

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.25164 of 2013

& M.P.No.1 of 2013

The Union of India, Represented by
Assistant General Manager (Estt),
Office of the Deputy General Manager (HR/Admn),
Bharat Sanchar Nigam Ltd.,
Chennai Telephones,
89, Millers Road,
Chennai - 600 010. ... Petitioner

-vs-

1.E.Bharath
2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court Building,
Chennai - 600 104. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records in O.A.No.1024/2011 on the file of the second respondent and quash the order in O.A.No.1024/2011 dated 27.07.2012 passed by the second respondent.

For Petitioner : Ms.K.Parameshwari

For Respondent No.1 : Mr.P.Rajendran

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present Writ Petition for a Writ of Certiorari, to call for the records of the order passed by the second respondent / Central

Administrative Tribunal, Chennai Bench, in O.A.No.1024 of 2011 dated 27.07.2012 and to quash the same.

2.M.Elangovan, while working as Section Supervisor (Operative), Telegraph Office, Ethiraj Salai, died on 02.10.2004, in harness. He left behind his wife, a son (first respondent) and a daughter. The first respondent submitted an application dated 09.12.2004, for appointment on compassionate ground. The Circle High Power Committee of Chennai Telephones examined the case of the first respondent and the Committee made the following observations:

"The ex-official expired on 02/10/2004 at the age of 45 years, survived by his wife, one son and a daughter. The family pension is Rs.3,850/+ + IDA and other terminal benefits were Rs.3,13,575/-. The family is living in their own house. Keeping in view the assets, limited liabilities and overall assessment of the financial condition of the family, the committee did not consider the family to be living in penury and rejected the request under provisions of the scheme for the purpose."

3.In view of the above, the Chennai Telephones informed the first respondent, by a letter dated 07.08.2009 that his request for appointment on compassionate ground could not be acceded to. Thereafter, the first respondent submitted an application dated 04.05.2011 for reconsideration of the already rejected case. However, the Chennai Telephones, based on the earlier rejection informed the first respondent, by its letter dated 19.05.2011 that his request for reconsideration for appointment could not be acceded to.

4.Aggrrieved by the rejection of his request for reconsideration, the first respondent approached the Central Administrative Tribunal, Chennai Bench, by way of O.A.1024 of 2011, seeking the following relief: "to call for the records relating to the impugned order of the respondent in ASR/CGA/CTO/021/2006/13 dated 19/5/2011 and quash the same and direct the respondent to re-consider the claim of the applicant for compassionate appointment and appoint him on compassionate grounds to any suitable post commensurate with his qualifications."

5.According to the first respondent, his father, namely, M.Elangovan, died on 02.10.2004, leaving his family in indigent circumstances. They are residing in a house, which was inherited by his mother from her grandmother. The terminal benefits paid at the time of death of his father

were spent on repaying debts incurred by the family. The family pension is not sufficient to make ends meet. The family has been struggling for their survival. According to him, his request for appointment was mechanically rejected.

6. According to the writ petitioner, Letter No.273-18/2005-Pers.IV dated 27.06.2007 of BSNL contains the provision of weightage point system to assess the eligibility and indigent condition of the family of the deceased for compassionate appointment. As per the said policy guidelines, Circle High Power Committee should consider the request for compassionate appointment as per the weightage point system. Cases with 55 or more NET POINTS, should be prima facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate appointment. Cases with NET POINTS below 55 (i.e.54 or less) shall be treated as non-indigent condition and rejected. The Circle High Power Committee has examined the case of the first respondent and rejected his request for compassionate ground appointment. The first respondent's family received terminal benefits of the deceased employee to the tune of Rs.3,13,575/-. In addition to that, a sum of Rs.3,850/- + IDA per month has been sanctioned as family pension. The family is residing in their own house and the deceased left behind three heirs. He died at the age of 45. All these factors were taken into account, as per the weightage point system. However, the first respondent scored less than 54 points and hence, his application was rejected.

7. The Tribunal having considered the rival submissions has come to the conclusion that the first respondent has made out a case for grant of the relief. The Tribunal directed the writ petitioner to reassess the weightage points. It has also directed the writ petitioner not to take into account the terminal benefits, family pension and the accommodation, in which, the family of the deceased is residing.

8. Aggrieved by the directions of the Central Administrative Tribunal, Chennai Bench in O.A.No.1024 of 2011, the present Writ Petition has been filed by the petitioner.

