

(2023) 05 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1689 Of 2019

Amit Malhotra

APPELLANT

Vs

Chairman, Managing Director, Bharat Sanchar Nigam Ltd. &
Others

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 05 J&K CK 0007

Hon'ble Judges : Tashi Rabstan, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Ravinder Gupta, Palvi Sharma

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. Petitioner-Amit Malhotra being aggrieved of the order dated 20.09.2018 passed by Central Administrative Tribunal, Chandigarh in OA No.61/1098/2017 has approached this court.

2. The petitioner in the instant petition filed under Article 226 of the Constitution craves the indulgence of this Court for grant of the following reliefs:-

"I) For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing Order dated 20.09.2018 passed by Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu) in OA No. 61/1098/2017 which is patently illegal and unjustified, in the given facts and circumstances of the case.

II) For issuance of further writ of certiorari for quashing Order No.JP/Q-539/KW/24 dated 13.01.2017 passed by the respondent No.5 being patently illegal, arbitrary and unjustified whereby the claim of the petitioner for appointment on compassionate grounds has been declined by the respondent no.5.

III) For issuance of an appropriate writ, order or direction in the nature of writ of mandamus whereby commanding upon the respondents to appoint the petitioner on compassionate grounds in view of his eligibility and qualification.

3. The factual matrix of the petition as propounded in the petition is that the petitioner's mother namely Rita Rani Kakkar was working as Ex Sr. TOA(P) in the office of respondents and while working on the aforesaid post, the mother of the petitioner died in a tragic road accident at Ambphalla Road, Jammu on 22.08.2005. After the death of the petitioner's mother, the petitioner through his father moved an application in the September, 2005 in the office of respondent no.3 seeking appointment on compassionate grounds in view of peculiar facts and circumstances of the case. The petitioner remained approaching the respondents for his compassionate appointment, but nothing was done except the hollow assurances by the respondents. The petitioner again filed an application dated 05.10.2013 alongwith requisite formalities and proforma regarding employment of government servants dying while in service before the respondent no.3 which was duly received in the office of the respondent No.3.

4. After filing of the application dated 05.10.2013 by the petitioner, the respondent no.5 raised query regarding the delay to apply for appointment under Compassionate Rules vide letter bearing No.JP/Q-539/KW/2 dated 28.05.2014 and the same was duly replied by the petitioner stating the reasons for delay in view of facts and circumstances of the case. The petitioner again approached the respondent no.3 with representations dated 23.01.2015 and 11.03.2015 and requested the respondent no.3 to consider the case of the petitioner on compassionate grounds.

5. Thereafter the respondents vide their communication dated 13.01.2016 addressed to respondent no.3 returned the CGA case of the petitioner and asked the respondent no.3 to submit the complete case of the petitioner at an earliest for consideration in the next Circle High Power Committee.

6. It is being further stated in the petition that the office of respondent no.2 through another communication dated 15.06.2016 addressed to respondent no.3 in which the respondent no.2 sought necessary action to be taken with respect to the delayed cases of compassionate appointment and furnish the required documents/information in respect of cases as per Annexure-B annexed with the aforesaid communication under which the petitioner's name was shown at Serial No.2 for want of affidavit to be submitted by him.

7. It is being further stated in the petition that the petitioner came across with a letter bearing No.JP/Q-539/KW/24 dated 13.01.2017 issued by respondent no.5 whereby the claim of the petitioner has been declined after a period of 12 years on the basis of subsequent instructions dated 27.06.2007 and the petitioner being aggrieved of the above aforesaid order dated 13.01.2017, thrown challenge to the same before Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu) in OA No. 61/1098/2017 which was ultimately

dismissed vide order dated 20.09.2018 being devoid of merits.

8. Having dissatisfied with the order passed by the Central Administrative Tribunal dated 20.09.2018, the petitioner has filed the present writ petition.

9. Learned counsel for the petitioner has submitted that the respondents have declined the claim of the petitioner by considering the same under the instructions issued after the death of his mother, whereas, the petitioner has right of consideration of his claim in terms of the policy instructions prevalent at the time of death of his mother.

