
(2017) 03 JH CK 0097
In the Jharkhand High Court
Case No : 1854 of 2013

Rajiv Kumar Paswan

APPELLANT

Vs

The State of Jharkhand & Ors.

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Citation : (2017) 03 JH CK 0097

Hon'ble Judges : S. N. Pathak

Bench : SINGLE BENCH

Advocate : Saurabh Shekhar, Arbind Kumar Jha

Judgement

1. Heard Mr. Saurabh Shekhar, learned counsel appearing for the petitioner and Mr. Arbind Kumar Jha, learned counsel appearing for the respondents.
2. In this writ application the petitioner has prayed for quashing the order dated 15.07.2011 issued under the signature of respondent No. 2, whereby, the claim of the petitioner for his appointment on compassionate ground has been rejected. Petitioner has further prayed for payment of all consequential benefits.
3. The factual exposition as has been delineated in the writ petition is that father of the petitioner, late Dhaneshwar Munda, had been appointed under the respondent-Bharat Sanchar Nigam Ltd. ("BSNL" for short) who died in harness on 26.08.2001. After his death, the petitioner made application for his appointment on compassionate ground, which was duly received in the office of the respondents on 26.02.2003. As per the circular of the Department of Personnel & Training, Govt. of India, as contained in memo dated 09.10.1998 & 03.12.1999, the case for appointment on compassionate ground must be considered within a period of one year from the date of such application. It is case of the petitioner that the respondents-authorities kept the matter pending for a long period and after lapse of more than eight years, the same has been rejected on frivolous ground that the net points must be more than 55 in overall assessment, which was on the basis of letter No. 273 dated 27.06.2007, as

would be apparent from the order dated 15.07.2011, wherein at column No. (9) the point scored (+ve) has been given, which is Dep. Wtge-25, Pension-2, Left Svce-10, App. Wtge-0, T.B.-5, Accom.-0. Again in column No. (10), the point scored (-ve), which is monthly income-0 and belated request-0 and thereby, net point scored at column Nos. (9) and (10) comes to 42 and as such, the claim has been rejected being less than qualified 55 points. Since claim of the petitioner has been rejected by the respondents-authorities, the instant writ application has been filed by the petitioner.

4. Learned counsel for the petitioner submits that BSNL is duty bound to follow circular of the Department of Personnel and Training, Govt. of India, which is the Nodal Department of the Central Government to formulate any rule. Since the Department of Personnel & Training has issued OM on 03.12.1999, it is obligation on part of the other Departments to follow the same but the same has not been followed by the respondents-authorities. This decision has been taken by the Central Government solely for the reasons that situation existing in the bereaved family may improve after elapse of time but the same has not been taken care of by the respondents-authorities and after lapse of eight years, the claim of the petitioner has been rejected on the ground that the petitioner secure less than the minimum qualified points. The impugned order is non-speaking order and the respondentsauthorities have not disclosed the basis on which the points at column Nos. 9 and 10 have been allotted and as such, the petitioner could not be able to find out what led the respondents-authorities in allotting the points. Further illegality in the impugned order and the decision taken by the respondents-authorities is that it is not disclosed in the impugned order that what is the basis of fixing cut-off points of 55. The basic requirement for providing appointment on compassionate ground is to see the financial viability of the family of the deceased and the same has to be assessed soon after death of the deceased employee. To strengthen his arguments, learned counsel for the petitioner relies on the Judgment of the Apex Court in the case of Kusheshwar Prasad Singh Vs. State of Bihar and others reported in (2007)11 SCC 447.

