



W.P.No.29209 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.29209 of 2017 and

WMP No.31467 of 2017

T.Ilayaraja

... Petitioner

Vs.

1. The Chairman cum Managing Director,
Bharat Sanchar Nigham Limited (BSNL),
H.C. Mathur Lane, Janpath
New Delhi 110 001.

2. The Chief General Manager,
BSNL, TN Circle, No.16, Greams Road,
Chennai 600 006.

3. The General Manager,
Bharat Sanchar Nigham Limited (BSNL),
CRDA SSA, Kumbakonam,
Tanjore District 612 001.

4. The Assistant General Manager,
BSNL, TN Circle, No.16, Greams Road,
Chennai 600 006.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mndamus, calling for the records in connection with the impugned order file No.RET/31-44/2005/Part-I dated 13.01.2014 passed by the 4th respondent and another rejection order No.RET/31-44/2005/Part-III dated 18.02.2015 passed by the 2nd respondent herein and quash the same, consequently, direct the respondents to appoint the petitioner in any suitable post.

For Petitioner : Dr.R.Sampathkumar

For Respondents : Mr.K.R.Rameshkumar

ORDER

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to quash the impugned order in file No.RET/31-44/2005/Part-I dated 13.01.2014 passed by the 4th respondent and another rejection order No.RET/31-44/2005/Part-III dated 18.02.2015 passed by the 2nd respondent and consequently, direct the respondents to appoint the petitioner in any suitable post.



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2. The petitioner's father G.Thanapal was working as a Senior Telephone Supervisor in Kumbakaonam Telephone Exchange and he died on 31.7.2004 leaving behind his wife and two sons, including the petitioner. The petitioner made a representation on 22.02.2005 seeking compassionate appointment and the other legal heirs had also given no objection. However, the Divisional Engineer, Kumbakonam has rejected the representation of the petitioner on 12.04.2007 and subsequently, the third respondent also rejected the claim of the petitioner seeking compassionate appointment on 12.11.2009. Hence, the petitioner had filed an Appeal cum Review petition before the Director (HRD), BSNL, New Delhi, which was also ended against the petitioner. Therefore, the petitioner had filed O.A.No.247/2011 challenging the order dated 12.11.2009 and the Central Administrative Tribunal, vide order dated 07.09.2011, has set aside the above order dated 12.11.2009 and also has given a direction to reconsider the review petition. Again, the 4th respondent, vide order dated 10.11.2011, has rejected the claim of the petitioner saying that, the petitioner has got only 38 weightage points, which is less than 55 points. Therefore, the petitioner had filed O.A.No.148/2012 before the Tribunal and the Tribunal,



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vide order dated 17.10.2012, had quashed the order passed by the 4th respondent dated 11.10.2011 and also directed to re-consider the claim of the petitioner for compassionate appointment, as per guidelines dated 09.10.1998, framed by the DOPT and pass reasoned order within two months. However, once again the 4th respondent rejected the claim, saying the same reason as stated in the earlier rejection order. As such, the petitioner had filed Contempt Petition and it was disposed with liberty to file fresh O.A. Accordingly, the petitioner had filed third application in O.A.No.267/2013 and the Tribunal, vide order dated 13.08.2013 had set aside the impugned order dated 17.12.2012 and directed the respondents to issue an order of appointment to the petitioner to any suitable post under compassionate grounds within six weeks. Since that order was not complied with, the petitioner had filed contempt petition No.310/13/2014. After filing contempt petition, the 4th respondent had served rejection order dated 13.01.2014, referring the order passed in W.P.No.30482/2013, which was filed by the respondents herein, challenging the order passed by the Tribunal dated 13.08.2013. It is the contention of the petitioner that, though the petitioner was shown as second respondent in that writ petition,



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he was not served any notice by the officials of the BSNL and the respondents have adopted illegal way to make a representation by one advocate on behalf of him and got order from the Court. In the above writ petition, this Court, vide order dated 13.11.2013, has modified the order passed by the Tribunal dated 13.08.2013 and remitted back the matter to the 4th respondent to consider the claim of the petitioner, on the basis of the guidelines issued on 09.10.1998 and without reference to the subsequent guidelines issued in the year 2007 and pass fresh order. However, the 4th respondent, rejected the claim of the petitioner on 13.01.2014. Subsequently, as directed by the respondents, the petitioner made a fresh application for re-consideration on 12.02.2015, however, it was once again rejected by the second respondent on 18.02.2015. Challenging the above orders dated 13.01.2014 and 18.02.2015, the instant writ petition has been filed.

