

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18685 of 2021

Vikram Kumar S/o Late Anil Kumar Shahi Village and P.O.- Anant Kamtaul,
P.S.- Kudhni, District- Muzaffarpur.

... .. Petitioner

Versus

1. The Bharat Sanchar Nigam Limited through the C.M.D., BSNL, Bharat Sanchar Bhawan, Janpath, New Delhi- 110001.
2. The Chief General Manager, BSNL, Bihar Telecom Circle, Patna 800001.
3. The Dy. General Manager (Admin), BSNL, O/o Chief General Manager, Bihar Telecom Circle, Patna 800001.
4. The Asstt. General Manager (Estt), Bharat Sanchar Nigam Limited, O/o Chief General Manager, Bihar Telecom Circle, Patna 800001.
5. The General Manager, BSNL, Muzaffarpur 842001.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Hemant Kumar Karan, Advocate
For the Respondent/s	:	Mr.Harendra Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 06-09-2022

The petitioner is aggrieved by the order dated 7.2.2019 passed by the Central Administrative Tribunal, Patna Bench, Patna (henceforth for short 'the Tribunal') in O.A./050/00800/2017 by which the claim for his appointment on compassionate ground has been dismissed.



2. The matrix of facts giving rise to the present appeal is/are as follows:

3. The petitioner is son of Anil Kumar Sahi an employee with Bharat Sanchar Nigam Limited (henceforth for short 'the BSNL') worked as Telephone Mechanic at Muzaffarpur.

4. On 23.7.2015, while returning home from office at 9:15 P.M., his motorcycle met with an accident with a truck resulting into his death.

5. On 30.7.2015, the application for appointment of the petitioner was forwarded by the mother before the 'BSNL'. Although, the pensionary/death benefits were released in favour of the mother of the petitioner on 25.4.2016 but the appointment was still awaiting.

6. As the office 'the BSNL' failed to take any decision, the mother of the petitioner moved before 'the Tribunal' in O.A. No. 050/0062/2017 which was decided on 25.1.2017 directing the respondent Chief General Manager, Bihar Telephone Circle, Patna to ensure earliest possible consideration of his case (Annexure-A/7 to the application before 'the Tribunal')

7. The office of 'the BSNL' thereafter vide speaking



order dated 10.10.2017 signed by the Deputy General Manager (Admn.) rejected the claim of the petitioner holding therein that the weightage points earned by the petitioner is less than 55 points and as such, the Committee did not find the family to be in penury/indigent condition and as such his claim was rejected which is being incorporated herein-below:-

Bharat Sanchar Nigam Limited
(A Govt. of Indian Enterprises)
Office of the Chief General Manager Telecom
Bihar Circle, Patna -800001

Speaking Order

No. Rectt/Relax—CHPC/2016/123

October 10, 2017

**Sub: Compassionate Ground Appointment Case of
Shri Vikram Kumar S/o Late Anil Kumar Shahi, Ex.TM
under O/o PGM TD, Muzaffarpur.**

The request of the applicant for Compassionate Ground Appointment Shri Vikram Kumar S/o Late Anil Kumar Shahi, Ex. TM under O/o PGM TD, Muzaffarpur has been considered in accordance with BSNL H/Q letter no. 273-18/2013/CGA/P-IV dtd. 01/10/2014 against vacancy year 2015-16 by the Competent Authority (CHPC) of Bihar Telecom Circle, Patna and obtained its concurrence from BSNL Corporate Office, New Delhi vide letter no. F. No. 273-19/2015/Estt.IV dtd. 07/04/2017 and following are the observations :



1. BSNL since its inception on 1.10.2000 follows the Compassionate Ground Appointment policy based on Government of India instructions issued by DOPT vide its O.M. No. 14014/94/6-Estt(D) dated 9.10.1998. The main objective of policy is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical ground, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The number of vacancies is limited in Compassionate Ground Appointment quota and is offered to the candidates found more needy.

