

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

OP (CAT).NO. 2486 OF 2012 (Z)

AGAINST THE ORDER IN OA 546/2010 OF CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 7.6.12

PETITIONER:

PRAVEEN S. KURUP AGED 30 YEARS
S/O. LATE N. PARAMESWARA KURUP
"PREETHA NIVAS" MADAPPALLI P.O.
CHANGANASSERY-686 546, KOTTAYAM DISTRICT.

BY ADV. SRI. T. C. GOVINDA SWAMY

RESPONDENT(S):

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1. THE CHAIRMAN - CUM - MANAGING DIRECTOR
BHARAT SANCHAR NIGAM LTD., NEW DELHI.
 2. THE CHIEF GENERAL MANAGER
BHARAT SANCHAR NIGAM LTD., KERALA TELECOMMUNICATIONS
THIRUVANANTHAPURAM-695 033.
 3. THE ASSISTANT GENERAL MANAGER
OFFICE OF THE PRINCIPAL GENERAL MANAGER
BHARAT SANCHAR NIGAM LTD., TELECOM DISTRICT
KOTTAYAM-686 001.

R1-R3 BY ADV. SMT. I. SHEELA DEVI, SC, BSNL
SRI. MATHEWS K. PHILIP, SC, BSNL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 8.7.2015, THE COURT ON
11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.2486/12

PETITIONER'S EXTS:

- EXT.P1: COPY OF ORDER IN O.A.NO.546/2010 DT.7.6.12.
- EXT.P2: COPY OF OA.NO.546/2010 ALONG WITH ITS ANNEXURES.
- EXT.P3: COPY OF REPLY STATEMENT DT.9.9.2010 FILED BY RESPONDENTS WITH ANNEXURES.
- EXT.P4: COPY OF ADDL.REPLY STATEMENT DT.31.10.2011 FILED BY THE RESPONDENTS IN O.A.546/2010 WITH ANNEXURES.
- EXT.P5: COPY OF REJOINDER DT.20.1.12 FILED BY THE PETITIONER WITH EXTS.
- EXT.P6: COPY OF REPLY STATEMENT TO THE REJOINDER DT.8.3.12 FILED BY THE RESPONDENTS IN OA.546/2010

RESPONDENTS' ANNEXURES:

- ANNEXURE R1(A): COPY OF INSTRUCTIONS ISSUED BY THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSION, DEPARTMENT OF PERSONNEL AND TRAINING, GOVT.OF INDIA UNDER LETTER NO.14014/94-ESTT (D) DT.9.10.98.
- ANNEXURE R1(B): COPY OF APPOINTMENT VIDE LETTER NO.272-18/2005-PERS.IV DT.27.6.07.
- ANNEXURE R1(C): COPY OF LETTER NO.268-79/2002 PERS.IV DT.27.12.2006.
- ANNEXURE R1(D): COPY OF CHECK LIST.
- ANNEXURE R1(E): COPY OF REPORT SUBMITTED BY THE WELFARE OFFICER.
- ANNEXURE R1(F): COPY OF INCOME CERTIFICATE ISSUED BY THE TAHSILDAR.

TRUE COPY

P.S.TO JUDGE

DSN

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

O.P.(CAT) No.2486 of 2012

Dated this the 11th day of August, 2015

JUDGMENT

Anil K.Narendran, J.

The petitioner is the applicant in O.A.No.546 of 2010 on the file of the Central Administrative Tribunal, Ernakulam Bench. The said O.A. was filed against the respondents herein, seeking an order to quash Annexure A1 order dated 20.2.2008 issued by the 2nd respondent and Annexure A3 letter dated 28.8.2008 issued by the 3rd respondent and seeking a declaration that the petitioner is entitled to be considered for appointment on compassionate basis as per the scheme which was in force as on the date of demise of his father i.e., on 15.9.2005 and to direct the respondents to consider his case accordingly with a further a direction to grant all consequential benefits thereof.

2. The respondents filed Ext.P3 reply statement, which was followed by Ext.P4 additional reply statement contending, inter alia, that the reasoning in Annexures A1 and A3 are perfectly legal and that the petitioner is not entitled for the reliefs prayed for. The

respondents have also contended that, in the assessment made by the High Power Committee, the petitioner could secure only '54' as against the minimum score of '55'. Thereafter, the matter was reconsidered by the High Power Committee and the Committee found that, since the daughter of the deceased has already been married she cannot be treated as a dependent of the deceased official and as such the points given under the item 'dependent's weightage' will have to be reduced to '10' instead of '20', in which event the net point scored by the petitioner will be only '44', instead of '54'.