9. The learned counsel for the petitioner would submit that the case of the first respondent has been considered by the Circle High Power Committee, as per the weightage point system contained in Letter No.273-18/2005-Pers.IV dated 27/06/2007 from BSNL Corporate Office, New Delhi. The learned counsel would further submit that the

case of the first respondent has to be considered only in accordance with the governing scheme.

10.The learned counsel for the petitioner relied on the judgment of the Supreme Court in UNION OF INDIA vs. SHASHANK GOSWAMI [(2012) 11 SCC 307]. In paragraph 13 of the judgment, it was observed thus : "13.In Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384], this Court examined the scope of employment on compassionate grounds in a similar scheme making the dependant of an employee ineligible for the post in case the family receives terminal/retiral benefits above the ceiling limit and held that the judgment in Govind Prakash [(2005) 10 SCC 289] had been decided without considering earlier judgments which were binding on the Bench. The Court further held that that the appointment has to be made considering the terms of the scheme and in case the scheme lays down a criterion that if the family of the deceased employee gets a particular amount as retiral/terminal benefits, dependant of the deceased employee would not be eligible for employment on compassionate grounds."

11.The learned counsel for the petitioner also relied on the judgment of the Supreme Court in STATE BANK OF INDIA vs. SOMVIR SINGH [(2007) 4 SCC 778], wherein it has held that "In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

12.The learned counsel for the first respondent would submit that the case of the first respondent ought not to have been rejected by applying the parameters formulated in the year 2007. According to him, the weightage point system, which came into force in the year 2007 cannot be made applicable to the case of the first respondent, as his father died in the year 2004. In this connection, he relied on the decision in CANARA BANK AND ANOTHER vs. M.MAHESH KUMAR [(2015) 7 SCC 412].

13.As can be seen from the said judgments, extracted above, appointments on compassionate ground have to be made only in accordance with the governing scheme formulated by the employer.

14. Admittedly, the writ petitioner [BSNL] resolved to continue with the policy guidelines on compassionate ground appointment, issued by DOP&T in OM No.14014/6/94-ESTT(D) dated October 9, 1998. However, it introduced the weightage point system on 27.06.2007 to assess the indigent condition of the family of the deceased. The learned for the petitioner put forth a contention that the weightage point system introduced in the year 2007 is only an extension of the guidelines issued by the DOP&T. In this connection, the learned counsel relied on the decision of this Court in UNION OF INDIA vs. B.DILIP dated 24.09.2013. However, this Court has not held that the weightage point system introduced in the year 2007 is only an extension of the guidelines issued by the DOP&T in the year 1998. In fact, the Court directed the BSNL to consider the claim of the first respondent therein for compassionate appointment, as directed by the Central Administrative Tribunal, after giving an opportunity to him. Though it is claimed that the weightage point system is only an extension of the policy guidelines issued by the DOP&T, but in effect it introduced new set of parameters for consideration of the request for appointment on compassionate ground.

15. The first respondent applied for compassionate ground on 09.12.2004. However, his request was rejected on 07.08.2009. In MGB GRAMIN BANK vs. CHAKRAWARTI SINGH [(2014) 13 SCC 583], the Supreme Court held that "Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years." Had the petitioner / BSNL been diligent enough to dispose of the application of the first respondent immediately, as observed by the Supreme Court in

the said judgment, there would have been no occasion for the Department to seek to apply the weightage point system which came into existence in the year 2007.

16. In CANARA BANK AND ANOTHER vs. M. MAHESH KUMAR [(2015) 7 SCC 412], the claim for compassionate ground appointment must be considered as per the scheme which was in vogue at the time of death of the employee concerned. It has also been held that administrative or executive order cannot have retrospective effect, so as to take away the right accrued to the dependent of a deceased employee. As per the dictum laid down by the Supreme Court in STATE BANK OF INDIA vs. JASPAL KAUR [(2007) 9 SCC 571] and CANARA BANK AND ANOTHER vs. M. MAHESH KUMAR [(2015) 7 SCC 412] the first respondent's request for compassionate appointment must be considered strictly in accordance with the governing scheme, which was in force at the time of death of the employee (02.10.2004). It would not be appropriate to apply the weightage point system introduced in the year 2007 retrospectively to a case of the year 2004.

17. The Central Administrative Tribunal placing reliance in the decision of the Supreme Court in GOVIND PRAKASH VERMA vs. LIFE INSURANCE CORPORATION OF INDIA & OTHERS [(2005) 10 SCC 289] directed the writ petitioner not to take into account the terminal benefits, family pension and the accommodation, in which, the family of the deceased is residing. The decision relied on by the Central Administrative Tribunal has not been followed in subsequent decisions on the reasoning that the said judgment was rendered without considering the earlier judgments which were binding on the Bench vide UNION OF INDIA vs. SHASHANK GOSWAMI [(2012) 11 SCC 307].

