BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **11.11.2019**
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI
W.P(MD)NO.17004 OF 2017

S.Chellameena : Petitioner

.vs.

1.The Chairman,
BSNL Corporate Office,
Statesmen House,
B148, Barakhamba Road,
New Delhi-110 001..

2.The Chief General Manager,
BSNL Tamil Nadu Telephone Circle,
Anna Salai,
Chennai – 600 002.

3.The General Manager,
BSNL, Telecom District,
Rathinasamy Nadar Road,
Madurai – 625 002. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Ceritorarified Mandamus calling for the records relating to the impugned order of the Central Administrative Tribunal, Chennai Bench, Chennai made in O.A.No.1595 of 2014, dated 23.12.2015 confirming the impugned order of the second respondent in No.E-62/SDE-HRD-II/284/2008-11/27, dated MA2, 24.12.2011 and the impugned order of the third respondent in No.E62/SDE-HRD-II/284/2008-11/23 dated MA-2, the 18.3.2011 and to quash the same as illegal and consequently direct the respondents herein to appoint the Petitioner herein on compassionate ground applying the difference of marks eligible by the Petitioner's family within a reasonable time stipulated by this Court.

For Petitioner : Mr.P.Mahendran
For Respondents : Mr.A.Haja Mohideen

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM.,J.**]

This Writ Petition has been filed by Ms.S.Chellameena, daughter of Late.K.Santhanam, challenging the order passed by the

Central Administrative Tribunal in O.A.No.1595 of 2014, dated 23.12.2015.

2.The Petitioner's father K.Santhanam was working as Telephone mechanic in the office of the third respondent and died in harness on 23.08.2007, leaving behind nine legal heirs including his wife and eight daughters, of which, three daughters were married at the relevant point of time and the remaining daughters were unmarried. The Petitioner, who had completed her +2 course, submitted an application to the respondents on 12.08.2009 requesting for appointment on compassionate grounds. The respondent/organization has issued policy guidelines for grant of appointment on compassionate grounds and in terms of the said policy guidelines, there is a weightage point system for assessment of the indigent condition of the family of the deceased employee. Unless and until the candidate secures net points of 55, the application for grant of compassionate appointment will not be considered. The Petitioner's application was rejected by order, dated 18.03.2011 stating that the Petitioner has secured less than 55 points and therefore, she is not eligible to be considered as indigent person to be entitled for appointment on compassionate grounds. This order, dated 18.3.2011 was questioned for its correctness by filing an appeal petition before the second respondent on 6.5.2011. The appeal petition was rejected by order dated 24.12.2011, which order was put to challenge before the Tribunal in O.A.No.1595 of 2014, which has been dismissed by the impugned order and to test the correctness of the said order, the present Writ Petition has been filed.

3.We have heard Mr.P.Mahendran, learned counsel appearing for the Petitioner and Mr.A.Haja Mohideen, learned counsel appearing for the respondents.

4.To test the correctness of the order of rejection of the application made by the Petitioner for grant of appointment on compassionate grounds, we need to examine as to whether the computation of the weightage point for assessment of indigent condition of the Petitioner was rightly done or not.

5.To do the said exercise, we need to refer to the following tabulated statement which gives the merit points given to the Petitioner's application, which reads as follows:

S.No.	Items	Points	Ramarks
1	Dependents weightage	5x5=25+5	5 dependents +unmarried daughter weightage
2	Family Pension (Rs.3552/-(Now revised Family Pension is Rs.9107/-	06	
3	Left out service to be counted with respect to Date of death/medical invalidation	0	The deceased official has only 10 months of service hence 1 year ''0'' points is awarded
4	Application's ''weightage''	Nil	If the applicant for CGA is other than the widow of the deceased officials, ''Nil'' points is awarded
5	Terminal Benefits (Rs.5,77,923/-)	5	Terminal benefits received are in the range of Rs.5 lakhs to Rs.6 lakhs
6	Accommodation	0	Family is having own House surrounded with 1600 sq.ft vacant land
	Total points	41	

