

## Radhe Raman Kumar Vs The Union of India and Others

**Court:** Patna High Court

**Date of Decision:** May 3, 2011

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER,

Mihir Kr. Jha, J.

Heard Mr. S.B.K. Mangalam, Learned Counsel for the Petitioner and Mr. Dharmeshwar Mishra, Learned Counsel for",

the Respondents. The prayer of the Petitioner in this writ application reads as follows:-,

(i) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 13.11.2007 passed by the Assistant Director General,

(Per-sonnel-IV), Bharat Sanchar Nigam Limited issued under his letter No. 268-33/ 07-PERS(IV) dated 13.11.2007, whereby and whereunder",

he was pleased to communicate to the Petitioner that his re-quest for appointment on compassionate ground has been rejected by the - competent,

authority on the ground that the family of the Ex-employee has not been found to be living in indigent condition by the Committee.,

(ii) For issuance of an appropriate writ in the nature of mandamus commanding and directing the Respondent authorities for appointment of the,

Petitioner on compassionate ground whose father Umeshwar Kumar (since deceased), Ex-Telephone Mechanic, died in-harness on 8.7.2002 and",

for a declaration that the assessment of the Respondent about the family condition of the Petitioner and their decision that the family of the Ex-,

employee is not living in indigent condition is illegal, perverse and beyond the facts, submitted by the Petitioner for consideration his case for",

appointment on compassionate ground.,

2. In support of the aforementioned prayer Learned Counsel for the Petitioner would submit that the policy adopted by Bharat Sanchar Nigam,

Limited (hereinafter referred to as "B.S.N.L.") as with regard to compassionate appointment being wholly impragmatic and unrealistic in fact has led,

to arbitrary rejection of the case of the Petitioner. In this context he has contended that the policy as contained in the circular of the B.S.N.L. dated,

27.6.2007 laying down a specified criteria of allocation of points on certain self-evolved parameters with the requirement of minimum of 55 points,

for a dependent to become eligible for consideration is wholly irrational and arbitrary inasmuch as such parameters have been heavily loaded,

against a claimant dependent of the deceased employee only with a view to deny appointment on compassionate ground in B.S.N.L. He has,

accordingly proceeded to assail the rejection of the case of the Petitioner for his appointment on compassionate ground in the impugned order on,

such parameters of the aforesaid policy by describing it to be bad both on fact and in law.,

3. In this case a counter affidavit has been filed on behalf of the Respondent B.S.N.L. wherein apart from justifying rejection of the case of the,

Petitioner for appointment on compassionate ground, it has also been urged that this writ application in the first instance is not maintainable before",

this Court, inasmuch as the Petitioner has statutory alternative remedy before the Central Administrative Tribunal (CAT.). Reliance in this",

connection has been placed on a notification of the Govt, of India dated 31st October, 2008, Annexure "C to the supplementary counter affidavit",

wherein the B.S.N.L. has been included in the list of statutory organizations and the societies owned and controlled by the Govt, of India who have",

been placed under the ambit of Central Administrative Tribunal in exercise of power u/s 14(3) of the Administrative Tribunals Act, 1985.",

4. In view of the fact that the question of jurisdiction would go to the root of the matter this Court must first address to preliminary objection of,

B.S.N.L. as with regard to maintainability of the WW application. The Administrative Tribunals Act came into force in the year 1985 and it was,

meant basically for the employees of the Central Government and their service related cases. At that point of time the B.S.N.L. not being even in,

existence could not have been included, in the list of the statutory Corporation owned and controlled by the Central Government which were",

subjected to jurisdiction of CAT. The B.S.N.L. in fact came into existence much later when the working employees of the Telegraph and,

Telephone Department of Government of India were made the employees of the B.S.N.L., some by way of deputation and other by way of",

absorption. Thus, the service matter relating to such employees of the B.S.N.L. a statutory Corporation, automatically went out of jurisdiction of",

the Central Administrative Tribunal and this Court in exercise of power under Article 226 of the Constitution of India could have entertained any,

matter relating to service condition of the employees of the B.S.N.L. In fact this writ application also came to be filed on 7.7.2008 on which day,

there was no notification of the Govt, of India in exercise of power u/s 14 of the Administrative Tribunals Act placing B.S.N.L. also under the",

ambit of the Central Administrative Tribunal. As a matter of fact the bare perusal of the notification of the Govt, of India dated 31.10.2008 would",

go to show that it was given a prospective operation w.e.f. 10th of November, 2008. Consequently only such complaints/cases relating to service",

condition relating to employees of B.S.N.L. on or after 10th of November, 2008 in the first instance had to be filed before the Central",

