

(2023) 03 CAT CK 0040

In the Central Administrative Tribunal

Case No : Original Application No. 158 Of 2014

Arun Singh

APPELLANT

Vs

Bharat Sanchar Nigam Limited Through Its Chairman /
Director, 10, Ashok Marg, New Delhi & Ors

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 03 CAT CK 0040

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : S.K. Pandey, D.S. Shukla

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the order dated 20.09.2013 (Annexure A-1). Prayer has also been made for a direction to the respondents to reconsider the case in accordance with law taking into account the indigent condition of the family of the applicant.

2. The facts of the case of the applicant, in brief, are that the father of the applicant, who was working on the post of TOA (SS) under the Telecom District Manager, Bharat Sanchar Nigam Limited, Jhansi, died on 07.04.2011 leaving behind him, his mother and two daughters. It is stated that the father of the applicant had taken huge loan for the marriage of the daughters and construction of house and recovery from the pay per month was being made from the salary of the father of the applicant. After the death of his father, the applicant approached the respondent no. 4 on 25.05.2011 and submitted representation for compassionate appointment but no acknowledgement was given. However, the applicant was assured for sympathetic consideration. It is further stated that

the mother of the applicant received total amount of Rs. 9,82,262/- as terminal benefits which was not sufficient to satisfy the remaining dues of the father of the applicant. The applicant has stated that as per the Department of Telecommunication Circular dated 10.02.1999 and Office Memorandum dated 09.10.1998, compassionate appointment scheme was notified and that his case is covered by the same as the family of the applicant is in indigent condition and deserves immediate assistance. It has also been stated that the case of compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefit under the various welfare schemes. It is further emphasized that no reason has been reflected in the impugned order except the terminal benefit and pension released in favour of the mother of the applicant. It is further stated that the respondents have also not disclosed the marks of last selected candidate and have failed to follow the proper procedure laid down. It has also been alleged that no opportunity of personal hearing was afforded to the applicant before taking decision. It is also alleged that the respondents demanded NOC of the mother of the applicant for his candidature and he was provided proforma which he submitted on 09.01.2012 including NOC of the mother and other details. The impugned order discloses that the applicant's case was rejected on the ground that mother of the applicant received certain amount as terminal benefits and she was allowed pension. Further ground of rejection has been mentioned that in view of assets, limited liability and overall assessment of the financial condition of the family, the committee did not consider the family of the deceased to be living in penury. The applicant has cited an order dated 23.02.2012 passed by the Assistant General Manager (Pers-IV), Bharat Sanchar Bhawan, New Delhi in the case of Smt. Arti Gupta where a non-speaking order was quashed on 23.02.2012. It is further alleged that no one has visited his house to assess his family condition. It is also stated that the criteria of rejection of his case below 55 marks is arbitrary, hence the impugned order cannot be sustained in the eyes of law and is liable to be quashed.

3. Upon notice the respondents have filed counter affidavit. It is stated by the respondents that the case of the applicant for appointment on compassionate ground was considered strictly in the light of guidelines reflected in BSNL Corporate Office letter No. 273-18/2005-Pers.IV dated 27.06.2007. As the applicant secured total 12 weightage points, he could not be recommended for compassionate appointment.

4. No rejoinder is filed.

5. The case came up for final hearing on 03.03.2023. Shri N.L. Yadav, brief holder of Shri S.K. Pandey, learned counsel for the applicant and Shri P.K. Dubey, brief holder of Shri D.S. Shukla, learned counsel for the respondents were present and both were heard. Respondents have filed their written argument, where they reiterate their stand as taken in their counter affidavit. They emphasized the ratio of judgment in Umesh Kumar Nagpal Vs. State of Haryana

and others – (1994) 4 SCC 138 etc, as being applicable to the instant case. I have carefully gone through the entire record, written submissions filed by the respondents and considered the rival contentions.

6. The facts of the case of the applicant is that the deceased employee (father of the applicant) died on 07.04.2011. Since then more than 12 years have passed and the family has sustained during all these years. From the record, it is evident that the case of the applicant was sympathetically considered and the process was meticulously gone through. The respondents authorities provided the applicant a proforma to furnish all the relevant details and based on all the relevant details furnished by the applicant, which were placed before the relevant committee, the committee after due examination of the case, passed speaking order dated 20.09.2013 and did not consider the case of the applicant, as he was not within the comparative merit because he achieved only 12 weightage point instead of minimum 55, which was cut off marks. Hence, keeping in view the assets, family pension, limited liabilities and overall assessment of the financial condition of the family, the Committee did not consider the family of the deceased official to be living in penury and rejected the request as per the provisions of the scheme for the purpose in accordance with instructions of Department of Personnel & Training laid down in O.M No. 14014/6/94-Estt(D) dated 09.10.1998 and BSNL HQ New Delhi policy guide lines vide letter no. 273-18/2005-Pers-IV dated 27.06.2007.

7. It is also evident from the pleadings of the applicant that he could secure only 12 weightage points (10 points for two dependents, Nil points for family pension being Rs. 11,310/- per month, 2 points for total two years left out service, Nil points for applicant's weightage as the son of deceased employee of BSNL had applied, Nil points for terminal benefits being in the tune of Rs. 14,31,642/- and Nil points for accommodation as the family of the deceased employee was living in non-rental house).

8. Apart from the above facts, it is not disputed that the deceased has died in 2011 and since then, more than 12 years have passed and family has sustained all these years. In the case of Umesh Kumar Nagpal Vs. State of Haryana and others – JT 1994(3) SC 525, Hon'ble Supreme court has clearly held that appointment on compassionate grounds can be considered only if the family is in indigent circumstances and not as a matter of right, which can be exercised at any time in future. Hon'ble Supreme Court has laid down following the important principle regarding compassionate appointment.

“(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group 'C' and 'D' (formerly classes III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post, i.e., in the Group 'A' or Group 'B'

category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad hoc basis".

9. Present case does not pass the litmus test of conditions laid down by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana (Supra), and as the case of the applicant was through due process already decided by the respondents on merits, hence in view of the forgoing discussions, I do not find any procedural infirmity in the respondents' decision making or on merits of the case brought before this Tribunal. Therefore, I find no ground to interfere with the impugned order dated 20.09.2013; hence the instant OA is liable to be dismissed. Accordingly, the original application is dismissed.

10. No order as to costs.