2. The case of applicant was considered in Circle HPC on 24/02/2017 w.e.f. weightage point system. It is worth mentioning that in view of the advice of Hon'ble Chairman for Scheduled Tribes in the year 2006 a weightage point system was introduced in BSNL with the approval of BSNL Board in the year 2007 vide letter no. 273-18/2005-Pers-IV dated 27.6.2007 to bring uniformity in assessment of indigent condition of the family for offering Compassionate Ground Appointment under the overall policy guidelines of DoP&T OM No. 14014/694 Estt(D) dated 9.10.1998. So as per the weightage point system the applicants scoring equal to or more than 55 points are prima facie treated as



eligible for consideration by High Power Committee of BSNL Corporate Office.

3. As per this weightage points system, case of the applicant was examined and applicant have scored only 08 points as per the break up of points given below:

Item	Points
(i) Weightage points	
(a) Dependent's weightage :	15
(b) Basic Family Pension :	Nil
(c) Left out Service :	03
(d) Applicant weightage :	Nil
(widow seeking CGA)	
(e) Terminal Benefits :	Nil
(f) Accommodation :	Nil
Total :	18
(ii) Negative Weightage point if any -	
(Income of spouse/other than spouse/	
belated requests)	
Total :	08

Keeping in view of the assets, limited liabilities and overall assessment of the financial condition of the family of deceased official as assessed by the CHPC in the light weightage point system introduced vide no. 273-18/2005-Pers.IV dated. 27/06/2007 and weightage points earned by the applicant i.e. less than 55 points, the committee did not consider the family to be living in penury/indigent condition and recommended for



rejection of the request under provision of the scheme.

This issues with approval of the competent authority.

(Anil Kumar)
Dy. General Manager (Admin)

8. Aggrieved by the said order, the petitioner preferred O.A./050/00800/2017 before 'the Tribunal'.

9. 'The BSNL' contested the matter and filed its counter affidavit bringing on record the reason for rejection of the petitioner's claim for appointment on compassionate ground. The main ground taken by 'the BSNL' was that as per the policy decision dated 27.6.2007, the methodology of Weightage Points System for assessment of indigent condition of the dependent of deceased employee was fixed in which the petitioner did not find fit in it and accordingly, the claim was rejected.

'The BSNL' also brought on record the policy decision dated 27.6.2007 which is incorporated herein-below:-

Bharat Sanchar Nigam Limited

(A Government of India Enterprise)

Corporate Office

102 B Statesman House New Delhi, 110001

[Personnel – IV Section]

No. 273-18/2005-Pers IV

Dated 27.06.2007

To,



All Heads of Telecom Circles

**Sub: Compassionate Ground Appointments
(CGA) – Policy guidelines regarding.**

It has been decided to bring uniformity in assessment of indigent condition of the family for offering compassionate ground appointment in view of the following recent developments:-

(A) Advise by Hon'ble Chairman, national Commission for Scheduled Tribes in the meeting held on 20.11.2006 with Secretary (Telecom) and CMD, BSNL that "keeping in view the guidelines issued by Govt. of India, standard guidelines for eligibility for appointment on compassionate grounds may be formulated by the BSNL" and

(B) BSNL Board's decision, communicated vide letter No. 6-5/2004-EB (Part-I) dated 26.12.2006, wherein "Circle Heads are authorised to create non-executive level posts for offering compassionate ground appointment subject to the Policy guidelines to be given by the Corporate Office in this regard".

2.0 Accordingly, The High Power Committee of the Corporate Office for considering the compassionate ground appointment cases, Headed by Director (HRD), recommended for introduction of a weightage point system, within DOPT guidelines, to bring uniformity in



assessment of Indigent condition of the family, which has subsequently been approved by the Management Committee of BSNL as per the following:-

(I) To continue with the policy guidelines on compassionate ground appointment, issued by DOPT vide OM No. 14014/6/94-Estt (D) dated October 9, 1998 and to introduce the weightage point system, as per details given at Annexure-I.

(II) The assessment criteria for recommendation of the Indigent condition of the family by the Circle High Power Committee shall be – (a) Cases with 55 or more NET POINTS shall be prima-facie treated as eligible for consideration by 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.

3.0 Keeping in view the provisions of weightage point system, the procedure for processing the cases of compassionate appointment shall now be as below:-

(I) 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 for details in prescribed proforma i.e. Proforma Part 'A'



(as in Annexure of the DOPT scheme) and other details needed as per weightage point system and verify it with the official records. The office concerned will fill up the Proforma Part 'B' as per the existing practice.