Administrative Tribunal. As noted above, this writ application was filed on 7.7.2008 and the same can neither be transferred to the Central",

Administrative Tribunal nor can it be held to be not maintainable before this Court. As a matter of fact the jurisdiction of a High Court under,

Articles 226 and 227 of the Constitution of India, even in respect of service matter relating to the Central Government employees despite there",

being a provision for a direct appeal to the Apex Court against an order of CAT. was laid down by the Apex Court itself in the case of L. Chandra,

Kumar Vs. Union of India and others, on the ground of power of judicial review being basic feature of the Constitution of India.",

5. Considering all these aspects the preliminary objection raised by the Learned Counsel for the B.S.N.L. as with regard to maintainability of this,

writ application must be and is hereby rejected.,

6. Coming to the submissions of Mr. Mangalam as with regard to scheme of compassionate appointment of B.S.N.L. either being impragmatic or,

impractical and thus arbitrary this Court would find that the Petitioner has not assailed the policy of B.S.N.L. as is apparent from the relief sought in,

this writ application, already quoted above. None-the-less as the case of the Petitioner has been rejected under this scheme this Court even",

otherwise may go into the parameters fixed for finding out as to whether the case of the Petitioner was considered in a true and correct,

prospective. A bare reading of the Circular of B.S.N.L. dated 27.6.2007 laying down its policy of compassionate appointment would go to show,

that a uniform criteria has been evolved for determining indigent condition of a dependent seeking employment on compassionate appointment. It,

would thus be also useful to quote the whole policy in the circular dated 27.6.2007 in extenso, which reads as follows;?",

Bharat Sanchar Nigam Limited,

(A Government of India Enterprises),

Corporate Office,

102-B, Statesman House, New Delhi-110001",

(Personnel-IV SECTION),

(IDA) pattern or

CDA+50%)",

upto 2000,20

2001 to 2250,18

2251 to 2500,16

2501 to 2750,14

2751 to 3000,12

3001 to 3250,10

3251 to 3500,08

3501 to 3750,06

3751 to 4000,04

4001 to 4250,02

4250 & above,Nil

Payment etc.,Max. 10 points

<1.001 Lac,10

>1 Lac <2 lac,09

>2 lac to <3 lac,08

>3 lac to <4 lac,07

>4 lac to <5 lac,06

>5 lac to <6 lac,05

>6 lac to <7 lac,04

>7 lac to <8 lac,03

>8 lac to <9 lac,02

>9 lac to <10 lac,01

>10 lac to above,Nil

7. In adoption of this principle, an office memorandum, was circulated to all banks on 7.8.1996 emphasising that the observations of this Court",

would have to be complied with. The Indian Banks" Association also adopted the directive of this Court in Umesh Kumar Nagpal case in the,

Scheme which was proposed for appointment of heirs of deceased employees. In that proposal it was recommended that in order to determine the,

financial condition of the family the following amounts would have to be taken into account:-,

(a) Family pension.,

(b) Gratuity amount receive.,

- (c) Employee's/ employer's contribution to provident fund.,
- (d) Any compensation paid by the bank or its Welfare Fund.,
- (e) Proceeds of LIC policy and other investments of the deceased employee.,
- (f) Income of family from other sources.,
- (g) Employment of other family members.,
- (h) Size of the family and liabilities, if any, etc.",

8. This recommendation of the Indian Banks' Association was accepted in the Scheme which was finally formulated on 1.1.1998 where the same,

criteria for determining the financial condition of the family was laid down. It may be noted, that the express language for appointment on",

compassionate grounds reads as follows:-,

Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in",

favour of dependants of employees dying in-harness and leaving their family in penury and without any means of livelihood.,

9. On the basis of the criteria as recommended by the Indian Banks' Association and adopted by the Appellant Bank, it could not be said that the",

family of the late K.N. Tiwary had been left in "penury" or "without any means of livelihood". The particular of their income have been noted in their",

application and it certainly could not be said on the basis thereof that the Respondents were living hand to mouth. The Division Bench erred in,

diluting this criteria of penury to one of "not very well-to-do.",

10. A close perusal of the aforesaid scrutiny made by the Apex Court to the policy of the Bank in evaluating the financial condition of the family,

after the death of deceased employee would go to show that the criteria was approved on the touch stone of penury and/or means of livelihood.,

