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No. BSNLCO-A/15(19)/13/2022-ESTAB

Bharat Sanchar Nigam Limited
(A Govt. Of India Enterprises)
[Corporate Office]

Dated 01/06/2023

To,

All Heads of Telecom Circles,
Bharat Sanchar Nigam Limited

Sub: Forwarding of a copy of Hon'ble High Court of Judicature at Allahabad, Lucknow Bench order dated 11.05.2023 in Writ-A No:12936/2021 and Writ-A No:2613/2023 filed by BSNL in the case of Shri Dilip Singh.- for reference/citation in court cases on Compassionate Ground Appointments (CGA).

Sir,

I am directed to forward herewith a copy of Hon'ble High Court of Judicature at Allahabad, Lucknow Bench order dated 11.05.2023 in Writ-A No:12936/2021 and Writ-A No:2613/2023 filed by BSNL in the CGA case of Shri Dilip Singh pronounced in favour of BSNL.

2. The case details are as under:

- a. The CGA case of Sri Dilip Singh, S/o.Late Shri Rai Narayan Singh, Ex-Phone Mechanic(DoD:09.09.2007), UP(East) Circle was rejected by BSNL CO HPC on 10.10.2012 as the committee did not find the family of deceased to be living in indigent condition to offer CGA to the applicant.
- b. The applicant filed an OA No:173 of 2013 in Hon'ble CAT, Lucknow and as per its order dated 26.04.2013, the case was reconsidered for CGA in HPC on 06.12.2013 and the same was rejected as the family of the deceased was not found to be living in indigent condition.
- c. The applicant again filed an OA No:332/00002/2016 before Hon'ble CAT, Lucknow and vide its order dated 19.07.2019 Hon'ble Tribunal directed the respondents to offer the order of appointment to the applicant within a period of 6 weeks for the date of receipt of the order comparing the case of Smt Archana Srivatsava, who was being considered for CGA who got lesser marks than the applicant.
- d. The BSNL UP(East) circle filed Review Petition in Hon'ble CAT, Lucknow and then the WP No:12936/2021 before the Hon'ble High Court, Lucknow on 23.06.2021 submitting that only one applicant name Smt Archana Srivatsava (Widow of Sri Rakesh Chandra Srivatsava with weightage point 61) was recommended for appointment as the case was found more indigent and the widow of the deceased.
- e. In the absence of any stay, the petitioner filed Execution Application No:2652/2019 before Hon'ble CAT, Lucknow and judgement was passed on 08.04.2022 requiring personal presence of the BSNL authorities.
- f. Hon'ble CAT vide its order dated 21.03.2023 also directed to attach the pay of the authorities and the next date is adjourned to 03.04.2023.
- g. A new writ petition was filed by BSNL in Hon'ble High Court, Lucknow against the order dated 21.03.2023 of Hon'ble CAT, Lucknow in Ex.Appl No:2652/2019 in OA 02/2016 which was filed by the applicant. This new Writ Petition No:2613/2023 was clubbed with previous Writ Petition No:12936/2021 filed by BSNL.
- h. Now, Hon'ble High Court, Lucknow has passed a judgement order dated 11.05.2023 and set aside the Hon'ble Tribunal orders dated 19.07.2019 (passed in OA) & 21.03.2023 (passed in Ex.Appl No:2652/2019). Hon'ble High Court, Lucknow has allowed the both Writ-A.No:12936/2021 & 2613/2023 filed by the BSNL authorities.

3. The Hon'ble High Court vide its order dated 11.05.2023 citing various judgements of the Hon'ble Supreme Court on the matter has inter-alia observed the following points:

- i. The object of compassionate ground appointment is to enable the family to get over sudden financial crisis and not to confer a status on the family. Appointment on compassionate grounds is not a vested

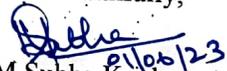
right and has to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. (para 21) And cannot be claimed or offered after a lapse of time or after the crisis is over. (para 27).

