
(2019) 03 CAT CK 0064

In the Central Administrative Tribunal

Case No : Original Application No. 1551 Of 2017

Mukesh Kumar Gupta

APPELLANT

Vs

Union Of India Through Its Secretary

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0064

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Manindra Dubey, A.C.Mishra, Pallavi Dubey

Final Decision : Dismissed

Judgement

1. Applicant is the son of late Sh. Ram Adhar Gupta (Date of Birth 06.04.1960). Sh. Ram Adhar Gupta was working as Office Assistant in the office of General Manager, Mahanagar Telephone Nigam Limited (MTNL), West Rajouri Garden, Delhi. While in service he had unfortunately died on 25.07.2015. He has left behind his wife, one son named Sh. Mukesh Kumar Gupta, the applicant herein (Date of Birth 10.08.1992) and a daughter (Date of Birth 25.11.1996).

2. The applicant applied for compassionate ground appointment vide his representation dated 29.08.2016. It was followed by a second representation dated 03.10.2016. The respondents vide letter dated 14.10.2016 replied that the request dated 29.08.2016 has been registered at Sl. No.2016/36. However, MTNL, vide their letter dated 18.03.2004, have imposed a total ban on compassionate ground appointments. Accordingly, the request could not be considered at that time. Feeling aggrieved, the applicant had filed the present OA. Following relief has been sought:

"(i) The Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned orders dated 14.10.2016 as well as 18.03.2004 and direct the respondents to consider the legitimate claims of the applicant for the appointment on compassionate ground, and

(ii) Any other relief which this Hon'ble Tribunal may deem fit and proper also be granted to the applicant alongwith the costs of litigation."

3. The applicant relied upon DOP&T OM dated 26.07.2012 wherein the time limit of three years for consideration of cases related to compassionate ground appointment was done away with. The applicant also brought out that DOP&T vide another OM dated 16.01.2013 had issued consolidated instructions on compassionate appointment. Para 8 of the same reads as under:

"8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT: Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case."

The applicant pleaded that in terms of these instructions, his request is required to be considered by the respondents.

4. The applicant also relied upon the following judgments:

(i) Balbir Kaur & anr. vs. Steel Authority of India Ltd., 2000 (6) SCC 493 - In this case the compassionate ground appointment was not considered in respect of the petitioner as other benefits were granted. Hon'ble High Court has also given a judgment to this effect. It was thereafter that the case was adjudicated by Hon'ble Apex Court. The question before the Court and the decision thereupon is as follows:

"The core question which falls for determination before this Court in these Civil Appeals pertain to the interpretation of Family Benefit Scheme as introduced in NJSC Tripartite Agreement of 1989 and the consequences thereof on the existing welfare measure as contained in NJSC Agreement in 1983 : Whereas the Orissa High Court in the judgment impugned held that by reason of introduction of Family Benefit Scheme in terms of NJSC Tripartite Agreement in 1989, question of compassionate appointment would not arise - the appellant herein contended that by reason of clause 8.14.1 in the 1989 Agreement; the requirement of compassionate appointment cannot possibly be given a go bye.

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Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees' Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family

- This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

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In that view of the matter these appeals succeed, the order of the High Court stands set aside. Steel Authority of India is directed to consider the cases of compassionate appointments in so far as the appellants are concerned. There shall be no order as to costs."

(ii) Union of India vs. Rajendra Kumar Gaur and ors., 2002 (4) WLC 60 of Hon'ble High Court of Rajasthan decided on 30.05.2002.

5. The respondents opposed the OA. Following averment was made in the counter reply:

"5. That the answering respondent is a government company engaged in providing telecommunication services in the metro cities of Mumbai and New Delhi and also in the island nation of Mauritius in Africa. It had a monopoly in Mumbai and New Delhi until 1992, when the telecommunication sector was opened up to other service providers. However, thereafter it started facing stiff competition from the new entrants in the sector who were heavily automated and cost efficient. Thus, for its sustainability and growth a policy decision regarding its downsizing and optimizing the Organizational Structure was taken.

6. That the issue related to appointments on Compassionate Ground was put up before the 192nd Meeting of Board of Directors held on 16.02.2004. The Board examined the proposal in its entirety and concluded that MTNL/Respondent No.2 is making honest attempts to downsize and optimize the organizational structure by way of introduction of Voluntary Retirement Schemes, it would be therefore counter-productive if it goes ahead in making recruitments based on Compassionate Grounds, Sports Quota etc.

7. That in light of the above-stated facts and circumstances the answering respondents took a policy decision vide Departmental Order Dated 18.03.2004 imposing a ban on all types of recruitments except in the key areas where posts have to be manned by professionally qualified personnel."

