

(2010) 09 GAU CK 0043

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3626 of 2010

Sanjib Kalita

APPELLANT

Vs

Bharat Sanchar Nigam Limited & Ors.

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Citation : (2010) 5 GLT 436

Hon'ble Judges : Madan B.Lokur, C.J. and K.Meruno, J

Bench : Division Bench

Advocate : Advocate appeared for the Petitioner: Mr.S.Chauhan, Advocates appeared for the Respondents: SC, BSNL & Mr.B.C.Pathak, Advocates appearing for Parties

Judgement

Madan B. Lokur, CJ.

1. The petitioner is aggrieved by an order dated 13.5.2010 passed by the Central Administrative Tribunal, Gauhati Bench at Guwahati in O. A. No. 283/2009.

2. The petitioner's father was working as a permanent employee (Lineman) in Bharat Sanchar Nigam Limited (for short hereinafter referred to as "BSNL"). He joined the service of BSNL on or about 23.12.1974. Much later, due to his illness, the petitioner's father applied for voluntary retirement on medical grounds on 10th June, 2002. It appears that he was given voluntary retirement because he was apparently incapacitated. After prolonged treatment he died on 3.11.2002 leaving behind his widow, two sons including the applicant and one married daughter.

3. On 4th August, 2003, the petitioner made an application to the General Manager, BSNL for appointment on compassionate grounds as the son of a deceased employee. It was mentioned in the application that due to the prolonged treatment of his father, the petitioner has to spend a huge amount of money, which could not be reimbursed. It was further stated that the petitioner had to borrow money from various quarters for the treatment of his father and

under these circumstances, the petitioner being the eldest son of the deceased employee had applied for appointment on compassionate grounds. Along with the application the petitioner submitted a No Objection Certificate from his mother, the widow of the deceased employee, as well as other family members.

4. According to the mother of the petitioner, i.e. the widow of the deceased employee, she is illiterate and over aged and due to ill health she cannot do any work and as such she is not desirous of getting employment on compassionate grounds and instead she desires that her eldest son should get employment so that he can look after the entire family.

5. The application of the petitioner was considered by the High Power Committee of BSNL in its meeting held on 6.5.2009 and the application was rejected with the following observations:

"The exofficial expired on 03.11.2002 at the age of 50 years survived by his wife (age 46 years at present), two sons (age 25 & 20 years at present) and a daughter (age 16 years at present). The family pension is Rs. 2731/ + IDA and other terminal benefits were Rs. 1,72,784/. The family is living in its own house. The elder son is the applicant. The Committee was of the view that the applicant can selfsustain in view of his age and education. Therefore the request of the applicant is recommended that the widow, if so desire, may apply afresh for her own compassionate appointment as only the widow can look after the whole family in a better way and she is also the first preference w.r.t. 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 9.10.98.)"

6. Feeling aggrieved by the rejection of his application, although he was eligible for appointment in view of the total assessment points fixed by the High Power Committee of BSNL, the petitioner approached the Central Administrative Tribunal by way of O. A. No. 283/2009 to set aside the decision of the BSNL.

7. The O.A. No. 283/2009 filed by the petitioner was rejected by the Tribunal by an order dated 13.5.2010 and that is how the petitioner is now before us.

8. When we had taken up the matter for consideration on 23rd July, 2010 we noted the facts of the case and required the respondents to reconsider their decision in view of the inability of the petitioner's mother, the widow of the deceased employee, to take up employment.

9. Today, learned counsel for the respondents informs us that the respondents are not in a position to reconsider their decision and continue to hold the view that the widow of the deceased employee i.e. the mother of the petitioner may get the employment but the petitioner cannot get employment.

10. It is common knowledge that not all women in India venture out from their house for employment unless they are compelled. In the present case, the petitioner's mother, the widow of the deceased employee, says that she is illiterate and over aged and also does not keep good health and as such she is

unable to work. In these circumstances, she is not desirous of taking up any employment with BSNL and is desirous that her eldest son should get employment so that he can look after the entire family including his mother and younger brother.

11. The High Power Committee of BSNL has failed to appreciate the matter in a pragmatic manner and in its proper perspective. Instead it insists that the widow of the deceased employee should come out of her house and take employment in BSNL. The decision of the High Power Committee ignores the ground reality. In our opinion, it should hardly matter to the High Power Committee of BSNL whether the widow of the deceased employee takes up the employment or the eldest son of the deceased employee takes up the employment.

12. The purpose of giving employment on compassionate grounds is to ensure that the family of the deceased employee does not suffer from penury. It was said by the Supreme Court in *Union of India Vs. Joginder Sharma*, (2002) 8 SCC 65 that:

"(Compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood."

13. Earlier in *Umesh Kumar Nagpal Vs. State of Haryana*: (1994) 4 SCC 138 the Supreme Court said:

"In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment."

14. But the respondents, instead of looking at the matter in this perspective have sought to create an unnecessary hurdle in the rehabilitation of the deceased employee's family. The hurdle has been created by insisting on the widow of the deceased taking up employment and not her son.

15. In the circumstances, it must be held that the decision taken by the High Power Committee of BSNL on 6.5.2009 as well as the decision of the Tribunal dated 13.5.2010 are not at all sustainable in law. These decisions are set aside.

16. The respondents are directed to place the application of the petitioner for consideration for appointment on compassionate grounds on its appropriate seniority. The reasoning given by the High Power Committee of BSNL in its meeting dated 6.5.2009 will not come on the way of the application of the petitioner being considered on its merit in accordance with law.

The writ petition is allowed to the above terms.