- ii. The financial condition of the family at the time of the employee's death is the primary consideration. If there is a prolonged delay in considering an application for compassionate appointment, or the financial circumstances of the family have improved since the employee's death, then the claim may not be entertained. (para 27)
- iii. On perusal of circular dated 27.06.2007, the Hon'ble High Court found that two tier criteria for assessment has been made for recommendation of the indigent condition of the family by the Circle High Power Committee viz. (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. In the circular dated 27.06.2007, complete mechanism for processing the cases of compassionate appointment has been made keeping in view the provisions of weightage point system. (para 30)
- iv. The net weightage points of 55 and above allocated by the Circle High Power Committee is only for the purpose of prima facie treating as eligible for consideration of compassionate appointment and it has no relevancy thereafter. The said weightage point system was apparently meant to bring the applicants, who have scored more than 55 marks within the first tier of consideration zone and does not create any vested right to be considered for appointment on compassionate grounds as the said score loses its significance at the time of second tier of consideration. (para 34)
- v. The 'indigent' condition of the family of the deceased employee and the uniform assessment thereof was only done by the High Power Committee of BSNL C.O., ND, whereas Circle High Power Committee had allocated net weightage point strictly in accordance with Circular dated 27.06.2007 issued by BSNL CO, ND. (para 33)
- vi. The Hon'ble Court has further observed that "Compassionate appointment has always been considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law, but it is not the case. In any case, appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds..." (para 4.1)
- vii. The Hon'ble High Court, Lucknow while setting aside the Hon'ble Tribunal's order dt 19.07.2019 has concluded that "...the appointment on compassionate ground is not an alternative mode of direct recruitment but it is a speedy remedy to overcome the consequences of untimely death of their breadwinner....."

4. The above order dt.11.05.2023 may be suitably utilised as a reference/citation in consultation with the counsel(s) for defending the court cases on CGA.

This issues with the approval of Competent Authority.
Encl: As above

Yours faithfully,


(M Subha Krishnan)

Asstt. General Manager(Estt-III)

Court No. - 1

Case :- WRIT - A No. - 12936 of 2021

Petitioner :- Chief General Manager Bsnl U.P. East Lucknow And Ors.

Respondent :- Dilip Singh And Anr.

Counsel for Petitioner :- Gyanendra Singh Sikarwar

Counsel for Respondent :- Praveen Kumar, Dr. V.K. Singh, Prashant Vikram Singh

Connected with

Case :- WRIT - A No. - 2613 of 2023

Petitioner :- Arvind Kumar Jaiswar And Another

Respondent :- Dilip Singh And Another

Counsel for Petitioner :- Gyanendra Singh Sikarwar

Counsel for Respondent :- Dr. V.K. Singh, Prashant Vikram Singh

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

- (1) Heard Shri Asit Chaturvedi, Senior Advocate assisted by Shri Gyanendra Singh Sikarwar, learned Counsel for the petitioners and Dr. V.K. Singh, learned Counsel for the respondent no.1- Dilip Singh.
- (2) In Writ-A No. 12936 of 2021, the B.S.N.L. authorities/ petitioners have questioned the correctness of the judgment and order dated 19.07.2019 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as '**Tribunal**'), whereby the Tribunal has allowed the Original Application No. 332/00002/2016 preferred by the respondent no.1 and set-aside the orders dated 10.11.2014 and 19.11.2012, rejecting the claim for compassionate appointment of

respondent no.1, and has also directed the petitioners to grant appointment to the applicant/respondent no.1 in the light of findings/observations made in the said judgment within a period of six weeks. Petitioners have also assailed the judgment and order dated 09.03.2021 passed by the Tribunal, rejecting the Review Application No.332/0002/2020 seeking review of the aforesaid judgment and order dated 19.07.2019, which was rejected by the Tribunal both on the ground of limitation as well as on merits.