5. Counter-affidavit has been filed by the respondents. Learned counsel appearing for the respondents vehemently opposes the prayer of the petitioner and submits that the instant writ application is not maintainable in the eyes of law and liable to be rejected. He further submits that before coming to this Hon"ble Court, the petitioner ought to have moved before the Central Administrative Tribunal having the jurisdiction to decide such disputes. In spite of that, the petitioner straightway moved this Hon"ble Court, which is not permissible in the eyes of law. In terms of weightage point system adopted by BSNL, the petitioner has got 49 points, whereas, the weightage point system stipulates the case to be considered with 55 or more points. Hence, his claim for appointment on compassionate ground, after due consideration in terms of the circular, has been considered and rejected by order dated 15.07.2011. Learned counsel submits that the petitioner has applied for compassionate appointment after death of deceased father on 26.02.2003 and if he has not been appointed

immediately and if he survived for more than 10 years and has got 49 points which is below the cutoff point of 55, his case cannot be considered keeping in view the judgment of Hon''ble Supreme Court and the circular of Govt. of India, BSNL Corporate Office letter No. 273-18/2005-PERS-IV dated 27.06.2007. In support of his argument, learned counsel has placed reliance upon a judgment passed by this Hon''ble Court in W.P.(S). No. 7181 of 2006 (Binod Kumar Prabhakar Vrs. BSNL & Ors.), wherein it has been held that:- "The appointment on compassionate ground is to be made to ensure immediate relief to the family of the deceased bread earner. In the instant case the writ petition has been preferred in 2006 after 8 years of the death of the employee and today after 15 years of the death of the employee in harness, the whole object of grant of compassionate appointment, as per the law laid down by the Hon''ble Supreme Court, would be defeated when the family of the deceased and the petitioner seems to have survived for so long in absence of the employment."

6. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioner deserves consideration. It is settled principle of law that the authorities cannot neglect to do which the law mandates and requires doing. By non consideration of case for last eight years, the respondents cannot derive force from the contention that already several years have elapsed. Learned counsel for the petitioner is right in contending that the authorities cannot be allowed to take undue advantage of its own fault in failure to act in accordance with law by not passing orders within a period of one year as per the Circular of the Department of Personnel and Administrative Reforms, Government of India, contained in Memo dated 09.10.1998 and 03.12.1999. The Hon''ble Apex Court in the case of Kusheshwar Prasad Singh (Supra) has held in paragraph-11 as under: "11. In this connection, our attention has been invited by the learned Counsel for the appellant to a decision of this Court in *Mritunjay Pany and Anr. v. Narmada Sasmal and Anr.* [1962] 1 SCR 290, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim "*Commodum ex injuria sua nemo habere debet*" (No party can take undue advantage of his own wrong).

12. In *Union of India and Ors. v. Major General Madan Lal Yadav (Retd.)* [1996] 3 SCR 785, the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise the contention that proceedings were time-barred. This Court referred to *Broom's Legal Maxims* (10th Edn.) p. 191 wherein it was stated;

. . it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure..

13. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong."

7. As a cumulative effect of the aforesaid rules, guidelines, orders and judicial pronouncements, this Court is of the view that the respondents cannot be permitted to take undue and unfair advantage of their own wrong to give favourable interpretation of law. The Judgment relied upon by the learned counsel for the respondents does not come to his rescue as in the instant case the petitioner applied on 26.02.2003 itself after death of his father who died in harness on 26.08.2001 and it is only the respondents authorities who have taken decision after lapse of eight long years and as such, the petitioner cannot be held liable for delay. It is not open to the respondents authorities to act in an arbitrary and whimsical manner. The allotment of posts and calculation made is not based on any cogent reason which has not been explained in the impugned order and as such, on frivolous grounds after scrutinising the case after more than eight years, the action of the respondents cannot be held to be legal. As regards the contention of the learned counsel for the respondents regarding the non-maintainability of the petition, the learned counsel has failed to produce any notification regarding jurisdiction of the present case in the Central Administrative Tribunal though the case is pending since the year 2013 and relates to compassionate appointment.

8. In view of aforesaid proposition of law, this Court is of the opinion that the impugned order dated 15.07.2011 is not tenable in the eyes of law and as such, the same is fit to be quashed and set aside and the writ petition stands allowed. The respondents are directed to reconsider case of the petitioner for appointment on compassionate ground within a period of six weeks from the date of receipt of a copy of this order.