(ii) The SSA/Unit concerned will scrutinize the application and prepare check-list according to the weightage point system (Proforma enclosed at Annexure-II) for the purpose of assessment of indigent condition in the family.

(iii) The check-list (in the format of Annexure-II), Proforma Part 'A' and Proforma Part 'B' complete in all respects, alongwith supporting details, shall be sent to concerned Territorial Circle for further processing.

4.0 A Circle high Power Committee (CHPC), consisting of Circle head and two other officers of SAG/JAG level, nominated by Circle Head, shall consider applications for appointment on compassionate grounds as per weightage point system. In the case with net points 55 or more, the minutes of the Circle HPC will be sent to BSNL Corporate Office, alongwith supporting documents including the check-list, for consideration and decision by Corporate Office. In the case with net points below 55 (i.e. 54 or less), the family will be treated as not living in indigent condition and such compassionate ground appointment request will be rejected by



the Circle. The applicant will be intimated about rejection of the request by the concerned circle through a speaking order.

5.0 Where there is a problem in attributing points on any of the aspects due to peculiar circumstances in any specific case, the same may also be sent to BSNL Corporate Office along with supporting documents, including the check-list, for consideration and decision by Corporate Office.

6.0 Any appeal for re-consideration of the already rejected case will also be considered according to the weightage point system. If in an appeal case, net points come to 55 or more, the complete case alongwith check-list may be sent to the Corporate Office for decision.

7.0 The High Power Committee of the Corporate Office will consider and decide the cases, forwarded by Territorial Circles, with the approval of CMD, BSNL.

8.0 The decision taken by the Corporate Office will be intimated to respective circles for further follow up action i.e. informing the candidate about acceptance or rejection or wait listing etc. The procedure with regard to wait-listing the offering of compassionate ground appointment under 5% CGA quota shall remain the same as prescribed vide letter No. 268-101/2022-Pers.IV dated 1.10.2002.



(P.S. Venkatraman)

Asstt. Director General (Pers.IV)

Weightage Point System for assessment of Indigent Condition

Items with Positive Points

ITEM	WEIGHTAGE POINTS	
1. Dependent's weightage	Max. 30 points	
(a) @ 5 points per dependents		
(b) @ 5 points per handicap dependent		
(c) @ 5 points per minor child		
(d) @ 5 points per unmarried daughter (after 18 years of age)		
Sum of total of points for (a) to (d) above shall be subject to maximum of 30 points		
2. Basic Family pension (IDA pattern or CDA+50%)	Points	Max. 20 points
Upto 2000	20	
2001 to 2250	18	
2251 to 2500	16	
2501 to 2750	14	
2751 to 3000	12	
30001 to 3250	10	
3251 to 3500	08	
3501 to 3750	06	
3751 to 4000	04	
4001 to 4250	02	
4250 & above	Nil	
3. Left out service		Max. 15 points
1 year left out service	nil	
1 year left out service	@ 1 point for each year of left out service. Subject to maximum of 15 points.	
To be counted w.e.f. date of death/medical invalidation		
4. Applicant's weightage		Max. 15 points
Widow seeking CGA	15	
others (Son/Daughter/Brother/Sister/Widower)	nil	
5. Terminal benefits including DCRG, GPF/EPF, Leave encashment. CGEGIS/GSLI, LIC policies, ex-gratia payment etc.		Max. 10 points
1.00 lac	10	
1 Lac to 2 lac	9	
2 lac to 3 lac	8	
3 lac to 4 lac	7	
4 lac to 5 lac	6	



5 lac to 6 lac	5
6 lac to 7 lac	4
7 lac to 8 lac	3
8 lac to 9 lac	2
9 lac to 10 lac	1
10 lac	nil