- (3) In the Second Writ Petition, namely, Writ-A No. 2613 of 2023, B.S.N.L. authorities/petitioners have questioned the correctness of the judgment and order dated 21.03.2023 passed by the Tribunal in M.A. No. 2652 of 2019 (Execution Application) in Re: O.A. No. 2 of 2016 : *Dilip Singh Vs. Union of India*, whereby the Tribunal has directed to attach the pay of the petitioners (respondent nos. 2 and 3 in aforesaid execution application) until further orders or when compliance is filed, whichever is earlier, or receipt of appropriate order from the Hon'ble High Court.
- (4) Since the above-captioned writ petitions arise out of a common factual matrix and law, both the writ petitions have been clubbed together and are being disposed of by a common judgment.

FACTUAL MATRIX

- (5) Succinctly, the facts of the case are that Shri Jai Narayan Singh, father of respondent no.1, was working as Phone Mechanic in Bharat Sanchar Nigam Limited (hereinafter referred to as 'B.S.N.L.') and while working, he died on 09.09.2007 leaving behind his wife Smt. Kushla Singh, two sons, namely, Dalijeet Singh and Dilip Singh (respondent no.1 herein) and a daughter. Soon thereafter, wife/widow of the deceased employee (mother of respondent no.1) applied for compassionate appointment, however, subsequently, due to ill-health, wife of the deceased employee submitted an application in January, 2010, seeking to consider her son for appointment on compassionate ground in her place, which was eventually rejected by means of order dated 19.11.2012.
- (6) Not being satisfied with the aforesaid order dated 19.11.2012, the respondent no.1-Dilip Singh (son of the deceased employee) submitted a representation on 03.12.2012, seeking reconsideration of his appointment on compassionate ground in the light of the judgment of the Apex Court rendered in the case of **Mukesh Kumar Vs. Union of India and others** : (2007) 8 SCC 398 as well as judgment of the Central Administrative Tribunal, Madras Bench in the matter of E. Dilip, but as no heed was paid, respondent no.1 had approached the Tribunal by filing Original Application No. 173 of 2013.

(7) During pendency of the aforesaid Original Application No. 173 of 2013, the aforesaid representation dated 03.12.2012, submitted by the respondent no.1 for compassionate ground appointment was considered and rejected by the authorities of the B.S.N.L. by means of order dated 10.01.2014. Consequently, the respondent no.1 sought amendment in the aforesaid original application, however, as the amendment so sought for by the respondent no.1 would had changed the nature of the case, hence on the request of respondent no.1, the Tribunal dismissed the aforesaid original application vide order dated 11.12.2015 as withdrawn with liberty to respondent no.1 to file fresh original application. Thereafter, the respondent no.1 preferred Original Application No. 333/00002/2016 before the Tribunal, challenging the aforesaid orders dated 10.01.2014 and 19.11.2012.

(8) Apparently, the Tribunal, after appreciating the submissions of the parties and after going through the record, found that though the order dated 10.02.2014 is reasoned and speaking, however, on examination of the proceeding of the Circle High Power Committee dated 15.03.2011, the Tribunal recorded that the respondent no.1 had obtained 62 marks and was placed at serial no. 21 in the list of the candidates for compassionate appointment, whereas one Archana Srivastava had obtained 61 marks and was placed at serial no. 36, but even then Archana Srivastava, who got lesser marks, was given compassionate

appointment which reflects that the respondent no.1 has been treated differently and was discriminated in the matter of employment. In the backdrop of the aforesaid facts, vide order dated 19.07.2019, the Tribunal allowed the aforesaid original application, set-aside the orders, dated 10.11.2014 and 19.11.2012, and directed the B.S.N.L. authorities/petitioners to offer the order of appointment to the respondent no.1 in the light of the findings within a period of six weeks from the date of receipt of certified copy of the order.