18. The Central Administrative Tribunal directs the writ petitioner to reassess the weightage points. However, the approach of the Central Administrative Tribunal in coming to the conclusion that weightage point system will apply to the facts of the case could not be sustained. If so, the question of assessing the eligibility of the first respondent by applying the weightage point system would not arise. The request of the first respondent which was made in the year 2004 must be considered in accordance with the scheme, which was in force at the time of death of the employee (02.10.2004).

19. The object of the said scheme formulated by the DOP&T vide OM No.14014/6/94-ESTT(D) dated October 9, 1998 is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness. Clause 16(c) of the scheme reads thus: "The Scheme

of compassionate appointments was conceived as far back as 1958. since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare scheme. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc." The scheme provides inter alia for personal hearing of the dependent. The Department may consider according a personal hearing to the dependent at the time of consideration of his case in terms of Clause 12(c) of the scheme.

20. It is obvious that the authority has not chosen to reconsider the request of the first respondent, on merits and to pass orders, but has in the threshold itself rejected the request by merely quoting the earlier rejection. Therefore, we are of the considered view that the request of the first respondent to reconsider his case deserves to be accepted.

21. For the reasons supra, we are inclined to direct the petitioner to consider the case of the first respondent by applying the parameters of the scheme as they stood at the time of death of the employee in the year 2004, after affording an opportunity to the first respondent. Since the matter pertains to the year 2004, the petitioner shall dispose of the case, within a period of three months from the date of receipt of a copy of this order, in the light of the observations made by this Court.

22. The Writ Petition is ordered in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

sri

To

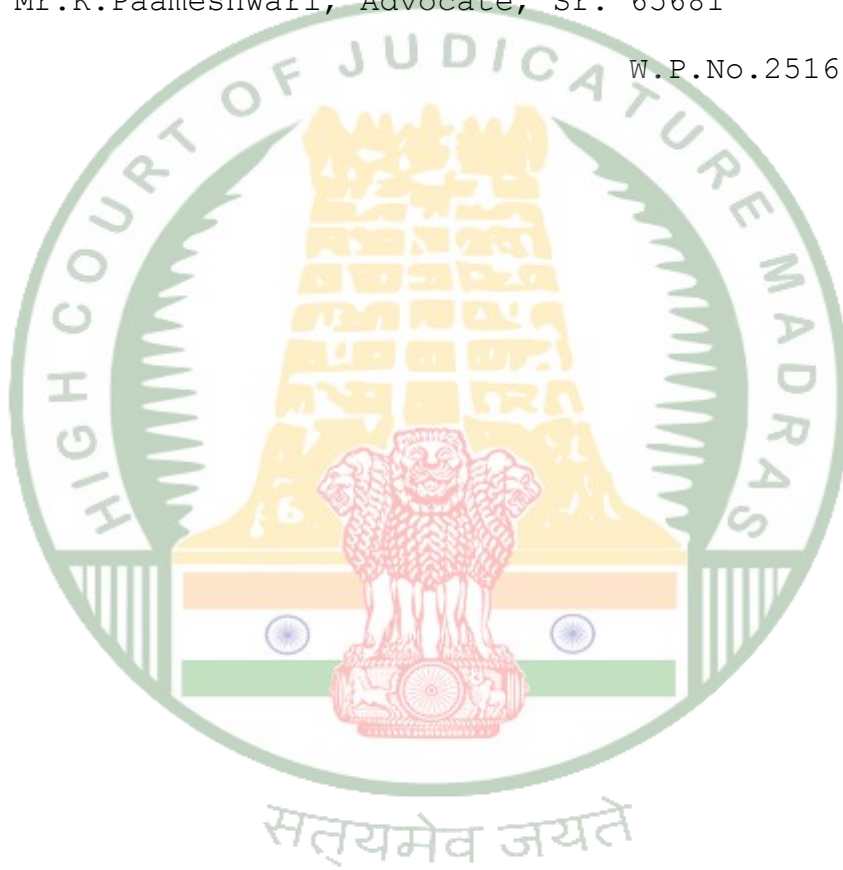
The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court Building,
Chennai - 600 104.

1 cc to M/s. P. Rajendran, Advocate, Sr. 65465

1 cc to Mr.K.Paameshwari, Advocate, Sr. 65681

W.P.No.25164 of 2013

RK (CO)
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