3. After considering the rival contentions, the Tribunal by Ext.P1 order dated 07.06.2012 dismissed O.A.No.546 of 2010. The correctness and sustainability of Ext.P1 order passed by the Tribunal, rejecting the challenge against Annexures A1 and A3 orders passed by the BSNL is the subject matter of challenge in this O.P.(CAT).

4. The father of the petitioner late B.Parameswara Kurup, who was working as Telecom Mechanic under the respondents died in harness on 15.9.2005. The petitioner submitted an application for appointment on compassionate ground before the 3rd respondent on

10.9.2006. However, vide Annexure A1 order dated 20.2.2008 he was informed that his case stands rejected as the family of the deceased is not found to be living in indigent condition. He again sent Annexure A2 representation in March, 2008, which was responded to by Annexure A3 communication, once again rejecting his claim for compassionate appointment. According to the petitioner, the action of the respondents in rejecting his claim for compassionate appointment relying on the new guidelines which came into force with effect from 27.06.2007, much after the death of his father is per se arbitrary and illegal. Further, the assessment made by the High Power Committee is also legally unsustainable and the petitioner is legally entitled for a higher score. As evident from Annexure A1, in the assessment made by the High Power Committee, the petitioner could secure only '54' as against the minimum score of '55'. Thereafter, as requested by the petitioner, the matter was reconsidered by the High Power Committee. The Committee found that, since the daughter of the deceased has already been married she cannot be treated as a dependent of the deceased and as such the net point scored by the petitioner will be only '44', instead of '54'. It was accordingly, that the request for

compassionate appointment was again turned down as per Annexure A3 order dated 28.08.2008. Annexures A1 and A2 orders were sought to be challenged by the petitioner herein by filing O.A.No.546 of 2010.

5. The main challenge raised from the part of the petitioner was that the right to be considered for compassionate appointment had accrued on the date of death and as such, there was absolutely no rhyme or reason for the employer/BSNL to have it considered with reference to the norms prevailing on the date of consideration of the application. Reliance was also sought to be placed on Annexure A8 order passed by the Tribunal dated 8.6.2010 in O.A.No.896/2009 and connected cases, in which the applicants therein relied on the verdict passed by the Apex Court reported in ***State Bank of India v. Jaspal Kaur (2007 (9) SCC 571)*** and some other cases as well including ***State Bank of India v. Vikas Dubey (2007 (9) SCC 579)***. After hearing both the sides, the Tribunal in Annexure A8 order observed that, by virtue of the law declared by the Apex Court as per ***Jaspal Kaur's case*** (supra), the stand of the BSNL was liable to be intercepted. It was declared by the Tribunal that the applicants in O.A.No.896/2009 and connected

cases had to be considered with reference to the pre-revised scheme/norm which was prevailing on the date of application. It was accordingly, that order passed by the BSNL was set aside and the matter was directed to be reconsidered, which came to be challenged by filing O.P.(CAT)No.458/2010 and connected cases, at the instance of the BSNL.

6. During the course of hearing, it is brought to the notice of this Court that diverging views were being expressed as to whether the 'date of death' was the relevant one to be considered or the 'date of consideration of the application'. A Division Bench of this Court as per order dated 17.02.2012 in OP(CAT).No.458/2010 and connected cases made a reference to a Full Bench for resolving the issue. Pursuant to the reference, the matter was considered by a Full Bench of this Court and a common order was passed on 19.01.2015 which stands reported in **Bharat Sanchar Nigam Ltd. Vs. Rajesh (2015 (2) KLT 478)**, as per which it has been held that the crucial date that has to be considered is the date of consideration of the application and not the date of death. It has been held that the verdicts passed by the Supreme Court in **Jaspal Kaur's case** (supra) and **Vikas Dubey's case** (supra) sought to be

relied on from the part of the aspirants could not be held as authorities for the proposition that the case of an applicant will have to be considered against a scheme which was in force at the time of death of the employee. Reliance was sought to be placed by the Full Bench on the law declared by the Apex Court in ***State Bank of India and another v. Raj Kumar (2010 (11) SCC 661)***. The reference was answered accordingly and the matter was remitted to be considered by the concerned Bench and hence this matter stands listed before this Court today.

7. After hearing both the sides, this Court finds that, there is no dispute on facts and the main ground raised in the Original Application and pressed before the Tribunal was with reference to the applicability of the 2007 scheme i.e., whether the old scheme was to be made applicable or the new scheme. The only other ground as pointed out by the learned counsel for the petitioner is with regard to the indigence of the petitioner as projected in the Grounds B and C of this O.P.(CAT), which find no place in Ext.P2 O.A. filed before the Tribunal. The learned counsel for the petitioner would contend that, the finding of the High Power Committee that the net point secured by the petitioner is less than 55 is absolutely

erroneous.