- (9) As the aforesaid order dated 19.07.2019, passed by the Tribunal has not been complied with by the authorities of B.S.N.L., the respondent no.1 has filed Execution Application No. 2652 of 2019 before the Tribunal. In the interregnum, the petitioners/B.S.N.L. authorities also filed Review Application No. 332/00002/2020 before the Tribunal seeking review of the impugned judgment, which was rejected being barred by limitation as well as on merits, by means of order dated 09.03.2021.
- (10) During pendency of the first writ petition being Writ-A No. 12936 of 2021 before this Court, the Tribunal, while appreciating the various orders passed in Execution Application No. 2652 of 2019, recorded that although three years have already elapsed but compliance of the order dated 19.07.2019 has not been made by the authorities of B.S.N.L. and as such, vide order dated 21.03.2023, the Tribunal has directed to attach

the pay of the petitioners (respondents no. 2 and 3 in the execution application), until further orders or when compliance is filed whichever is earlier or receipt of appropriate order from the Hon'ble High Court.

- (11) Aggrieved by the aforesaid order dated 21.03.2023 passed in the Execution Application, the concerned authorities have preferred aforementioned, second writ petition being Writ-A No. 2613 of 2023.

SUBMISSIONS

- (12) Shri Asit Chaturvedi, Senior Advocate, assisted by Shri Gyanendra Singh Sikarwar, learned Counsel representing the petitioners-BSNL authorities has argued that the findings recorded by the Tribunal were based on an incorrect appreciation of law and fact, hence the impugned orders are liable to be set-aside.
- (13) Learned Senior Counsel has invited our attention to Office Memorandum No. 14014/6/94-Estt. (D) dated 09.10.1998 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) and Circular No. 272-18/2005-Pers.IV, dated 27.06.2007 issued by the Corporate Office of B.S.N.L., New Delhi and has strenuously urged that the Corporate Office of B.S.N.L., New Delhi, vide Circular dated 27.06.2007, has decided to continue with the policy guidelines on compassionate appointment issued by

Office Memorandum dated 09.10.1998 and also introduced the weightage point system for assessment of indigent condition as per details given in Annexure-I appended to the circular. He urged that two tier system for assessment for recommendation of the indigent condition of the family by the Circle Office has been formulated by the Corporate Office of B.S.N.L., New Delhi by means of Circular dated 27.06.2007, i.e., (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. The fulcrum of the Submission of the learned Senior Counsel is that in terms of the aforesaid two tier system as well as guidelines as stipulated in Circular dated 27.06.2007, the Circle High Power Committee met on 15.03.2011 for examination of the claim for appointment on compassionate ground of 71 cases including the respondent no.1 and recommended 37 compassionate ground appointment cases including the respondent no.1 with net points equal or more than 55 stand as indigent to Corporate Office B.S.N.L., New Delhi. Thereafter, the Corporate Office High Power Committee of B.S.N.L. had examined the recommendation of the Circle High Power Committee and after due deliberations, the Corporate Office High Power Committee of B.S.N.L. did not find the case of the respondent no.1 to be fit for consideration as juxtaposed to other more deserving and needy

dependent of the deceased employees, hence the claim of the respondent no.1 for appointment on compassionate ground could not be approved by the Corporate Office High Power Committee of B.S.N.L. The decision of the Corporate Office High Power Committee of B.S.N.L. has been communicated to the respondent no.1 by the Circle Office of B.S.N.L., Lucknow vide letter dated 10.01.2014. The learned Senior Counsel has vehemently argued that there is no discrimination being done against the respondent no.1 while considering his claim for compassionate appointment, therefore, the findings recorded by the Tribunal, while allowing the original application, have no substance and are liable to be set-aside.

- (14) Placing reliance upon the judgments of the Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana and others** : (1994) 4 SCC 138, **Bhawani Prasad Sonkar Vs. Union of India and others** : (2011) 4 SCC 209, **State of Himachal Pradesh and another Vs. Shashi Kumar** : (2019) 3 SCC 653 and **the State of West Bengal Vs. Debabrata Tiwari and others etc. etc.** : 2013 LiveLaw (SC) 175, learned Senior Counsel representing the petitioners has vehemently argued that the object underlying a provision for grant of compassionate appointment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner, which has left the family in penury and without any means of livelihood. As such, in order to determine as to

whether the family is in financial crisis or not, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits, if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source. He argued that the Corporate Office of B.S.N.L., New Delhi, while assessing the suitability of the respondent no.1 on receipt of the recommendation of the Circle Office High Power Committee in terms of the Circular dated 27.06.2007, has examined all relevant aspects including income of the family, its liabilities, the terminal benefits, if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source and after assessing it, the Corporate Office of B.S.N.L., New Delhi did not find the respondent no.1 fit for appointment on compassionate ground. Thus, the Tribunal has erred in allowing the original application by means of the impugned order dated 19.07.2019.