3. The learned counsel for the petitioner submitted that this Court has modified the orders passed by the Tribunal in O.A.No.267/2013 dated 13.08.2013 and directed the respondents to consider the petitioner's



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application for compassionate appointment, strictly only on the basis of guidelines issued on 09.10.1998, without reference to the subsequent to the guidelines issued in the year 2007. It is also submitted by him that when this Court has specifically directed the respondents to consider the claim of the petitioner, based on the guidelines issued in the year 2007, the respondents have to pass orders independently. But, without giving any opportunity to the petitioner, the Committee had given recommendations, based on the pensionary benefits, which is not applicable to the case of the petitioner and based on the recommendations of the Committee, the fourth respondent had rejected the claim of the petitioner. Therefore, the order passed by the 4th respondent dated 13.01.2014 and the order passed by the second respondent 18.02.2015 are liable to be set aside.

4. The learned Standing Counsel appearing for respondents submitted that, pursuant to the order of this Court dated 13.11.2013 in W.P.No.30482/2013, the respondents have considered the case of the petitioner, as per GOPT guidelines dated 09.10.1998 and rejected the claim of the petitioner. He further submitted that the petitioner is seeking



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compassionate appointment from time to time, on the same grounds and no fresh data is submitted to assess the indignity of the deceased official's family, Since the deceased official's family is receiving reasonable amount as pension and had already received terminal benefits, there is no ground to give compassionate appointment to the petitioner. Therefore, the orders dated 13.01.2014 and 18.02.2015 passed by the respondents 4 and 5 are in order and the same does not warrant any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and we perused the material records.

6. It is the admitted facts that the father of the petitioner G.Thanapal died while he was in service in BSNL and after his death, the petitioner sought compassionate appointment and it was rejected the respondents. It is also an admitted fact that, challenging the rejection orders passed by the respondents, the petitioner had filed applications before the Tribunal, and pursuant to the orders passed by the Tribunal to consider the claim of petitioner, the 4th respondent again and again had passed rejection order.



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At last, the Tribunal vide order dated 13.08.2013 in O.A.No.267/2013 had directed the respondents to issue an order of appointment to the petitioner to any suitable post in compassionate grounds. As against this order, the respondents had filed W.P.No.30482/2013 and a Division Bench this Court, vide order dated 13.11.2013, has passed the following order.

" 11. Hence, the order of the Tribunal is modified and the matter is remitted to the fourth petitioner to consider the claim of the second respondent, seeking compassionate appointment, strictly only on the basis of the guidelines issued on 09.10.1998 and without reference to the subsequent guidelines issued in the year 2007 and pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order. As the matter is remitted for the third time, the fourth petitioner is directed to consider with all seriousness and pass orders."

7. It is to be noted that, in the office memorandum dated 09.10.1998, The Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) has given guidance to all the Ministries/Department of the Government of India with regard to appointment on compassionate ground, in the light of the various Court Judgments and also based on the various recommendations contained in the



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Fifth Central pay Commission Report as well as the Study Report of 1990 and 1994 prepared by the Department of Administrative Reforms and Public Grievances. In that Official Memorandum, the Scheme for compassionate Appointment and its object, eligibility, exemptions, relaxations, Determination/Availability of vacancies, etc. were explained in detail. Further, the important Judgments of Hon'ble Supreme Court in i) ***Audit General of India and others Vs. G.Anantha Rajeswara Rao reported in 1994 1 SCC 192***; ii) ***Umesh Kumar Nagpal Vs. State of Haryana and others reported in JT 1994(3) S.C. 525*** and its observations were also extracted therein.

8. In the order passed in W.P.No.30482 of 2013 dated, 13.11.2013, the Division Bench of this Court has observed that the fourth respondent, in the rejection order relied upon the guidelines issued in the year 2007 and hence, remitted the matter back to the fourth respondent herein to consider the claim of the petitioner, based on the guidelines issued on 09.10.1998. Pursuant to the above order, the fourth respondent has passed order dated 13.01.2014, rejecting the claim of the petitioner. According to the petitioner,



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the housing loan availed by his deceased father is still outstanding and his mother, who received pension was also died on 15.01.2015 and hence, he has to clear the above said loan. It is contended by the petitioner that, the 4th respondent has rejected the claim of the petitioner by saying the same reason, as stated in the earlier order dated 12.04.2007.

9. Therefore, considering all the above facts and circumstances of the case, and also after perusing the records, we are of the view that the fourth respondent, without taking into account the criteria of the guidelines issued on 09.10.1998 has passed the impugned order and the second respondent has also rejected the representation of the petitioner by saying that already the request of the petitioner was considered in detail by the Circle Review High Power Committee and the decision of the Committee is a final one. Therefore, there is no hesitation to set aside the orders passed by the fourth and second respondent dated 13.01.2014 and 18.02.2015 respectively and to remit the matter back to the 4th respondent for consideration of the claim of the petitioner.



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10. Accordingly, the impugned orders dated 13.01.2014 and 18.02.2015 passed by the fourth and second respondent respectively are set aside. The matter is remitted back to the fourth respondent to re-consider the claim of the petitioner in accordance with Law as observed in the earlier order and the decision of the Hon'ble Supreme Court, within a period of three months from the date of receipt of a copy of this order.

11. With the above direction, the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

(D.K.K.J.) (P.D.B.J.)

02.06.2023

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To

WEB COPY

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D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

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