

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 8TH DAY OF JULY 2015 /17TH ASHADHA, 1937

OP (CAT).No. 828 of 2010 (S)

AGAINST THE ORDER/JUDGMENT IN OA 904/2009 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 08-06-2010

PETITIONERS :

1. THE CHIEF GENERAL MANAGER,
BHARATH SANCHAR NIGAM LIMITED,
KERALA TELECOMMUNICATIONS, THIRUVANANTHAPURAM-695033.
2. THE DEPUTY GENERAL MANAGER (ADMN.),
OFFICE OF THE CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED, KERALA TELECOMMUNICATIONS,
THIRUVANANTHAPURAM-695033.
3. THE CHAIRMAN-CUM-MANAGING DIRECTOR,
BHARAT SANCHAR NIGAM LIMITED, NEW DELHI-110001.

BY ADV. SMT.I.SHEELA DEVI,SC,BSNL

RESPONDENT :

SREEJU V.P.,
S/O.(LATE) G.VIJAYAN,
VALAMOOZHI, NEDUMPA, PANAYAMUTTOM.P.O.,
NEDUMANGAD, TRIVANDRUM-695561.

BY ADV. SRI.T.C.GOVINDA SWAMY
BY ADV. SMT.KALA T.GOPI

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 08-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :-

- EXT.P1 : COPY OF O.A.No.904/2009 FILED BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXT.P2 : COPY OF THE FINAL ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.904/2009.
- EXT.P3 : COPY OF LETTER BEARING NO.Rectt/9-256/2006 DTD.20.2.08/10.3.08 ISSUED BY THE 2ND PETITIOENR.
- EXT.P4 : COPY OF THE INSTRUCTION ISSUED BY THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE & PENSION, DEPARTMENT OF PERSONAL AND TRAINING GOVERNMENT OF INDIA FOR APPOINTMENT UNDER THE COMPASSIONATE APPOINTMENT SCHEME OR DYING IN HARNESS SCHEME, UNDER LETTER NO.14014/6/94-Estt (D) DTD.9-10-1998.
- EXT.P5 : COPY OF THE WEIGHTAGE POINT SYSTEM FORMULATED BY THE BSNL HAS FORMULATED A 'VIDE LETTER NO.272-18/2005 PERS.4 DTD.27.6.2007.
- EXT.P6 : COPY OF THE LETTER NO.268-79/2-002 PERS.4 DTD.27.12.2006.
- EXT.P7 : COPY OF THE HISTORY SHEET.
- EXT.P8 : COPY OF THE LETTER NO.268-79/2-002 PERS.4 DTD.27.12.2006.

RESPONDENT'S EXHIBITS :- NIL.

True copy

P.A to Judge

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

O.P.(CAT) No.828 of 2010

Dated this the 8th day of July, 2015

JUDGMENT

P.R.Ramachandra Menon, J.

Correctness and sustainability of Ext.P2 order passed by the Tribunal, setting aside the order passed by the petitioner/BSNL on considering the application preferred for granting compassionate appointment under the 'Scheme of 2007' and directing the matter to be considered under the 'old scheme' with reference to the 'date of death' of the employee concerned, is the subject matter of challenge.

2. The father of the respondent, who was working as Regular Mazdoor, took his last breath on 12.11.2006. The respondent submitted an application for compassionate appointment under the existing scheme/norms, on 04.01.2007. The eligibility was considered by the BSNL only much later and by this time, a new scheme was introduced on 27.06.2007, which envisaged a 'weightage system', whereby a minimum requirement was stipulated to be satisfied so as to fix the indigence. As per the said scheme, only persons who secured a

minimum score of '55' were to be declared as indigent and to be appointed under the compassionate appointment scheme. In the case of the respondent herein, the High Power Committee constituted by the BSNL to consider the traits/credentials in accordance with the said scheme of 2007 found that the respondent could score only '51' points, which was much below the cut off minimum of 55. It was accordingly, that the request for compassionate appointment was turned down as per Ext.P2 order dated 20.02.2008, which was sought to be challenged by the respondent by filing O.A.No.904/2009.

3. The main point raised from the part of the respondent 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 sought to be placed 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 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 interdicted. It was declared by the Tribunal that the applicant had to be considered with reference to the old scheme/norms which were prevailing on the date of application of the concerned employee. It was accordingly, that Ext.P1 order passed by the BSNL was set aside and the matter was directed to be reconsidered, which has now been challenged by filing the Original Petition at the instance of the BSNL.

4. It is brought to the notice of this Court that, in view of diverging views expressed by different Benches (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 '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, as reported in **Bharat Sanchar Nigam Ltd. Vs. Rajesh [2015 (2) KLT 478]**. It has been held that the crucial date to be considered is the 'date of consideration of the

application' and not by the date of death. It has been held that the verdict 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 subsequently 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.

5. After hearing both the sides, this Court finds that there is no dispute with regard to the factual position. The main ground raised in the O.A., which was 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 is with regard to the indigence of the applicant. But 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 '51' and having not secured the minimum of '55' points, was not eligible to be declared as indigent and to have the benefit of compassionate appointment.

6. By virtue of the turn of events, the matter requires to be reconsidered, submits the learned counsel. It is brought to the notice of this Court by the learned counsel appearing for the respondent that there is another judgment by a Division Bench of this Court in **Bharat Sanchar Nigam Ltd. Vs. Tittin** [2011 (4) KLT Pg.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 before the Supreme 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 Supreme 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."

7. 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 Pg.409] has got the approval of the Supreme Court, merely because of the dismissal of the SLP.

8. 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 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 observed that the 2005 scheme (providing only for ex gratia payment in lieu of compassionate appointment) stands superceded 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 circumstance, the appellant/Bank was not justified in contending that the 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 old 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.

In the above circumstances, this Court holds that the challenge raised by the BSNL against the order passed by the Tribunal requires to be upheld and accordingly Ext.P2 order passed by the Tribunal stands set aside, restoring Ext.P1 order passed by the BSNL. It is declared that there is no merit in the O.A. filed by the respondent and hence the same stands dismissed.

P.R.RAMACHANDRA MENON, JUDGE

ANIL K.NARENDRA, JUDGE

skj