- (15) Learned Senior Counsel representing the petitioners has next argued that the Apex Court in **Life Insurance Corporation of India vs. Mrs Asha Ramchandra Ambekar and others** : JT 1994 (2) S.C. 183 has held that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment. Thus, the direction of the Tribunal, by means of the impugned order to

the petitioners to offer appointment on compassionate ground to the respondent no.1, is contrary to the dictum of the Apex Court in **Mrs Asha Ramchandra Ambekar (supra)**.

- (16) So far as the attachment of the pay of the petitioners in Writ-C No. 2613 of 2023 is concerned, Shri Asit Kumar Chaturvedi, learned Senior Advocate representing the petitioners has argued that the Tribunal has no power to attach the pay of the petitioners in Execution Application No. 2652 of 2019 under the provisions of the Administrative Tribunal Act, 1985, Central Administrative Tribunal (Procedure) Rules, 1987 and Central Administrative Tribunal Rules of Practice, 1993. He argued that the powers under Section 17 of the Administrative Tribunal Act, 1985 read with the Central Administrative Tribunal (Procedure) Rules, 1987 and Contempt of Court Rules, 1992 are not applicable in Execution Application No. 2652 of 2019. More so, the petitioner no.1-Arvind Kumar Jayaswar is working as Assistant General Manager (Administration) in the office of Principal General Manager, B.S.N.L w.e.f. 01.02.2020 till date and petitioner no.2-Anuj Katiyar is working as Assistant General Manager (Recruitment) in the office Chief General Manager, B.S.N.L., U.P. (East) Telecom Circle, Lucknow w.e.f. 01.07.2021 till date and since both have been appointed much after the passing of the impugned order, they cannot be held liable for non-compliance. Further, the Ld. Sr. Counsel has submitted that since both the petitioners have only

communicated the decision of the Corporate Office of B.S.N.L., New Delhi to the respondent no.1 and the petitioners have no authority to comply the order dated 19.07.2019 as the competent authority is the Corporate Office of B.S.N.L., New Delhi but the respondent no.1 has neither made him party in original application nor in execution application. Thus, the direction to attach the pay of the petitioners vide impugned order 21.03.2023 is arbitrary and a case of mistaken identity and is liable to be set-aside.

- (17) *Per contra*, Dr. V.K. Singh, learned Counsel for the respondent no.1 has vehemently opposed the arguments of the learned Senior Counsel representing the petitioners and while supporting the impugned orders passed by the Tribunal, he argued that the act of the B.S.N.L. authorities/petitioners cannot be justified in any manner as it is arbitrary, discriminatory and also against the legitimate expectation of the respondent no.1 because the B.S.N.L. authorities/petitioners cannot be allowed to carve out any exception contrary to the statutory provision or the relevant guidelines issued by the B.S.N.L. authorities/petitioners themselves relating to compassionate appointment. He argued that as per the provisions of guidelines, all widow applicants were to be given weightage of 15 marks and although, the last candidate Smt. Archana Srivastava had been given the said weightage marks, still she had been able to secure only 61 marks and was, as such, placed below the

respondent no.1, who had got 62 marks, she was given the appointment on compassionate ground by rejecting the claim of the respondent no.1. Thus, placing the candidate having obtained lower marks over and above the candidate who obtained higher marks is contrary to their own guidelines and hence it cannot be justified in any manner.