Check-list with reference to Weightage Point
System

(A)Items with positive points

Sr. No	Item	Details	Points *	Remarks
1.	Dependent-Weightage	Nos (a) total no. of dependent(s) out of from (a) (b) No. of handicap dependent(s) (c) No. of Minor dependent(s) (d) No. of Unmarried daughter(s) For (b) certificate issued by competent authority be enclosed For (c) & (d) status to be taken w.e.f. date of CGA application in Proforma Part 'A'		
2.	Family pension	Amount of basic family pension (IDA or CDA – 50% Rs...		
3.	Left Out Service	Years Left Out Service (to be counted w.e.f. date of death/medical invalidation)		
4.	Applicant's weightage	Widow or others (Tick, whichever is		



		applicable)		
5.	Terminal Benefits	Total terminal Benefits- Rs.....		
6.	Accommodation	Family living in rented house and not owning his own house		

Total Points (1+2+3+4+5+6)

(B) Items with negative points

7.	Monthly income	Income of spouse- Rs..... Income of other dependents- Rs..... (income from any other source may be included. Income/salary certificate issued by employer/Tehsildar may be enclosed)		
8.	Belated Request	Belated period, if any- (To be counted from date of death/medical invalidation till date of CGA application in Proforma Part 'A')		

Total Points (7+8)

Points as per weightage Point System. If points for Dependent's weightage and left out service come to more than the maximum allotted points w.e.f. weightage point system, the maximum allotted points are to taken for that item, while computing total points.

NET POINTS = (A(1+2+3+4+5+6) - (B(7+8))) =

10. After going through the facts of the case as also the stand taken by 'the BSNL' in its counter affidavit, 'the



Tribunal' rejected the claim of the petitioner vide its order dated 7.2.2019.

11. Still aggrieved, the petitioner preferred this appeal.

12. Heard learned counsel for the parties.

13. Learned counsel for the petitioner submits that during the pendency of the claim for his compassionate appointment, 'the BSNL' came out with letter dated 5.2.2016 in which specific guideline was given as under:-

In case of death due to accident while performing duty such as electrocution accidental mishap while attending telephone fault, telephone cable, having militant attacks, fire in Telephone Exchange, electrocution while attending faults in electrical equipments etc, the dependent may be directly offered CGA as per his/her educational qualification without considering the weightage points. A proposal in this regard will be sent by concerned CGM to corporate office for concurrence before offering



compassionate Ground Appointment.

***However, the appointment shall be within
the ceiling of 5% vacancies earmarked for
the purpose.***

14. Learned counsel for the petitioner submits that since during the pendency of the application for compassionate appointment when the said letter dated 5.2.2016 came into picture, the respondents wrongly rejected the claim on 10.10.2017.

15. Per contra, learned counsel for 'the BSNL' submits that dates are very important inasmuch as father of the petitioner died on 27.3.2015 and the application for compassionate appointment was preferred on 30.7.2015 and as such the letter dated 5.2.2016 will not be applicable to him rather his case will be guided under 27.6.2007 policy decision of 'the BSNL' and thus his case was rightly rejected. He further submitted that merely because the order was passed in the year 2017, the petitioner cannot claim his case to be considered in the light of letter dated 5.2.2016. In the light of Apex Court's decision in the case of the **Secretary to Govt. Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa- LL 2021 SC 755**



“20. Coming to the case on hand, the employee died on 8.12.2010 and the amendment to the Rules was proposed by way of a draft notification on 20.06.2012. The final notification was issued on 11.07.2012. Merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent could not have sought the benefit of the amendment. The Judgment of the Division Bench of the Karnataka High Court in Akkamahadevamma on which the Tribunal as well as the High Court placed reliance, was not applicable to the case of compassionate appointments, as the amendment in Akkamahadevamma came as a result of the existing rule being declared to be ultra vires Articles 14 and 16 of the Constitution”.

16. We have gone through the facts of the case and heard both the parties as also took note of different policy decisions. Admittedly, unfortunate accidental death of the father of the petitioner took place on 23.7.2015 and accordingly the office of ‘the BSNL’ considered his case and rejected the same on 10.10.2017 in line with policy decision dated 27.6.2007. The letter no. 5.2.2016 will not come to aid of the petitioner in view of Apex Court’s decision cited (supra).

17. Taking into account the aforesaid facts, this Court does not find any error in the order dated 07.02.2019



passed by the learned Tribunal in O.A./050/00800/2017.

18. The appeal as such fails and is accordingly dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2022
Transmission Date	NA