6. The MTNL instructions dated 18.03.2004 read as follows:

"The position regarding pending cases of Delhi Unit for grant of approval on compassionate ground was put up to the Board of Directors vide 192nd meeting held on 16.02.2004. The Board examined the proposal in its entirety and concluded that MTNL is making honest attempts to downsize and optimize the

Organisational structure, by way of introduction of Voluntary Retirement Scheme. It was, therefore, felt that it would be counterproductive if we go ahead in making recruitment on Compassionate Ground, Sports Quota etc. Accordingly approval of Board of Directors is conveyed to impose a ban on all types of recruitment except in the key areas where posts have to be manned by professionally qualified personnel. Copy of Agenda Note alongwith minutes are also enclosed for your perusal. Both the units are requested to take further action accordingly."

7. The respondents also relied upon a catena of judgments which are as under:

(i) A.Umarani vs. Registrar, Co-operative Societies and ors., (2004) 7 SCC 112 - In this case Hon^{ble} Apex Court has held as under:

"even the Supreme Court should not exercise the extra ordinary jurisdiction under Article 142 issuing direction to give compassionate appointment(s) in contravention of the provisions of the scheme/rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal."

(ii) Union Bank of India & ors. vs. M.T.Latheesh, (2006) 7 SCC 350 - In this case Hon^{ble} Apex Court has held as under:

"..... In the present case, by declining the application submitted by the respondent after the proper consideration of the same in the light of the relevant parameters the appellant-Bank cannot be said to have acted in an arbitrary manner regardless of the constitutional principles. 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. In the result, the appeal is allowed and the orders passed by the learned Single Judge and of the Division Bench are set aside. However, there will be no order as to costs."

(iii) MGB Gramin Bank vs. Chakrawarti Singh, (2014) 13 SCC 583 - In this case Hon^{ble} Apex Court has held as under:

"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."

(iv) Life Insurance Corporation of India vs. Asha Ramchandra Ambedkar and anr.,

1994 (2) SCC 718 - In this case Hon?ble Apex Court has held as under:

"i. High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments."

(v) Shiv Kumar vs. MTNL, OA No.593/2015 wherein judgment was pronounced by Principal Bench of this Tribunal on 04.10.2018. In the instant case also, the applicant was seeking compassionate ground appointment in MTNL and this was not agreed to in view of MTNL policy dated 18.03.2004. The observations by the Tribunal and the decision thereupon is reproduced below:

"2.3 On 19.10.2013, applicant received reply from the respondent to the effect that regarding job under compassionate appointment, MTNL Corp., office has imposed blanket ban on all types of recruitment under compassionate ground vide order dated 18.3.2004 and as and when ban will be lifted, action will be taken as per rules.

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6. There may be several such requests made by dependants of other deceased employees, and because of imposition of the ban, those cases may be pending for consideration. All those cases including that of the applicant may be considered by the respondent-MTNL as and when the ban is lifted. 7. In view of the above position,

this OA is dismissed. There shall be no order as to costs."

8. The respondents also pleaded that in the instant case the family of the deceased has been granted family pension at the enhanced rate of Rs.9625/- plus IDA for the period 26.05.2015 to 25.07.2025. Subsequent to this period, family pension shall be payable @ Rs.5775/- plus IDA w.e.f. 26.07.2025 and onwards. In addition, DCRG amounting to Rs.9.16,524/- and GPF amounting to Rs.3,89,367/- has also been paid. It was thus pleaded that the indigent condition of the family, as has been pleaded by the applicant, is not true. In view of the foregoing judgments, the OA is required to be dismissed.

9. Matter has been heard at length. Ms. Mandira Dubey, learned counsel represented the applicant and Sh. A.C.Mishra with Ms. Pallavi Dubey, learned counsel represented the respondents.

10. The compassionate ground appointment is not a vested right but a benevolent consideration to be extended to take care of the immediate family needs and to avoid penurious conditions of the bereaved family. The consideration can be extended by the department, if they decide for such compassionate ground appointments in the first place.

11. In view of the conditions brought out in the counter and also indicated in the said circular dated 18.03.2004, the MTNL have decided that there shall be no

appointment under compassionate ground category. In such an event, it cannot be argued that the respondents - MTNL should NECESSARILY appoint somebody on compassionate ground. The applicant had not been able to produce any policy directive to the effect that a department has to necessarily appoint on compassionate ground. The DOP&T letters dated 26.07.2012 and 16.01.2013 are only indicative of the procedure to be adopted for consideration of compassionate ground appointment. In the instant case, this consideration has been extended and applicant's name has been registered.

12. In view of the foregoing, the application is not maintainable. Accordingly, the OA is dismissed being devoid of merits.

13. However, since the respondent - MTNL have registered the name of the applicant for compassionate ground appointment, the MTNL shall give due consideration to the same if and when they process the cases for compassionate ground appointment. No order as to costs.