

(2022) 07 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4313 Of 2017

Roshan Lal

APPELLANT

Vs

Central Administrative Tribunal, Chandigarh Bench,
Chandigarh And Others

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Citation : (2022) 07 P&H CK 0135

Hon'ble Judges : G.S. Sandhawalia, J;Vikas Suri, J

Bench : Division Bench

Advocate : R.K. Arora, Rajesh Gupta

Judgement

G.S. Sandhawalia, J

Challenge in the present writ petition is to the order dated 23.11.2016 (Annexure P-1) whereby the Central Administrative Tribunal, Chandigarh (hereinafter referred as "the Tribunal") has dismissed the petition filed by the petitioner and rejected his claim for compassionate appointment. The ground which weighed with the Tribunal to uphold the rejection order whereby the claim for compassionate appointment had been declined was that the Weightage System as such had been applied. The applicant had only secured 50 points when his case was considered and no person with lesser points than him had been offered appointment. The point system being based on rational consideration of weightage the orders dated 07.01.2014 and 24.04.2014 were upheld.

The counsel for the petitioner has made a concise argument which is bound to be accepted keeping in view the matter is squarely covered by a Co-ordinate Bench judgment in Bhupinder Batra vs. Union of India and others, 2012(1) SCT 268. It is the sole case of the petitioner and which was also recorded by the Tribunal that the father of the applicant namely, Tilak Raj, who was working as Telephone Mechanic, who had died on 28.08.2006. At that point of time the earlier policy dated 09.10.1998 (Annexure P-6) was in vogue which did not provide for the

Weightage System. The applicant had applied on 20.09.2006 for compassionate appointment and his case was sent for approval. In the meantime the Weightage policy dated 27.06.2007 (Annexure R-1) was introduced whereby the guidelines for compassionate appointments were put into force.

It is, thus, the contention of counsel for the petitioner that his case had to be considered de hors the said guidelines since he had already applied in pursuance of the earlier policy which were in force at the time of death of the employee and, therefore, his case could not be rejected on this ground. It is not disputed that at the initial point of time the first rejection order was dated 20.09.2011 (Annexure A-9) which was a non-speaking order and communicated by informing the applicant that the case for compassionate appointment was not found fit by the competent authority. The petitioner had then approached the Tribunal by filing O.A. No. 1513-PB-2013 which was decided on 19.11.2013 (Annexure A-11) and direction had been issued to pass a speaking order.

Resultantly, the impugned order dated 07.01.2014 was passed by considering the family pension Rs. 3185/- plus IDA and other terminal benefits of Rs. 4,94,158/- had been paid to the deceased family which is stated to be living in their own house. The case was rejected on the ground that minimum 55 points were required for consideration of the case by the High Power Committee at BSNL Corporate Office, New Delhi. The legal notice sent as such for re-consideration that the guidelines dated 27.06.2007 are not applicable, was rejected while replying to the legal notice on 24.04.2014 (Annexure A-14) which is also the subject matter for consideration.

A Co-ordinate Bench in Bhupinder Batra's case (supra) was seized with the same issue and the points which came up for consideration read as under :-

"10. Broadly, two questions arise for our consideration in the facts of the present case :

(a) the scope and applicability of letter dated 27.06.2007 issued by BSNL whereby the weightage point system had been introduced.

(b) as to whether the respondent-authorities had acted in an arbitrary manner and had discriminated while rejecting the claim of the petitioner for compassionate appointment.

11. As regards question (a), there is no doubt as regards the settled proposition of law that it is the policy which was prevalent on the date of the 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. The contention of the learned counsel for the petitioner that his case had to be considered in the light of the policy dated 09.10.1998 and not in terms of the subsequent policy dated 27.06.2007 on account of the fact that his father had died on 31.07.2002 is erroneous. The subsequent letter dated 27.06.2007 issued by the BSNL head office does not supersede the policy dated 09.10.1998. The letter dated

27.06.2007 merely envisages the introduction of a weightage point system as regards assessment of the indigent condition of the family concerned. Be that as it may, the issue that arises for adjudication is regarding the retrospective operation of the weightage point system as contained in the letter dated 27.06.2007. The policy dated 09.10.1998 is comprehensive in nature. The procedure as regarding ascertaining requisite information and processing of the case for compassionate appointment has been dealt with comprehensively. Still further the policy clearly lays down that an application for compassionate appointment is not to be rejected merely on the ground that the family of the Government servant has received the benefits under certain welfare schemes. While considering his request for appointment on compassionate ground, the 1998 policy mandates a balanced and objective assessment of the financial condition of the family by taking into account its assets and liabilities. By virtue of the subsequent letter dated 27.06.2007 weightage point system has been introduced to assess the indigent condition of the family. The rejection of the claim of the petitioner for compassionate appointment by passing of the impugned order dated 08.09.2008 has been made on the premise that by applying the weightage point system the petitioner has been awarded 52 points and as such fell short of the bench mark of 55 marks which is the bench mark for being considered eligible for compassionate appointment. The letter dated 27.06.2007 introducing the weightage point system cannot operate retrospectively and be applied in the case of the petitioner whose father had died on 31.07.2002 and he having put in his request for compassionate appointment in the year 2003 itself, that is at the point of time when the letter dated 27.06.2007 introducing weightage point system had not even seen the light of the day. As such it was incumbent for the respondent authority to have considered the claim of the petitioner for compassionate appointment in the light of the policy dated 09.10.1998 and without applying the weightage point system as contained in the letter dated 27.06.2007."

It is further pointed out that the matter was taken to the Apex Court and SLP (c) No. 20361 of 2010 and other connected matters were dismissed on 18.02.2015, however, the question of law sought to be raised by the BSNL was kept open.

Keeping in view the above, we are of the considered opinion that the consideration of the Full Bench judgment of this Court in Krishna Kumari vs. State of Haryana, 2012(2) SCT 736 is also to the same effect that the policy which is in force at the time of death of the employee is to be taken into consideration. Therefore, we are of the considered opinion that the Tribunal was in error in dismissing the Original Application by failing to take into consideration the binding precedent of the Division Bench.

Resultantly the orders dated 07.01.2014 and 24.04.2014 and the order dated 23.11.2016 under challenge are not sustainable and are quashed. Respondents shall consider the case of the petitioner afresh as per the earlier policy dated 09.10.1998. The needful be done within a period of two months from the date of

receipt of certified copy of this order.