- (18) Learned Counsel for the respondent no.1, thus, argued that the petitioners kept on prolonging the matter so as to delay the matter from finalization on one or the other reason for which respondent no.1 cannot be held responsible. More so, the case of the respondent no.1 is based on arbitrariness and discrimination by which the respondent no.1 has been put to disadvantage against legitimate expectations. He further argued that the family of the respondent no.1 has still not recovered from the sudden demise of deceased employee and the payment, which the mother of the respondent no.1 receives as widow of the deceased employee, is not sufficient to cater to the needs of the family which has altogether five dependents on the meagre monthly pension of the mother. Thus, the impugned orders passed by the Tribunal are just and proper and does not warrant any interference by this Court in the writ petitions.

ANALYSIS

- (19) We have given anxious consideration to the rival submissions made by learned Counsel for the respective parties and have

examined the record available before this Court on the above-captioned writ petitions with reference to the law applicable.

- (20) Before proceeding further, it would be worthwhile to take note of the relevant law, particularly the law dealing with the right of legal heirs of the deceased employee seeking compassionate appointment.
- (21) It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution of the India. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. It should be well understood that an appointment made on compassionate grounds is not another source of recruitment but merely an exception to the aforesaid requirement process taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Appointment on compassionate grounds is not a vested right and has to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

- (22) In the case of **Umesh Kumar Nagpal vs State Of Haryana**, reported in 1994 SCC (4) 138, the Apex Court has held as under:-

“6. The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

- (23) Similarly, in the case of **General Manager, State Bank of India & 3 Ors. Vs. Anju Jain**, reported in (2008) 8 SCC 475, the Apex Court has held that compassionate appointment is a concession and not a right. In case of **Steel Authority of India Ltd. Vs. Madhusudan Das & Ors.** :(2008) 15 SCC 560 has held that the compassionate appointment should be given as per policy of the State and the policy should be realistic, reasonable, fair and in consistence with the constitutional provisions.

- (24) In the case of **Union of India Vs. Shashank Goswami** reported in (2012) 11 SCC 307, the Apex Court has observed as under :-

“ There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim

cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

- (25) In **State of Himachal Pradesh & Anr. vs. Shashi Kumar** : reported in (2019) 3 SCC 653, the Apex Court, while analyzing the earlier decisions governing the principles of compassionate appointment, has held that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.
- (26) In the case of **Central Coalfields Limited through its Chairman and Managing Director and Ors. Vs. Parden**

Oraon reported in AIR 2021 SC 1876, while referring to its earlier decision in the case of **Umesh Kumar Nagpur (supra)**, the Apex Court has held the same view that compassionate appointment is not a vested right which can be exercised at any time in the future.

(27) Recently, the Apex Court, in **State of West Bengal Vs. Debabrata Tiwari and others (supra)**, while considering the purpose of compassionate appointment, held that it is to provide immediate relief to the family of a deceased employee who is the sole bread winner. It is an exception to the regular procedure of recruitment and should only be used to achieve the stated objective. Compassionate appointments are not a vested right and cannot be claimed or offered after a lapse of time or after the crisis is over. The financial condition of the family at the time of the employee's death is the primary consideration. If there is a prolonged delay in considering an application for compassionate appointment, or the financial circumstances of the family have improved since the employee's death, then the claim may not be entertained.

(28) In light of the foregoing discussion on the issue of compassionate appointment and in order to appreciate the nature of the controversy, it would be necessary to advert to the genesis of the policy of the B.S.N.L. on compassionate ground appointment. Vide Circular No.272-18/2005-Pers.IV, dated

27.06.2007, the petitioners/B.S.N.L. had decided to continue with the policy guidelines on compassionate ground appointment issued by the Department of Personnel and Training, Government of India, vide Office Memorandum No. 14014/6/94-Estt (D) dated 09.10.1998, however, weightage point system as per details given in Annexure-I appended to the aforesaid Circular dated 27.06.2007 was introduced.

(29) For convenience, Circular dated 27.06.2007 is reproduced as under :-

"No.273-18/2005-pers-VI 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-1) 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 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) 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-face 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 filing up of details a prescribed proforma i.e. Profoma 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 fill up the Proforma Part B as per the existing practice.

