

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : February 12, 2018

Judgment Delivered on : February 26, 2018

+ W.P.(C) 1263/2018

RAKESH KUMAR SINGH BISHT Petitioner

Through: Mr.Rahul Kumar, Advocate

versus

BHARAT SANCHAR NIGAM LIMITED & ANR Respondents

Through: Mr.Sameer Agarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

PRA TIBHA RANI, J.

CM No.5273/2018 (by the petitioner for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM No.5272/2018 (by the petitioner for condonation of delay)

1. For the reasons stated in the application, delay in filing the petition is condoned.
2. The application is disposed of.

W.P.(C) No.1263/2018

1. This writ petition is another glaring example of how in the name of compassion, even after the decades of the death of the bread earner of the family, the policy of the Government to provide employment to the dependent of the deceased employee to save the family from starvation, is being misused. Despite overcoming the crisis, if any, due to the death of the employee, the dependents continue to litigate to

seek a back door entry in the name of compassion.

2. The facts of the writ petition reveals that late Sh.Pratap Singh Bisht, father of the petitioner herein, was employed as a Phone Mechanic in Bharat Sanchar Nigam Limited (BSNL) in Uttranchal Circle. The father of the petitioner expired on 01.09.2005, while in service. Late Sh.Pratap Singh Bisht left behind his widow and two sons i.e. the petitioner and his younger brother.

3. The petitioner was 19 years of age at that time. In December, 2005, the petitioner applied for employment on compassionate ground. When his application for employment on compassionate ground was under consideration, on 18.07.2008 his mother Smt.Pushpa Bisht also staked her claim for appointment on compassionate ground. Before any decision could be taken by the BSNL on the issue of providing employment to one of the dependents of Late Sh.Pratap Singh Bisht, again another application was filed by Smt.Pushpa Bisht in January, 2009 that instead of her, the petitioner be given appointment on compassionate ground.

4. On not being able to get a job on compassionate ground, the petitioner filed O.A.No.1933/2011 for seeking directions to the respondent/BSNL to consider his case against any Group 'C' post in BSNL. The said O.A. was disposed of vide order dated 05.03.2012, directing the respondent/BSNL to take a final decision on the petitioner's application seeking appointment on compassionate ground.

5. The respondent/BSNL, vide circular No.272-18/2005-Pers.IV, dated 27.06.2007, decided to continue with the policy guidelines on

compassionate ground appointment issued by the DoP&T O.M. dated 09.10.1998, but introduced the weightage point system as per details given in Annexure-1 appended to the circular. It was also decided by the respondent/BSNL that the assessment criteria for recommendation of the indigent condition of the family by the Circle High Power Committee shall be (a) case with 55 or more net points shall be *prima facie* treated as eligible for consideration by the Corporate Office High Power Committee for compassionate ground appointment, and (b) cases with net points below 55 (i.e. 54 or less) shall be treated as 'non-indigent' and rejected. Against the requirement of 55 points so as to be declared as 'an indigent', the petitioner had secured only 37 points. Hence his case was rejected.

6. The petitioner again filed O.A.No.2912/2013, questioning the legality of the Points Weightage System which was introduced in the year 2007. The said O.A. was dismissed by the Tribunal mainly on the ground that as per circular dated 27.06.2007, *ibid*, the cases with 55 or more net points shall be treated as eligible for appointment on compassionate ground and even if 5 negative points awarded to the petitioner are not taken into account, still he had scored 42 net points. It was held that his case had rightly been treated as 'non-indigent', and hence, his request has been rightly rejected.

7. In the instant writ petition, the petitioner seeks quashing of the order dated 10.02.2016 passed in O.A. No.2912/2013 on the ground that any change or amendment to any policy or provision of law cannot be implemented retrospectively. The petitioner had moved the application in December, 2005 and the inordinate delay in disposing

of the said application by the respondents could not have been to his disadvantage.

8. During the course of hearing, the petitioner through his counsel has informed this Court that now he is 31 years old. He is married and also having a child.

9. The legal position is well settled that appointment on compassionate ground is not a source of recruitment, but merely an exception to the requirement regarding appointments being made on open invitation of applications on merits. The underlying intention is on the death of the employee concerned, his family is not deprived of the means of livelihood. The object is to enable the family to get over the sudden financial crisis faced by them on the demise of the sole earning member.

10. In the case of Union of India & Anr. Vs. Shashank Goswami & Anr. reported as (2012) 11 SCC 307, the Apex Court has observed as under:-

"The claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

11. We have been noticing that the gesture of the employer towards the dependents in consideration of the services rendered by the

deceased employee, has in fact become akin to a right to inherit. We cannot lose sight of the fact that there is cut throat competition to seek public employment, but even after decades of the death of the employee, backdoor entry is being provided to the dependents of the deceased employee even when the family has already overcome the crisis.

12. At the time of his death, late Sh.Pratap Singh Bisht, who was an employee of BSNL, Uttranchal Circle, had left behind three dependents. Either of them i.e. the petitioner or his mother were eligible to be considered for appointment on compassionate ground. Both of them were staking a claim which resulted in the delay in disposal of their applications. By that time, the new CGA Policy Guidelines were received from the BSNL, Head Quarter, New Delhi vide letter No.273-18/2005-Pers-IV dated 27.06.2007 wherein a weightage point system as per the guidelines of the DOP&T, Govt. of India was introduced for processing the CGA cases. Despite the fact that subsequently, the petitioner's mother had surrendered in favour of her son i.e. the petitioner herein in the year 2009, vide her communication dated 23.01.2009, the petitioner had failed to secure the required weightage points i.e. 55 points so as to be termed as an 'indigent' and be eligible to get an appointment on compassionate ground. The learned Tribunal has examined the case of the petitioner by giving further relaxation to the extent that even the five negative points were ignored. Despite that, the petitioner could secure only 42 points against the requirement of 55 points for being eligible for appointment on compassionate ground.

13. After 13 years of the demise of his father, the petitioner, who by now is a married man having a family, could not have been given compassionate appointment as it is not a vested right which can be exercised at any time. The purpose behind such an appointment is to provide immediate succor against destitution to the family of the deceased employee by giving due consideration to the services rendered by him till he was alive as well as to address a legitimate expectancy of the survivors seeking a financial tide over due to the sudden death of the sole earning member.

14. For the reasons stated above, we do not find any infirmity in the order of the Tribunal impugned before us.

15. The writ petition is accordingly dismissed.

PRATIBHA RANI
(JUDGE)

HIMA KOHLI
(JUDGE)

FEBRUARY 26, 2018
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