6.S.No.1 of the tabulated column deals with the dependents weightage and there is no dispute to the points awarded to the Petitioner which is 30.The family pension has been computed at Rs.3,552/- and weightage points have been awarded by applying the point to be awarded for the pension ranging from Rs.3501/- to Rs.3750/-. The correctness of this has to be seen, for which, we have perused the Pension Payment Order issued to the Petitioner's father and we find that the family pension which has been sanctioned as per the CGS Rules, 1972 at the normal rate is Rs.2132/- and that is from 24.8.2014 onwards and the enhanced rate is Rs.3552/- which was for a period from 24.8.2007 to 23.8.2014. In our considered view, policy guidelines have been framed to test the indigent condition of the dependant of the deceased employee. Therefore, the interpretation to be given to the policy guidelines should lien in favour of the applicant rather than in favour of the management. Therefore the appropriate rate of family pension that should be taken is Rs.2,132 instead of Rs.3,552/- because that is the normal rate of family pension payable to the widow of the deceased employee. For this, the credit weightage point to be given to the petitioner will be '18' instead of '6'. So far as S.No.3 is concerned, it deals with left out service, whereas, on the date of death, admittedly, the Petitioner's father had less than one year of service and therefore, zero has been awarded, which is correct. S.No.4 deals with with Application's weightage and the weightage of 'nil' points is awarded as the applicant is not the widow. With regard to terminal benefits, the respondents have awarded five points by taking the terminal benefits at Rs.577,923/-.To be noted, that while passing the order of rejection, dated 18.03.2011 and in the order rejecting the appeal petition by order, dated 24.12.2017, the manner of computation of weightage point was not furnished to the Petitioner. Even before the Tribunal, the respondents in their counter affidavit did not disclose the computation particulars. The Petitioner filed a reply statement stating that computation is wrong and for the first time, before this Court, the computation is given. In the computation, leave encashment and amount paid on account of maturity of LIC policy and GPF has been taken into consideration for arriving at Rs.5,77,923/-. Leave Encashment is a benefit given to the employee and he would be entitled to encash the same even while in service and if the employee does not do so, he is entitled to encash the same on attaining the age of superannuation. Therefore, considering the stand taken by the respondents and bearing in mind the scheme of appointment on compassionate grounds, we are of the view that the said amount of Rs.1,25,799/- paid towards leave encashment cannot be termed as terminal benefits, because it was eligible to be encashed by the employee while in service. The payment of amount towards maturity of LIC Policy also cannot be termed as terminal benefits, because it is the deceased employee, who had paid the premium either by himself or being deducted from the salary. Therefore, the said amount of LIC of Rs.1,01,601/- should be excluded from the terminal benefits. Thus by taking the terminal benefits as Rs.3,50,000/- + Rs.523/- as GPF, the total amount of terminal benefit is Rs.3,50,523/-.The appropriate weightage point to be awarded is 7.

7.Next, we move to S.No.6 which deals with accommodation. The respondents have granted ''0'' points on the ground that their family owns a house surrounded with 1600 sq.ft of vacant land. The photograph of the house has been filed in the typed-set of papers and we find that it is a tiled house and a very old construction. Property tax assessment was made which shows that the built up area is 200 sq.ft and the vacant land is to the extent of 1627 sq.ft. To be noted is that the Petitioner alone is not the sole legal heir of her father, there are nine legal heirs including the Petitioner. Assuming all the daughters have consented to release their respective shares in favour of their mother, at best, the Petitioner can get 1/9th share which would be less than 9 sq.ft. Therefore, we are of the view that for such accommodation, appropriate weightage point to be granted is 10. If the computation is done in the above manner, then the Petitioner secures 65 points(30+18+7+10) which is well above the cut-off mark of 55 as per the policy guidelines.

Therefore, the Petitioner is entitled to be granted appointment on compassionate grounds.

8.For all the above reasons, the Writ Petition is allowed. The order passed by the Tribunal is set aside, consequently, the order passed by the second respondent/Appellate Authority, dated 24.11.2011 and the order passed by the third respondent, dated 18.03.2011 are quashed. The respondents are directed to consider the case of the Petitioner for appointment on compassionate grounds and grant appointment within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

vsn

To

1.The Chairman,
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Statesmen House,
B148, Barakhamba Road,
New Delhi-110 001..

2.The Chief General Manager,
BSNL Tamil Nadu Telephone Circle,
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Chennai - 600 002.

3.The General Manager,
BSNL, Telecom District,
Rathinasamy Nadar Road,
Madurai - 625 002.

+1 CC to Mr.A. HAJA MOHIDEEN, Advocate (SR-97570[F] dated 12/11/2019)
+1 CC to Mr.P. MAHENDRAN, Advocate (SR-97633[F] dated 12/11/2019)

ORDER MADE IN
W.P(MD)NO.17004 OF 2017
11.11.2019

MK (27.11.2019) 5P 6C