8. Along with Ext.P4 additional reply filed by the respondent herein in O.A.No.540 of 2010 the check list with reference to weightage point system was produced as Annexure R1(f), which shows that it was after considering the relevant parametres the 1st respondent was awarded a score of 54. It was based on Annexure R1(f), the claim of the petitioner for compassionate appointment was turned down by Annexure A1 order. Instead of challenging the said order, the petitioner submitted Annexure A2 representation for reconsideration, pursuant to which the claim was again rejected by Annexure A3 order. As noticed in Annexure A3 the net point scored by the petitioner became 44 only, as the unmarried daughter of the deceased employee got married, which fact was admitted in Annexure A2 representation. The specific stand taken by the respondents before the Tribunal as well as before this Court is that, a thorough investigation as regards the indigence of the family was made before submitting a report in this regard and that, after completing all pre-committee formalities the application submitted by the petitioner was placed before the High Power Committee and the Committee examined the related documents and came to a

conclusion about the indigence of the family. In the absence of any materials to conclude that the assessment made by the High Power Committee is in any way erroneous or illegal, no interference is warranted on Annexures A1 and A3 orders passed by the BSNL. We also notice that, even if the contention raised by the petitioner in this O.P.(CAT) is accepted, he will not secure the minimum net point of 55 in order to extend the benefit of compassionate appointment, as his present score is only 44. Since the legal position has been made clear by the Full Bench, the matter has to be considered only in terms of the new scheme, i.e., 2007 scheme. This exercise has already been done by the High Power Committee, who, after analysing the facts and figures has held that the applicant could secure only a score of '44'. Having not secured the minimum of '55', he was found as not eligible to be declared as indigent and to extend the benefit of compassionate appointment.

9. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that there is another judgment by a Division Bench of this Court in **Bharat Sanchar Nigam Ltd. Vs. Tittin (2011 (4) KLT 409)**, whereby it has been declared that the relevant date for consideration is the date of death. It is also

stated that the said judgment was sought to be challenged by the aggrieved party before the Apex Court by filing SLP, wherein interference has been declined and the SLP has been dismissed as per order dated 18.2.2015. A copy of the said order is placed for perusal of this Court. The order dated 18.2.2015 passed by the Apex Court is in the following terms:-

"Delay, if any, condoned in filing special leave petitions. Dismissed. However, the question of law sought to be raised in these petitions is kept open."

10. From the above, it is very much clear that the Apex Court, at the time of dismissal of the SLP, did not go into the merits of the case and as such, there is no merger with the decision rendered by the Division Bench of this Court, nor could it be said that the view expressed by the Division Bench in **Bharat Sanchar Nigam Ltd. Vs. Tittin (2011 (4) KLT 409)** has got the approval of the Supreme Court merely because of the dismissal of the SLP.

11. It is further brought to the notice of this Court that, the Apex Court, as per subsequent judgment reported in **Canara Bank Vs. Mahesh Kumar (2015 (2) KLT SN 109 (C.No.128) SC)** has held that, the claim for compassionate appointment under the

scheme of a particular year cannot be decided in the light of any subsequent scheme that came into force much after the claim. The crux of the factual position discussed therein appears to be that, there was a scheme earlier, which came to be changed by introduction of 'ex gratia' payment, in lieu of compassionate appointments in the year 2005. The bank considered the eligibility of the person concerned in respect of death occurred on 10.10.1998 much later and the same was sought to be denied stating that there was no sustainable ground under the changed circumstances. The Apex Court also observed that the '2005 scheme' providing only for 'ex gratia' payment in lieu of compassionate appointment stands superseded by the scheme of 2014, which has virtually revived the scheme providing for compassionate appointment. As on date, the scheme in force was to provide compassionate appointment, and under such circumstances, it was held that the appellant/Bank was not justified in contending that application for compassionate appointment of the respondent could not be considered because of passage of time. The factual position in the present case stands entirely on a different pedestal. The impact of the verdicts passed by the Apex Court as per the decisions rendered at different points

of time has been discussed by the Full Bench of this Court with reference to the factual situation prevailing in the BSNL, holding that the matter had to be considered with reference to the new scheme of 2007 and not with reference to the pre-revised scheme. The said decision is binding upon this Court and as such, this Court does not find any reason to accede to the relief sought for from the part of the applicant before the Tribunal.

12. In the above circumstances, this Court finds that the challenge made by the petitioner against Annexures A1 and A3 orders passed by the BSNL was rightly rejected by the Tribunal in Ext.P1 order and in such circumstances, Ext.P1 order passed by the Tribunal requires to be upheld. Accordingly Ext.P1 order passed by the Tribunal stands confirmed and it is declared that there is no merit in O.A.No.546 of 2010 filed by the petitioner herein and the same was rightly rejected by the Tribunal.

In the result, the O.P.(CAT) is dismissed.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRAN, JUDGE

skj