(II) The SSA/Unit concerned will scrutinise 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, along with 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, along with 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 any appeal case, net points come to 55 or more, the complete case along with 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.

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 waitlisting and offering of compassionate ground appointment under 5% CGA quota shall remain the same as prescribed vide letter No. 268-101/2002-Pers.IV dated 1.10.2002.

(P.S.Venkatraman)
Asstt. Director General (Pers. IV)
TT: 2373 4152”

- (30) On perusal of the aforesaid Circular dated 27.06.2007, what we find is that two tier criteria for assessment has been made for recommendation of the indigent condition of the family by the Circle High Power Committee viz. (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. In the aforesaid Circular dated 27.06.2007, complete mechanism for processing the cases of compassionate appointment has been made keeping in view the provisions of weightage point system.
- (31) In the instant case, as per the recommendation of the Circle High Power Committee dated 15.03.2011, 34 cases were informed about their rejection, whereas remaining 37 cases including the case of the respondent no.1, who all were allocated the net weightage point 55 or more, were sent to B.S.N.L. Corporate Office, New Delhi through letter dated 09.05.2011 for consideration. Out of 37 cases, three cases, namely, Rajesh Kumar Kashyap, Shri Vishnu Nand and Ms. Upasana Pandey, who were placed at serial nos. 11, 16 and 1, respectively, in the recommended list of B.S.N.L. Circle Office, were considered and after due consideration, their cases were rejected by the B.S.N.L. High Power Committee of Corporate Office and decision was also communicated to the aforesaid

three persons vide letters dated 07.07.2011, 24.07.2012 and 16.07.2012, respectively. However, remaining 34 cases out of 37 cases after the aforesaid letters dated 07.07.2011, 24.07.2012 and 16.07.2012, were considered on 10.09.2012 and 14.09.2012 by the High Power Committee of B.S.N.L., Corporate Office, New Delhi, who made recommendation dated 24.09.2012 and the same was duly accepted by the competent authority. The decision of the competent authority in terms of the recommendation dated 24.09.2012 was communicated through two letters dated 10.10.2012 to the B.S.N.L. Circle Office, who, thereafter, informed the respondent no.1 through letter dated 19.11.2012 that his case for compassionate appointment was rejected.

- (32) As stated hereinabove, aggrieved by the aforesaid letter dated 19.11.2012, the respondent no.1 preferred Original Application No. 173 of 2013, wherein an interim order dated 24.04.2013 was passed by the Tribunal. In compliance of the order dated 24.04.2013, the High Power Committee of B.S.N.L, Corporate Office, New Delhi again considered the claim of the respondent no.1 in its meeting dated 06.12.2013 and made its recommendation, which was duly accepted by the competent authority. The said decision of the High Power Committee of B.S.N.L, Corporate Office, New Delhi, was communicated to the Circle Office through letter dated 16.12.2013, which was

subsequently communicated to the respondent no. 1 through letter dated 10.01.2014.

- (33) It is evident from perusal of the Circle High Power Committee recommendation dated 15.03.2011 read with recommendation of the High Power Committee of B.S.N.L., Corporate Office, New Delhi dated 24.09.2012 that 'indigent' condition of the family of the deceased employee and the uniform assessment thereof was only done by the High Power Committee of B.S.N.L., Corporate Office, New Delhi, whereas Circle High Power Committee had allocated net weightage point strictly in accordance with Circular dated 27.06.2007 issued by the B.S.N.L., Corporate Office, New Delhi.
- (34) Tested on the touchstone of these broad guidelines governing appointment on compassionate ground, we are of the opinion that net weightage point of 55 and above allocated by the Circle High Power Committee is only for the purpose of *prima facie* treating as eligible for consideration for compassionate appointment and it has no relevancy thereafter. The said weightage system was apparently meant to bring the respondent and other similarly placed applicants, who have scored more than 55 marks within the first tier of consideration zone and does not create any vested right to be considered for appointment on compassionate grounds as the significance of the said score loose its significance at the time of second tier of consideration.

