

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. 360 of 2011 (S)

AGAINST THE ORDER IN OA 482/2010 of CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED **20-10-2010**

PETITIONER:

BHARAT SANCHAR NIGAM LTD. (BSNL)
REPRESENTED BY ITS CHIEF GENERAL MANAGER
KERALA TELECOMMUNICATIONS
THIRUVANANTHAPURAM 695 033.

BY ADV. SMT. I. SHEELA DEVI, SC, BSNL (BHARAT SANCHAR)

RESPONDENTS:

1. V. VINOD KUMAR
S/O. LATE M. VASUDEVA PILLAI, VALIYA PUTHUSSERIL
KADAKKAD, PANDALAM 689 501.

2. UNION OF INDIA, REPRESENTED BY THE
PRINCIPAL SECRETARY, MINISTRY OF TELE
COMMUNICATIONS CENTRAL SECRETARIATE
NEW DELHI 100 001.

R1 BY ADV. SRI. RINNY STEPHEN CHAMAPARAMPIL
R1 BY ADV. SMT. ASHA ELIZABETH MATHEW
R2 BY SRI N. NAGARESH, ASGI.

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 OPCAT.360/2011

APPENDIX IN OPCAT.360/2011

PETITIONER'S EXTS:

- EXT.P1: COPY OF O.A.NO.482/2010
- EXT.P2: COPY OF REPLY STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE CAT, ERNAKULAM BENCH.
- EXT.P3: COPY OF ORDER IN O.A.NO.482/2010 DT.20.10.2010.
- EXT.P4: COPY OF ORDER NO.268-79/2-002 PERS.IV DT.27.12.2006.
- EXT.P5: COPY OF REJECTION LETTER DT.20.2.08 ISSUED ON 10.3.2008 BY THE PETITIONER TO THE 1ST RESPONDENT.

RESPONDENTS' EXTS:

- EXT.R1(A): COPY OF DOPT OM DT.26.7.12.

TRUE COPY

P.S.TO JUDGE

dsn

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

O.P.(CAT) No.360 of 2011

Dated this the 11th day of August, 2015

JUDGMENT

Anil K.Narendran, J.

The petitioner is the 1st respondent in O.A.No.482 of 2010 on the file of the Central Administrative Tribunal, Ernakulam Bench. Ext.P1 O.A. was filed by the 1st respondent herein, against the petitioner and the 2nd respondent herein, seeking an order to quash Annexure A2 order dated 20.2.2008 of the petitioner herein, and for a declaration that he is entitled to be appointed on compassionate grounds on account of the untimely demise of his father late N.Vasudevan Pillai, who was an employee of Bharath Sanchar Nigam Limited (BSNL). The petitioner herein filed Ext.P2 reply contending that Annexure A2 order is perfectly legal and in order to substantiate the said contention, Annexure R1(d) check list with reference to weightage point system was also relied on, which shows that it was taking into account the relevant

parameters the 1st respondent was awarded the score of '34', which is much below the cut off minimum of '55'. After considering the rival contentions, the Tribunal by Ext.P3 order dated 20.10.2010 allowed the O.A.

2. The correctness and sustainability of Ext.P3 order passed by the Tribunal, setting aside Annexure A2 order passed by the 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 in this O.P.(CAT) filed by BSNL.

3. The father of the 1st respondent herein, Sri.N.Vasudevan Pillai was working as Telecom Mechanic under the General Manager Telecom, Thiruvalla. He died in harness on 15.5.2006. The terminal benefits of the deceased employee amounting to ₹2,55,407/- were adjusted by the Department towards a departmental loan taken by him. According to the 1st respondent a meagre

amount of ₹.2,960/- received towards family pension is not sufficient to meet the basic needs of the family. In such circumstances, he submitted an application dated 6.3.2007 seeking compassionate appointment, which was rejected by Annexure-A2 order dated 20.2.2008 issued by the petitioner herein. Though Sri.N.Vasudevan Pillai died in harness on 15.5.2006, by the time the 1st respondent made application for compassionate appointment dated 6.3.2007, a new scheme for compassionate appointment was introduced with effect from 17.6.2007, which envisages 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 scored a minimum of '55' were to be declared as indigent and to be appointed under the compassionate appointment scheme. In the case of the 1st 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 he could score only '34' 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 Annexure A2 order dated 20.02.2008, which was sought to be challenged by the 1st respondent herein by filing O.A.No.482 of 2011.

4. The main challenge raised from the part of the 1st respondent herein 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 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 intercepted. It was declared by the Tribunal that the applicant had to be considered with reference to the pre-revised scheme/norm which was prevailing on the date of application. It was accordingly, that Annexure A2 order passed by the BSNL was set aside and the matter was directed to be reconsidered, which came to be challenged by filing this O.P.(CAT), at the instance of the BSNL.

5. 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 sanctioned accordingly and the matter was remitted to be considered by the concerned Bench and hence this matter stands listed before this Court today.

6. After hearing both the sides, this Court finds that, there is no dispute on facts and the main ground raised in the writ petition 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 1st respondent is with regard to the indigence of the 1st respondent as projected in Ground 'D' of the O.A. The learned counsel for the 1st respondent would contend that, though a specific ground, namely, ground 'D' was raised in the O.A. to the effect that, the finding of the High Power Committee that the family of the deceased employee was not living in indigent condition is absolutely erroneous. Before arriving at such a finding neither the High Power committee nor any officials of the BSNL conducted an enquiry regarding the financial position of the family of the deceased. Therefore, according to the learned counsel, the finding of the said committee that the net points secured by the 1st respondent were less than 55 is absolutely erroneous.

7. Along with Ext.P2 reply filed by the petitioner herein in O.A.No.482 of 2011, the check list with reference to weightage point system was produced as Annexure R1

(d), which shows that it was after considering the relevant parametres the 1st respondent was awarded a score of 34. The specific stand taken in Ext.P2 reply affidavit is that, the Sub Divisional Engineer, BSNL, Panthalam had made a thorough investigation as regards the indigence of the family and has submitted a report in this regard. After completing all pre-committee formalities the application submitted by the 1st respondent was placed before the High Power Committee and the Committee examined the income certificate issued by the Tahsildar and other related documents and came to a conclusion about the indigence of the family. The learned counsel for the 1st respondent would contend that BSNL has not objectively assessed the financial condition of the family taking into account the assets and liabilities. The learned counsel would also point out with reference to Annexure R1(d) check list that under the item 'terminal benefits', 7 points were awarded taking the total terminal benefits received as ₹3,18,739/-, whereas as per the averments in Para.8 of Ext.P2 reply

filed before the Tribunal, the terminal benefits stated as paid were only ₹2,55,407/-. But, we notice that even if the aforesaid contention is accepted, the 1st respondent will not secure the minimum net point of 55 in order to extend the benefit of compassionate appointment. 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 Annexure A2 order passed by the petitioner herein. 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 '34'. 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.

8. It is brought to the notice of this Court by the learned counsel appearing for the 1st respondent 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 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."

9. 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.

10. 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.

In the above circumstances, this Court finds that the challenge raised by the BSNL against Ext.P3 order passed by the Tribunal requires to be upheld. Accordingly Ext.P3 order passed by the Tribunal stands set aside, restoring Annexure A2 order passed by the BSNL dated 20.2.2008. It is declared that there is no merit in O.A.No.482 of 2010 filed by the 1st respondent herein and the same stands dismissed accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj