

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 05.10.2020
Delivered On : 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.2361 of 2020

G.Vijaya
Prasanna

...Petitioner

vs.

1. Union of India,
Represented by its
Assistant General Manager (Per-IV),
Bharat Sanchar Nigam Limited (BSNL),
Government of India Enterprises,
5th Floor, Bharat Sanchar Bhawan,
Janpath, New Delhi - 110 001.
2. The High Power Committee,
Bharat Sanchar Nigam Limited,
New Delhi.
3. The Assistant General Manager (Estt),
Bharat Sanchar Nigam Limited,
Chennai Telephones,
No.89, Millers Road,
Chennai - 600 010.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench in OA.No.310/01216/2018 dated 03.09.2019 and quash the same and also direct the third respondent to appoint the petitioner on compassionate ground.

For Petitioner : Mr.C.Samivel

For Respondents: Mr.S.Udayakumar for R3

For R1 & R2 : No Appearance

O R D E R
(Order of the Court was made by R.HEMALATHA, J.)

The facts of the case as narrated by the petitioner in brief are as follows:

The petitioner's father K.Gajendran while working as a Telegraph Man under the third respondent died on 13.12.2003. After his death all the benefits were settled to petitioner's mother G.Geetha and the family pension was also allotted in the name of his mother for a sum of Rs.5,770/- on the very next day. The petitioner's mother submitted a representation to the third respondent on 12.05.2004 seeking appointment for the applicant on compassionate grounds. After receipt of the said representation, the third respondent neither gave any appointment nor any reply. Thereafter, the petitioner's mother directly approached the third respondent to enquire about her son's job and got a reply that the representation would be considered. Subsequently, the petitioner was appointed as an Office Assistant as a Contract Labour, since 2004, for seven years and was working in the Office of the third respondent. Thereafter, on 19.03.2013, the petitioner gave a representation along with relevant documents particularly the certificate issued by the Thasildar dated 16.03.2012 and disability certificate to the third respondent, seeking appointment for any post under the compassionate ground. Despite the lapse of 10 years, since 2004, the application was kept pending before the third respondent without any progress and only on 17.10.2014, the third respondent sent a reply to the petitioner stating that the application must be made in the new format. After receipt of the same in the month of December 2014, the petitioner submitted another application in the prescribed format along with necessary particulars. However, the third respondent without considering the above facts and the supporting documents rejected the request of the petitioner vide order dated 01.06.2016 stating that,

"in view of the assets / liabilities of the family of the deceased, official support arrangement, constitution of the family and over all assessment of condition of the family, the circle High Power Committee did not agree to recommend the compassionate ground appointment and rejected the request under provision of the scheme".

On 03.09.2016, the petitioner filed an appeal before the Chief General Manager, BSNL against the impugned order passed by the third respondent. On 21.10.2016, the Chief General Manager, BSNL rejected the petitioner's appeal stating that on 01.06.2016

itself, the application was rejected for appointment on compassionate ground and therefore, the appeal cannot be entertained. The petitioner filed OA.No.629 of 2018 before the Central Administrative Tribunal, Chennai Bench and the same was dismissed as withdrawn on 06.06.2018. Thereafter, the petitioner gave a representation dated 11.07.2018 to the second and third respondents as per the direction given in the above said Original Application before the Central Administrative Tribunal, Chennai Bench. But again the third respondent without considering the request of the petitioner, rejected the representation mechanically in a three line order dated 28.07.2018. Aggrieved over the same, OA.No.1216 of 2018 was filed by the petitioner before the Central Administrative Tribunal, Chennai Bench and the Tribunal also upheld the third respondent's order and hence the Writ.

2. Mr.C.Samivel, learned counsel for the writ petitioner would contend that this is a case of the death of the petitioner's father in December 2003 and the original request for the compassionate appointment and that the petitioner being a physically challenged person with his mother getting a negligible amount of Rs.5,770/- as family pension, it was getting very difficult for them to make both ends meet. His further contention is that for 7 years since 2004, he was given employment as an office assistant under the contract system and thereafter only in December 2014 he was asked to submit a complete application in the prescribed format and that the application for compassionate appointment was rejected by the third respondent vide their letter dated 01.06.2016. Thereafter, the petitioner approached Central Administrative Tribunal, Chennai Bench in OA.No.1216 of 2018 against this order of rejection by the third respondent. The Central Administrative Tribunal, Chennai Bench also dismissed the Original Application concurring with the third respondent's order.

3. The respondents have not disputed the fact that originally the application for compassionate appointment was submitted in 2004 (12.05.2004). That the application was not complete in terms of the annexed documents is also found to be true as per the reply statement of the respondents in the OA.No.1216 of 2018 before Central Administrative Tribunal, Chennai Bench. The relevant extract reads as under:

"it is submitted that the application of Sri.G.Vijaya Prasanna seeking compassionate ground appointment was sent by the applicant's mother to Deputy General Manager, CTO on 12.05.2004, but the case was handed over to SDE (welfare), CHTD on 31.05.2012 stating that the candidate has

submitted the application on 28.05.2004 but he did not give all the needed information and documents at that time. The required documents have been now received as per the new check list".

4. However, the respondents have vehemently denied the casual appointment of the petitioner as an office assistant on contract basis between 2004 and 2011. The petitioner has also not adduced any documentary evidence to that effect. The respondents have also contended that the Circle High Power committee had done an evaluation of the assets/liabilities of the family, official support arrangement, condition of family and overall assessment of the family condition strictly on the basis of the revised policy guidelines for compassionate ground appointment circulated vide BSNL circular dated 27.06.2007. According to the respondents, the petitioner could muster only 18 points while a minimum of 55 was required. The score as such was 43 points but reduced to 18 due to minus points of 25 for the delay of more than 9 years in submission of the application. Thus the Circle High Power committee was not in a position to recommend the petitioner case for appointment under this special scheme.

5. The learned counsel for the respondents further contended that the petitioner has sought appointment on compassionate grounds 17 years after the demise of the employee which is against the very object of the policy. It was further contended that the revised guidelines from 2007 was only a continuation of the earlier process with the exception of the new weightage system to make it more objective. Their further contention that two of the four dependants were already waived on the date the application was put up before the Circle High Power Committee and therefore only 10 points were given. They have also disputed the points calculation done by the petitioner in other heads.

6. The Central Administrative Tribunal, Chennai Bench in its order had concluded that compassionate appointment is not an automatic right vested on the applicant and mere death of a Government employee in harness does not entitle the family to claim the appointment. It was further observed that the philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner and that this category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. The Central Administrative Tribunal, Chennai Bench has relied on the decision of the Hon'ble Supreme Court in State Bank of India and another vs. Rajkumar reported in 2011 (1) SCC (L&S) 150 and Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat Singh in CA.No.8635 of 2012.

7. However, two pertinent aspects have been overlooked by the Central Administrative Tribunal in its analysis of the merits of the case.

1) The respondent having admitted that the Original Application was in 2004 ought to have explained the reason for keeping the petition pending till 2012 without any correspondence or reminder. The respondents have preferred to brush it aside as if it is insignificant, citing the guidelines which came into force in 2007.

2) The new revised guidelines ought not to have been applied in a case where the death occurred in 2003. Having applied the same, the pension amount considered for awarding points is the enhanced pension (Rs.2,885/-) which ceased to exist in 2010 instead of the original pension of Rs.173/-. Similarly, the deduction of 25 points for delay is totally unwarranted when the delay is on the part of the respondents. The dependants cannot be expected to remain single till the culmination of the proceedings. The marks awarded for four dependants by the petitioner is reasonable. The respondents in the reply statement in the Original Application before the Central Administrative Tribunal, Chennai Bench have pointed out deficiencies in the application form. However, the said circular intimating the revised guidelines for compassionate appointment para 3.0 reads as follows:

"The Welfare Officer of the Circle/SSA/Unit will meet the members of the family of the ex-employee immediately after his death / medical invalidation to advise them about provisions of the scheme and assist them in completing necessary formalities in filling up of details in prescribed format ie., Proforma part 'A' and other details needed as per weightage point system and verify it with the official records."

Though the said circular is in 2007, the empathy factor is stressed upon in the aforesaid paragraph.

8. In the instant case, the respondents have admitted that the application was submitted on 12.05.2004 without the needed information and documents and the case was handed over to SDE (Welfare) CHTD on 31.05.2012. It is evident that the respondents did not comply with the above instruction. The essence of the process of compassionate appointment is empathy but to the contrary there has been only apathy in the instant case. The deceased employee was only a telegraph man and his wife was VIII standard pass. In such circumstances, the death

of the sole bread winner was a catastrophe for the family. It is true that compassionate appointment cannot be claimed as a matter of right. At the same time, the respondent as the employer has taken shelter under this excuse. Instead of relieving the pain, they have compounded the pain. The learned counsel for the respondent relied on the Hon'ble Apex Court decision in the case of the Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat singh in CA.No.8635 of 2012, wherein it is held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention."

9. In the instant case, the respondents by their act has deprived a truly indigent destitute and impoverished family, of a deserving compassionate appointment. Instead of extending a helping hand at the time of distress, the respondents have remained mute for years only to turn the tables against the petitioner. Even in the assessment, the pension amount is taken as the original enhanced pension (which is for a limited period), though the assessment is done on an application submitted in 2004 with the revised guidelines, which is in force from 2007. Callous attitude and lack of empathy have caused this denial of an appointment on compassionate grounds. Death of a sole bread winner will definitely cause huge imbalance in any family especially when the family is in the low income group. Added to the loss is the prevailing situation when the other family members are not so educated or well informed. In the present case, the respondents have definitely failed to educate the family members of the deceased employee as outlined in the said circular stipulating the revised guidelines. Had the respondents done it as expected of them, the reply statement of the respondents would not have mentioned the deficiencies in the application form. The averment of the petitioner that he was employed on a temporary basis for seven years has been vehemently denied by the respondents. But there cannot be a better explanation for the delay of more than 7 years for the respondents to even peruse the application and point out the deficiencies. The respondents on their side have not shown any reason for the delay. Instead they point an accusing finger towards the hapless petitioner. The compassionate ground appointment is not "prasad" to be given to all who visit the temple. At the same time, it is also not an act of charity. Though a system is in place since 2007, whether it can be applied to a 2004 petition and whether the basic family pension

at the time of death (which is an enhanced amount for a restricted period of 7 years) can be considered in 2016 when the assessment is done, are all pointing out to the lack of empathy towards the affected family. Had they considered the actual family pension, the petitioner would have got 8 marks additionally. In our opinion, the principle of fairness and equity have not been applied and a routine mechanical assessment has been done to ease out the applicant / petitioner out of the process of compassionate appointment.

10. In such circumstances, the intervention of this Court is inevitable. Therefore, the Writ Petition is allowed and the order dated 03.09.2019 in OA.No.310/01216/2018 on the file of the Central Administrative Tribunal is quashed and accordingly the respondents 2 and 3 are directed to consider the compassionate appointment of the petitioner favourably within a period of three months from the date of receipt of a copy of this order and inform the decision taken, to the petitioner. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

mbi

To

1. Assistant General Manager (Per-IV),
Union of India,
Bharat Sanchar Nigam Limited (BSNL),
Government of India Enterprises,
5th Floor, Bharat Sanchar Bhawan,
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2. The High Power Committee,
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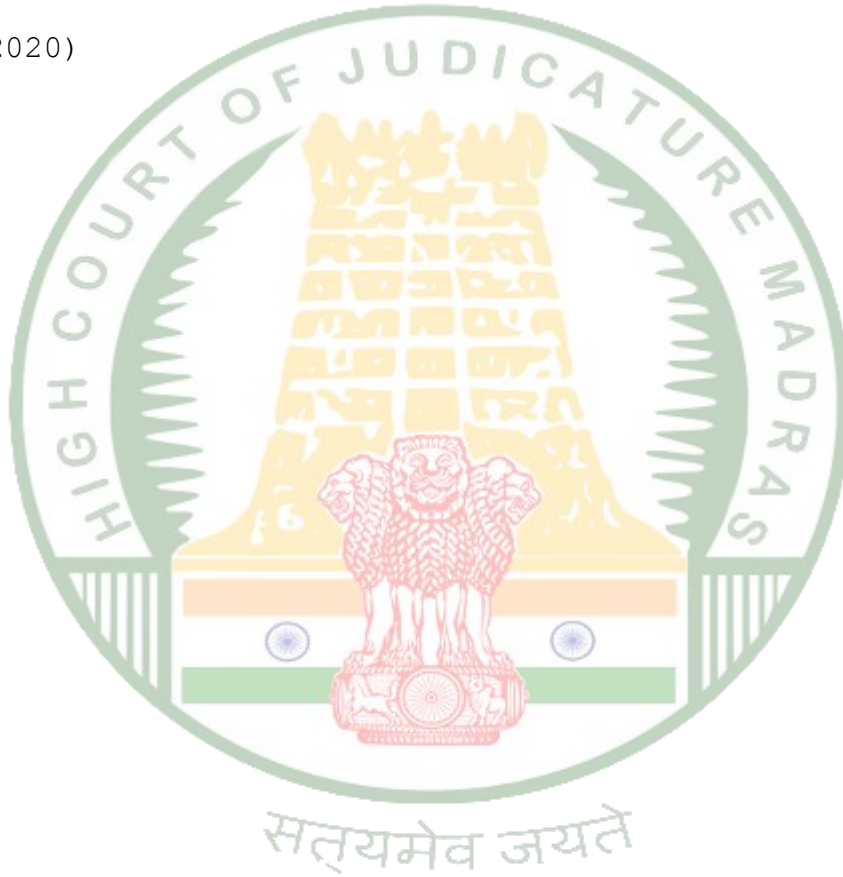
4. The Central Administrative Tribunal,
Chennai Bench,
Chennai.

+1 CC to Mr.S.Udayakumar, Advocate sr 33606

+1 CC to Mr.C.Samivel, Advocate sr 33745.

WP.No.2361 of 2020

RP (CO)
SP (11/11/2020)



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