10. Learned counsel for the petitioner further submitted that the point system adopted by respondents is only to bring in more transparency in prioritizing the cases of the numerous petitioners for appointment on compassionate grounds but in the instant case, the case of the petitioner for compassionate appointment in terms of the Policy dated 27.06.2007 has not been rightly appreciated and evaluated. It is further submitted that a person becomes prima facie eligible for consideration by High Power Committee of BSNL Corporate Office if he scores 55 or more points, but in the case of the petitioner, the overall assessment of the condition of family of the deceased employee has not been evaluated in its true perspective, as the respondents without appreciating the financial condition of the family while taking into consideration its assets and liabilities and all other relevant factors like presence of earning member, size of family, age of children, own house and essential needs of the family like education, marriage and medical needs etc has given the petitioner minus 8 points when the same after taking into consideration all the relevant factors could have been 55.

11. It is submitted by learned counsel for the petitioner that the impugned letter is liable to be set aside on the ground that the respondents were under legal obligations to consider the case of the petitioner without any delay and take a decision thereon, but the respondents after a period of 12 years in arbitrary manner have rejected the claim of the petitioner on flimsy grounds.

12. Further submission of the learned counsel for the petitioner is that the Policy dated 27.06.2007 laying down a specific criteria of allocation of points on certain self evolved parameters with the requirement of minimum 55 points for a dependent to become eligible for consideration under Compassionate Rules is wholly irrational and arbitrary as such parameters have been wholly loaded against a dependent of the deceased employee with a view to deny appointment on compassionate grounds in BSNL, as such, the impugned letter is liable to be quashed and set aside.

13. It is further submitted by the learned counsel for the petitioner that there is no doubt as regards the settled proposition of law that it is the policy which was prevalent on the date of death of the bread earner that has to be applied for considering the case of compassionate appointment. Any subsequent policy would not hold the field.

14. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of Bhawani Prasad Sonkar v. Union of India and others reported at 2011 (4) SCC 209 and judgments of various high courts in the cases of S. Vikram Singh v. State of J&K and others, 2013 (2) JKJ 126; Krishna Kumar v. State of Haryana and others, 2012 0 Supreme (P&H) 536; and the judgment of the Punjab and Haryana High Court passed on 05.10.2011 in CWP No. 6173/CAT of 2011 titled Bhupinder Batra v. Union of India.

15. On the other hand, learned AAG has supported the judgment passed by the Tribunal and has relied upon the judgments passed by the Supreme Court in the cases of Jagdish Prasad v. State of Bihar, 1996 (1) SCC 301; Sanjay Kumar v. State of Bihar, 2000 (7) SCC 192; State of J&K and others v. Sajad Ahmed Mir 2006 (5) SCC 766 and judgment of the High Court of J&K and Ladakh in the case of Mudasir Ahmad Kumar v. State of J&K and others reported at 2018 (2) JKJ[HC] 485.

16. Heard learned counsel for the parties.

17. A perusal of the petition and record appended therewith reveals that the petitioner is aggrieved of order dated 20.09.2018 passed by the Tribunal whereby the original application of the petitioner has been dismissed being devoid of merits and he is also aggrieved of the Order No.JP/Q-539/KW/24 dated 13.01.2017 passed by the respondent No.5 being patently illegal, arbitrary and unjustified whereby the claim of the petitioner for appointment on compassionate grounds has been declined by the respondent no.5.

18. In the case in hand also, the petitioner though approached the authority by filing an application on the very day when he attains majority whereas claim of the petitioner has been rejected by the Administrative Tribunal by the order impugned only on the basis of the policy of 2007 whereunder the petitioner has secured less than 55 points as per the check list and accordingly has been rejected.

19. Since the petitioner's case has to be considered only on the basis of policy of 1998, but there is no whisper in the rejection order that the case of the petitioner has been considered under the policy of 1998, therefore, we incline to entertain the writ petition and set-aside the order impugned passed by the Tribunal and accordingly direct the respondent authority to pass fresh speaking order on the application of the petitioner strictly on the basis of the policy of 1998 (compassionate appointment policy of 1998).

20. Let this exercise be done within a period of two months from the date copy of this order along with complete paper book is supplied to the respondent authority.