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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 09.02.2024***

+ W.P.(C) 12061/2019 & CM APPL. 49379/2019 -O-1, R-10
NIGAR FATIMA Petitioner

Through: Ms. Tanya Agarwal, Adv. (VC)

versus

BHARAT SANCHAR NIGAM LIMITED (BSNL) & ORS.

..... Respondents

Through: Mr. R.V. Sinha and Mr. Amit Sinha,
Advocates.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 20.08.2019 passed by the learned Central Administrative Tribunal (the learned Tribunal) in Original Application (OA) No. 3844/2018. Vide the impugned order, the learned Tribunal has rejected the petitioner's original application wherein she had sought that her son namely, Mujeebuddin Siddiqui, who had been appointed on compassionate grounds as a Group D employee in May, 2017, be appointed as a Group C employee.

2. In support of the petition, learned counsel for the petitioner submits that upon the death of her husband, the petitioner had applied for appointment of her son on compassionate grounds in 2012 as a Group D employee. However, before his case could be considered by the committee



dealing with compassionate appointments, he completed his graduation and therefore, the petitioner submitted an application on 15.07.2016 to the Assistant General Manager of the respondent with a request that he be now considered for a Group C post. This fact was, however, not brought to the notice of the committee and consequently, the petitioner's son was appointed as a Group D employee in 2017 instead of being appointed as a Group C employee, for which he was holding the requisite qualification when the committee recommended his name for appointment. She contends that the petitioner has been discriminated against, as while the case of the petitioner's son for appointment on the basis of qualifications acquired by him during the pendency of the application has been rejected, similar applications of other candidates seeking the same relief were accepted. She, therefore, prays that the writ petition be allowed and the respondents be directed to appoint her son as a Group C employee with all consequential benefits from the date of his appointment.

3. On the other hand, learned counsel for the respondents supports the impugned order and submits that the petitioner's son, having without any reservation accepted the offer of appointment as a Group D employee, the present petition is liable to be rejected on this ground alone. Furthermore, the petitioner's son is a major and, therefore, the petitioner has no locus to even propound his case. He finally submits that taking into account that compassionate appointment is not largesse but is only meant to help the family of a deceased employee to meet the sudden crisis on account of his death, the respondents are justified in directing that only qualification on the date of submitting application for compassionate appointment, would be considered. He, therefore, prays that the writ petition be dismissed.



4. In response, learned counsel for the petitioner submits that an application has been moved on behalf of the petitioner's son seeking his impleadment as a co-petitioner. She, therefore, contends that the present petition may be treated as a petition on behalf of the petitioner's son himself.

5. Having considered the submissions of learned counsel for the parties and perused the record, we are of the view that now that an application has been moved by the petitioner's son to seek impleadment in the present petition, no useful purpose will be served by examining as to whether the petitioner had any *locus standi* to file the O.A. We, may, therefore proceed to deal with the petition on merits.

6. As noted hereinabove, the only grievance of the petitioner is that even though the certificate regarding the petitioner's son having acquired a graduation degree was brought to the knowledge of the respondents in July, 2016, the committee did not take into account this fact and consequently recommended that based on the qualification held by him at the time of submitting his application, he be appointed as a Group C employee. In order to appreciate the rival submissions of the parties on this aspect, it would be apposite to note the relevant extract of the impugned judgment as contained in para 5, which reads as under:

“5. After hearing both the parties and perusing the record, quite clearly the applicant was only High School as shown from Annexure R-3 filed by him. when he had applied for appointment on compassionate grounds on 23.01.2012. Hence, the competent authority has rightly approved the case of the applicant for Group 'D' post as per clarification issued by the BSNL Corporate Office dated 21.12.2016 which clearly provides that no subsequent change in educational qualification will be entertained by Circle High Power Committee. Whereas



*the respondents are able to show from their record that the persons, namely, Rahul Srivastava and Jitender Kumar had possessed the qualifications of B.Tech (EC) and B.Com (Second year) respectively and their case for post of Group 'C' were rightly approved by the competent authority when they were received their applications for compassionate ground appointments. It is also not within the domain of the Tribunal to assess the qualifications of the persons who have applied for compassionate appointment and it is the prerogative of the respondents to assess the qualifications of the persons who have applied for compassionate appointment and accordingly appoint them against the posts on the basis of their qualifications. In the case of **Nanak Chand v. Delhi Jal Board**, 2007(140)DLT 489, the Honhble High Court clearly held as under:-*

"14. The mandate of the Supreme Court is very clear from the aforestated judgments that it is not for the High Court in exercise of its powers under Article 226 of the Constitution of India to interfere with the decision arrived at by the competent authority while considering the eligibility of an applicant for appointment on compassionate basis and all it can do is to see whether the decision of the competent authority is vitiated. Having scrutinized the cases in hand in the aforesaid background, this Court does not consider it appropriate to interfere with the findings of facts and the conclusion arrived at by the competent authority."

7. From the aforesaid, it is evident that when the application for compassionate appointment of her son was made by the petitioner on 23.01.2012, he was not a graduate and was, therefore, eligible only for appointment as a Group D employee. It is the respondent's case that only the qualifications as held by the candidate on the date of submission of



application for compassionate appointment are to be taken into account for considering the eligibility of the candidate. This, it has been urged by the learned counsel for the respondent, is an integral part of the scheme for compassionate appointment.

8. As has been consistently held by the Apex Court, compassionate appointment is an exception to the general rule for appointment by open advertisement and therefore can be resorted to only when the candidate and his family are in penury. Consequently, the eligibility for compassionate appointment is made on the basis of the policy for compassionate appointment framed by the employer. The eligibility of a candidate for compassionate appointment must therefore be considered strictly in terms of the policy. Taking into account the very nature of this policy which is an exception to the general rule, the Court cannot substitute its own views regarding the conditions laid down in the policy. In this regard, reference may be made to the observations of the Apex Court in para 20 of its decision in **India Bank and Ors. vs. Promila and Ors. (2020) 2 SCC 729**. The same reads as under :

“20. We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in



view of the judgment of this Court in Canara Bank [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] . It is not for the courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasised by this Court in State of H.P. v. Parkash Chand [State of H.P. v. Parkash Chand, (2019) 4 SCC 285 : (2019) 1 SCC (L&S) 621] .” (emphasis supplied)

9. Thus, it is clear that compassionate appointment is only meant to act as a succour for the grieving family when the earning member thereof dies in harness and, therefore, cannot be claimed or offered after a lapse of time when the crisis is already over. Compassionate appointment can never be a vested right and is primarily a discretionary relief to be granted strictly as per the terms of the scheme. Taking into account the very purpose of compassionate appointment, the respondents' action in considering only the qualification at the time of submission of application and not those qualifications, which the family member may later acquire, cannot be said to be arbitrary in any manner. Accepting the petitioner's plea that the later qualifications acquired by her son should have been taken into account by the committee would lead to a situation where the employer would be required to wait for years together for the children of the deceased employee to grow up and then acquire requisite qualification for compassionate appointment. This certainly cannot be the intent of compassionate appointment.

10. We have also considered the petitioner's plea that the respondents have discriminated against the petitioner's son but find no merit in this bald plea. We say so as it is the respondent's specific case before us that in no



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case, have the qualifications acquired by a candidate after the date of application, been taken into account.

11. For the aforesaid reasons, we find absolutely no infirmity with the impugned order. The writ petition being meritless is, accordingly, along with all pending applications, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 9, 2024
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