V.Raj Kumar, reported in 2011 (1) SCC (L&S) 150, has held that:

"the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

.....

Several circumstances having a bearing on eligibility and financial condition up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered and not the scheme that was in force earlier when the application was made will be applicable."

12. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 had held that:

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and

impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

13. This view of the Court has been echoed later on as well in the case of MGB Gramin Bank vs Chakrawarti Singh (2014) 12 SCC 583, wherein, the Apex Court has held as under:-

“9. The courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.”

14. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court (supra), I find no reason to interfere with the impugned order of the respondents dated 29.03.2017. The OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. Jacob)
Member (A)
.11.2019

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