
(2019) 08 CAT CK 0075

In the Central Administrative Tribunal

Case No : Original Application No. 3844 Of 2018

Nigar Fatima

APPELLANT

Vs

Bharat Sanchar Nigam Limited (BSNL) And Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 CAT CK 0075

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Rani Chhabra, Amit Sinha, RV Sinha

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA, seeking the following reliefs:-

"a) quash the illegal action of the Respondents in posting the applicant's son in category-D instead of category-C;

b) direct the Respondents to post the applicant's son on the post of Category-C according to his qualification at par with other similarly situated persons like Rahul Srivastava and Jitender Kumar Shakya; and

c) pass such other or further order/s as Your Lordships may deem fit and proper."

2. The applicant, who is widow of deceased employee, through this OA, has challenged the illegal, arbitrary and discriminatory action of the respondents in not granting her son compassionate appointment on category-C post on the basis of his qualifications. It is conceded that he only had qualification of High School while applying but had secured higher qualifications before his case for compassionate appointment was taken up for consideration and hence, the higher qualification should have been considered and her son should have been given appointment in Category "C" post. The applicant alleges that two other similarly situated persons, namely, Rahul Srivastava and Jitender Kumar Shakya,

who were not Graduate and had obtained Graduation during the pendency of the consideration of the application, have been appointed on the post of category-C. The applicant has, therefore, submitted an application on 13.11.2017 seeking appointment in category C on the basis of the latest education qualifications of her son. The said letter dated 13.11.2017 was replied by the respondent vide their letter dated 11.12.2017 reiterating that the consideration was on the basis of qualification possessed at the time of filing of the application. Being aggrieved by the order dated 11.12.2017, the applicant has filed the present OA.

3. The respondents, while contesting the OA, have filed their CA and stated that husband of the applicant had expired on 21.10.2008 leaving behind his wife, one son and two daughters. The son of the applicant had applied for his appointment on compassionate grounds on 23.01.2012. They have further contended that his case was put up before the Circle High Power Committee on 09.08.2016, 01.09.2016 and 21.10.2016 and his case for compassionate appointment was approved by the competent authority for Group "D" post on the basis of the education qualification shown as High School as per synopsis form "B" submitted by him. They have also drawn our attention to clarifications issued by BSNL, Corporate Office, letter No.273-18/2013/CGA/Estt.-IV dated 21.12.2016. In this, a direction/clarification has been given with regard to appointment to be made under the Compassionate Appointment and as per Point 4 thereof, the Educational qualification is to be considered at the time of application of Compassionate Ground Appointment. No subsequent changes in Education qualification will be entertained by the CGPC at the time of consideration of the case.

4. The respondents have also been able to show from Para 4.9 of their reply that that the case of Sh. Rahul Srivastava was received in the office of the respondents on 25.11.2013 and in synopsis form "B", his qualification was shown as "Intermediate (pursuing B. Tech Final Year) and on 16.04.2015, revised synopsis form "B" was received in the office from GMTD Bareilly in which his educational qualification was shown as B.Tech(EC). Accordingly, the case of Sh. Rahul Srivastava was approved by the competent authority for Group "C" post. Similarly, the case of Sh. Jitender Kumar Shakya, which was received in the office on 12.08.2008, was approved by the competent authority for Group "C" post as his educational qualification was shown as B.Com (Second Year) in the synopsis form "B" submitted by him. They have thus submitted that this OA is liable to be dismissed.

5. After hearing both the parties and perusing the record, quite clearly the applicant was only High School as shown from Annexure R-3 filed by him. when he had applied for appointment on compassionate grounds on 23.01.2012. Hence, the competent authority has rightly approved the case of the applicant for Group "D" post as per clarification issued by the BSNL Corporate Office dated 21.12.2016 which clearly provides that no subsequent change in educational qualification will be entertained by Circle High Power Committee. Whereas the

respondents are able to show from their record that the persons, namely, Rahul Srivastava and Jitender Kumar had possessed the qualifications of B.Tech (EC) and B.Com (Second year) respectively and their case for post of Group "C" were rightly approved by the competent authority when they were received their applications for compassionate ground appointments. It is also not within the domain of the Tribunal to assess the qualifications of the persons who have applied for compassionate appointment and it is the prerogative of the respondents to assess the qualifications of the persons who have applied for compassionate appointment and accordingly appoint them against the posts on the basis of their qualifications. In the case of Nanak Chand v. Delhi Jal Board, 2007(140)DLT 489, the Hon"ble High Court clearly held as under:-

"14. The mandate of the Supreme Court is very clear from the aforesaid judgments that it is not for the High Court in exercise of its powers under Article 226 of the Constitution of India to interfere with the decision arrived at by the competent authority while considering the eligibility of an applicant for appointment on compassionate basis and all it can do is to see whether the decision of the competent authority is vitiated. Having scrutinized the cases in hand in the aforesaid background, this Court does not consider it appropriate to interfere with the findings of facts and the conclusion arrived at by the competent authority."

6. Further, we also find merit in the contentions of the respondents that the applicant, who is the widow of the deceased employee has no locus standi to file the present OA as her son has already been appointed on the Group "D" post on compassionate basis and it is open only for her son to file the case if he is aggrieved by his appointment on Group "D" post instead of Group "C".

7. In view of the totality of aforesaid facts and circumstances of the case, we do not find any merit in the OA and the same is dismissed accordingly. No order as to costs.