

(2011) 05 PAT CK 0118

Patna High Court

Case No: CWJC No. 9702 of 2008

Radhe Raman Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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-request 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)
No. 273-18/2005-Pers.IV, dated 27.6.2007

To
All heads of Telecom Circles

Sub.: -Compassionate Ground Appointments (CGA) policy guidelines regarding.

It has been decided to brine] 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-1) dated 26.12.2006, wherein "Circle heads are authorized to create nonexecutive 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-1.

(ii).....

3.0.....

(i).....

(ii).....

(iii).....

4.0.....

5.0.....

6.0.....

7.0.....

8.0 ,.....

(P.S. Venkatraman) Asstt. Director General (Pers.-IV) Annexure-I Weightage points system for assessment indigent condition.

(A) 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. Basis family pension Points Max. 20 points.

(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

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 succ. subject to maximum of 15 points to be counted w.r.t. date of death/ medical invalidation.

4. Applicant's weightage max. 15 points Window seeking CGA 15 others (Son/ daughter/brother/sister/ widower) nil 5. Terminal benefits including DCRG.GPF/EPF, leave encashment CGEGIS/GSLI, LOC policies, Ex-gratia

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

Item Weightage Points 6. Accommodation Max. 10 points -Family living in rented house 10 and not owning his own house -Family living in own house Nil (B) Items with negative points.

7. From a bare reading of the said circular it becomes clear that points allocated under weightage system for assessment in indigent condition is germane to the object of appointment on compassionate ground. The concept of penurious condition in compassionate appointment came to be accepted in the judgment of the Apex Court in the case of [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), where it was held as follows:-

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of confusion on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in-harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in-harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes-III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more

destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

8. Thus, it cannot be said that when the B.S.N.L. by laying down transparent norms for deciding indigent condition has laid down certain criteria the same by itself would be violative of Article 14 of the Constitution of India. Any employer in a Welfare State if it lays down a policy which would may everyone ensure uniform consideration the same by itself cannot be held to be bad because a criteria was laid down for evaluating all the cases of similar nature. The appointment on compassionate ground closed from the premises that the bread-earner has died and the family of such bread-earner employee needs to be rehabilitated. It is in this background that the employer has to decide with regard to the claim of the dependent of the deceased employee in the backdrop of the sole parameter as to whether the family was in penury after the death of the deceased employee. Judged in this background if the weightage point system for assessment of indigent condition is read as a whole it would become clear that the B.S.N.L. in fact had laid down a sound and reasonable criteria for examining all the cases of the claimants seeking compassionate appointment after the death of the deceased employee.

9. A similar policy of the State Bank of India laying down the norms for determining indigent condition came to be approved by the Apex Court in the case of [General Manager \(D and PB\) and Others Vs. Kunti Tiwary and Another](#), wherein it was held as follows:-

6. The policy in question was framed by the Appellant Bank pursuant to the decision of this Court in Umesh Kumar Nagpal v. State of Haryana where this Court has said that appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. This exception was to be restored to in cases of penury where the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.

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.