Evaluation of such need of appointment on compassionate ground was also approved by Division Bench of this Court in the case of Kunti Devi,

Vs. The Chairman-Cum-Managing Director, Syndicate Bank Staff Department and Others wherein the Bank also had evolved certain norms for",

evaluating the indigent condition of the family.,

11. Thus even the policy of B.S.N.L. in hand needs to be examined in the same backdrop and the criticism of Mr. Mangalam towards Item No. 1,

as with regard to number of dependents being weightage by way of 5 points for each dependent in fact does not appeal to this Court, inasmuch as",

the first and foremost criteria for finding out the condition of the family would be number of persons left out to be maintained after the death of the,

deceased employee. In fact when certain more criterias have been laid down even in the category of dependent by giving additional weightage to,

handicapped person, minor child and unmarried daughter this Court will have no hesitation in holding that the criteria laid down by the B.S.N.L.",

does not suffer from any error much less capable of its being labelled as arbitrary.,

12. Similarly the next criteria of basic family pension based on from the minimum slab to the maximum slab and its corresponding points in the,

descending order again would be reflective of the fact that the authorities of the B.S.N.L. had due importance to the assured source of income to,

the members of the deceased family, which is again a very sound criteria and as such the principle of lesser income with higher points can also not",

be faulted in law.,

13. The analysis of even other weightage points such as left out year of service of the deceased employee and the weightage to the applicant giving,

precedence to the widow as also quantum of total amount paid to the family of the deceased employee can have no exception in law. As all of,

these are based relevant determining factors for appointment on compassionate ground, the weightage point allocated on the basis of the same has",

to be also held to be reasonable and germane to achieving the object of providing job by way of compassion in only appropriate cases.,

14. In this regard the further criticism made by Mr. Mangalam as with regard to allocation of weightage for accommodation on the plea that even a,

person having his own house by way of a thatched or a poorly constructed house denying any weightage point cannot be accepted. True it is that,

such a person is clubbed with a person having a well built house but then it has to be also kept in mind that a family which has lost its bread-earner,

due to premature death, if it has any type of accommodation for which it has not to meet any expenditure on this head, it definitely stands on a",

better footing to a family where the dependents even after the death of the bread winning employee has no house of its own and has to live in a,

rented house. Thus, the allocation of 10 weightage point to such a family and denial of the same to a family who has its own house of any type",

cannot be said to be arbitrary.,

15. As a matter of fact when the policy also takes into account that even after it is found that one of the spouses is in service or earning and yet,

even such cases can be considered for appointment on compassionate ground by only deducting certain points and not altogether omitting from,

consideration, one has to say that the policy evolved by the B.S.N.L. is most pragmatic and practical.",

16. this Court would also fail to appreciate the criticism made by Mr. Mangalam as with regard to deduction of certain weightage point on account,

of belated application. In this regard it has to be kept in mind that if such an application has been filed for appointment on compassionate ground,

within five years there would be no any deduction inasmuch as such deduction of point begins only after the application for compassionate,

appointment has been filed after a period of five years of the death of the employee. The very fact that an application for compassionate,

appointment is filed after a period of five years of the death of the employee and is still considered by itself would be in fact a grace to such family,"

inasmuch as there are number of cases where the Apex Court and this Court has held that a delay to the aforesaid extent itself would be good,

enough for rejection of the case for appointment on compassionate ground. Therefore, if only deduction of certain weightage points in such cases",

has been provided for considering the aspect of delay, it cannot be held to be bad, inasmuch as such delayed applications have been at least",

placed in the zone of consideration instead of its outright rejection.,

17. Based on the aforementioned analysis this Court must hold that the weightage point system evolved by the B.S.N.L. in its policy contained in,

Circular dated 27.6.2007 for considering the cases of compassionate appointment does not suffer from any error.,

18. As a matter of fact when the case of the Petitioner was considered the weightage point secured by him was found to be less than 55 and,

therefore, he was found ineligible for such compassionate appointment. It is not in doubt that the case of the Petitioner was considered on a same",

parameter laid down in the policy of B.S.N.L. and once its policy has been found to be wholly justified there would be no difficulty in also,

upholding the consequential decision.,

19. Thus, on giving a careful consideration to all these aspects this Court would not find any error in the decision taken by the authorities in the",

case of the Petitioner for appointment on compassionate ground and consequently this writ application has to be dismissed. It is ordered,

accordingly.,