

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.28196 of 2016
& W.M.P.No.24342 of 2016

The Union of India,
Represented by

The Assistant General Manager (Estt),
Bharat Sanchar Nigam Ltd. (BSNL),
No.89, Millers Road,
Chennai - 600 010.

.... Petitioner

-vs-

1.A.Arunkumar

2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
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 relating to the order dated 07.06.2016 passed by the second respondent in O.A.No.1389 of 2015 and quash the same.

For Petitioner : Mr.Y.Bhuvanesh Kumar

For Respondent No.1 : Mr.R.Malaichamy

For Respondent No.2 : Tribunal

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 dated 07.06.2016 passed by the second respondent / Central Administrative Tribunal, Madras Bench, in O.A.No.1389 of 2015 and to quash the same.

2.D.Arjunan, the father of the first respondent was an employee of BSNL. He died on 05.10.2005, while in service. He survived by his wife, a son (first respondent) and two daughters. The first respondent submitted an application dated 10.10.2006, 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 05/10/2005 at the age of 47 years, survived by his wife, one son and two daughters. The family is living in their own house. The family pension is Rs.2,765/- + IDA and other terminal benefits were Rs.2,91,822/-. The widow is not willing to apply for her own CGA due to her ill health. The son has applied for CGA vide application dated 10/10/2006. Keeping in view the assets, limited liabilities and overall assessment of the financial condition of the family of the deceased official, the Committee did not consider the family to be living in penury and recommended for rejection of the request under provisions of the scheme for the purpose."

3.The Chennai Telephones informed the first respondent about the rejection of his case vide letter dated 10.08.2011.

4.Aggrieved by the rejection of his request for consideration, the first respondent approached the Central Administrative Tribunal, Madras Bench, by way of O.A.1389 of 2015, seeking the following relief: "to call for the records of the respondent pertaining to his order made in ASR/CGA/CTO/041/2007/17 dated 10.08.2011 and set aside the same, consequent to, direct the respondent to appoint the applicant on compassionate grounds in any one of the vacant post on considering his educational qualification with all service benefits."

5.The case of the first respondent is that his father left his family in indigent circumstances. During his life time, his father was heavily indebted to private parties and to Karur Vysya Bank Limited. The family made part payments from out of the terminal benefits. The daughters of the deceased employee were minors at the time of his death. The family have taken out loans to meet the expenses of their marriages. The family is living in a small area allotted by the Slum Clearance Board.

6.According to the writ petitioner, the case of the first respondent was considered as per the weightage point system introduced by the BSNL in the year 2007. 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 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.

7.The first respondent's family received terminal benefits of the deceased employee to the tune of Rs.2,91,822/-. In addition to that, a sum of Rs.2,765/- + 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 47. All these factors were taken into account, as per the weightage point system.

8.The Tribunal in its order 07.06.2016 directed the authorities to reconsider the case of the first respondent as per the scheme existed as on the date of the deceased employee and to pass a speaking order.

9.Aggrieved by the directions of the Central Administrative Tribunal, Madras Bench in O.A.No.1389 of 2015, the present Writ Petition has been filed by the petitioner.

10.The learned counsel for the petitioner would submit that the weightage point system introduced in the year 2007 is only an extension of the guidelines issued by the DOP&T and it cannot be termed as a new scheme. In this connection, he relied on a judgment of a Full Bench of the Kerala High Court in O.P. (CAT) No.458 of 2010 dated 19.01.2015. The Full Bench has observed thus: "the provision for weightage point system has been introduced as a procedure for processing the case of compassionate appointment and it will not affect any substantive right of the applicant since the object is to find out the most eligible person or family having the indigent condition requiring an appointment under the scheme." It has also held that the scheme as on the date of consideration of the application for compassionate appointment will be the relevant one.

11.Subsequent to the said judgment, the Supreme Court in the decision dated 15.05.2015 in *CANARA BANK AND ANOTHER vs. M.MAHESH KUMAR* [(2015) 7 SCC 412], held that 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 this decision, 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. We are bound by the judgment of the Hon'ble Supreme Court. Following the dictum laid down by the Supreme Court in the said case, the Central Administrative Tribunal directed the writ petitioner to reconsider the case as per the old scheme existed as on the date of death of first respondent's father [05.10.2005]. Therefore, we of the view that the Central Administrative Tribunal is justified in giving the directions as aforesaid.

12.As per the policy guidelines dated 27.06.2007, the family pension left out service of the deceased employee, the terminal benefits received by the family, the availability of housing facilities to the family, the monthly income and the delay in making the request for appointment on compassionate ground have to be taken into account while assessing the indigent condition of the family. Under clause 16(c) of the scheme dated 09.10.1998, the scheme directs an objective assessment of the financial condition of the family. A balanced and objective assessment of the financial condition of the family has to be made. As per Clause (e) of the Scheme request for compassionate appointment consequent on death of Group-D staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case. The scheme provides *inter alia* for personal hearing of the dependent.

13.In an identical case, a Division Bench of this Court in W.P.No.25164 of 2013 dated 11.11.2016 has held that the guidelines which came into force in the year 2007 introduced new set of parameters for consideration of the request for appointment on compassionate ground and it would not be appropriate to apply the weightage point system retrospectively. The ruling of the Division Bench will apply on all force to the present case. Therefore, we are unable to agree with the above mentioned views of the Hon'ble Full Bench of the Kerala High Court.

14.In *MGB GRAMIN BANK vs. CHAKRAWARTI SINGH* [(2014) 13 SCC 583], the Supreme Court has held that "Compassionate appointment should be provided immediately to redeem the family in distress and it is improper to keep such a case pending for years." In the case at hand, the application for compassionate appointment was made 10.10.2006. The Chennai Telephones informed the rejection of the claim only on 20.06.2011. Had the BSNL disposed of the application of the first respondent immediately,

as per the dictum laid down by the Supreme Court, there would have been no occasion for application of the weightage point system which came into existence in the year 2007.

15. For the reasons supra, we do not find any valid reasons to interfere with the findings of the Central Administrative Tribunal, Madras Bench. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

sri

-sd-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.

+1 C.C. to MR.R.MALAICHAMY Advocate SR.NO.65343/16

+1 C.C. to M/S.Y.BHUVANESH KUMAR Advocate SR.NO.65099/16

W.P.No.28196 of 2016

SVI (CO)
VS 29.12.2016

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