- (35) From perusal of the impugned order dated 19.07.2019 passed by the Tribunal, what we find is that the Tribunal has allowed the original application preferred by the respondent no.1 *inter alia* on the grounds that though respondent no.1 got higher weightage marks than one Smt. Archana Srivastava, but the respondent no.1 has been discriminated in not granting compassionate appointment to him inspite of higher marks. It is manifest from the Circular dated 27.06.2007 that net weightage point of 55 and above allocated by the Circle High Power Committee is only for the purpose of *prima facie* treating as eligible for consideration for compassionate appointment and it has no relevancy thereafter. In this view of the matter, the Circle Office, after due consideration of the claim of the respondent no.1, is, undoubtedly, gave weightage marks 62 to him, which only means that he comes within the zone of consideration for appointment on compassionate ground in terms of Circular dated 27.06.2007 and no right on that basis accrued to the respondent no.1 to claim his appointment as a matter of right because his suitability along with other recommended candidate had yet to be assessed by the Corporate Office of B.S.N.L. uniformly by considering all pros and cons of the financial condition of the deceased family.
- (36) It is true that a rule of interpretation, which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the B.S.N.L. management, in the

case in hand, has introduced the scheme for compassionate appointment by means of Circular dated 27.06.2007, which provides for all applications to be decided under the scheme contemplated vide Circular dated 27.06.2007. Therefore, we are of the considered view that the interpretation as to the applicability of a scheme should depend only upon a determinate and fixed criterion.

- (37) Coming to the case in hand, the decision of the Corporate Office of B.S.N.L., which has been affirmed by the competent authority, is final and not the recommendation of the Circle Office of B.S.N.L. as the role of Circle Office of B.S.N.L. has only limited scope inasmuch as Circle Office has to only calculate the weightage point on considering the material available with it in terms of the Annexure No.1 appended to Circular dated 27.06.2007 and after calculating it, the name of candidates, who secured 55 and above marks, is forwarded to Corporate Office, B.S.N.L., New Delhi and the Corporate Office, New Delhi is not bound to accept the assessment of the Circle Office, B.S.N.L., Lucknow.
- (38) Further, there is another aspect of the matter. Apparently it is available on record that the father of the respondent died on 09.09.2007 and the application was made by him in December, 2010, which came to be rejected on 24.09.2012 and eventually the Tribunal granted appointment to the respondent vide the impugned order in 19.07.2019. It is well established principle

of law that the delay defeats equity. Furthermore, the appointment on compassionate ground is for helping the dependents of the deceased employee, so that they can face the financial crisis which may have occurred on account of loss of sole bread-winner. Appointment of compassionate ground is not an alternative mode of regular source of employment. If family of a deceased employee can survive for a longer period, then it cannot be said that there was any immediate need for providing appointment on compassionate ground by by-passing the regular mode of appointment.

- (39) In the present case in hand, the death of the father of the respondent is reported to be in the year 2007 and the Tribunal has offered to give appointment on compassionate ground in the year 2019, which is after twelve long years. Infact, it is a matter of record that the application seeking appointment on compassionate ground was made by the respondent in about three years' time, which is a long period of time. This court cannot be oblivious to the proposition of law which has been holding the ground and been authoritatively summarized in the case of **State of J&K and others Vs. Sajad Ahmed Mir** reported in (2006) 5 SCC 766, wherein Hon'ble Supreme Court has held as hereinunder: -

"11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the

general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

12. *In State of Haryana and Ors. v. Rani Devi and Anr. (1996)5SCC 308, it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.*
13. *In Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr., (1994) 2 SCC 718 it was indicated that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.*
14. *In Umesh Kumar Nagpal v. State of Haryana and Ors. (1994)4 SCC 138, it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee*

while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependent of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and 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 expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

15. *In Smt. Sushma Gosain and Ors. v. Union of India and Ors (1989 4 SCC 468). it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.*
16. *Recently, in Commissioner of Public Instructions and Ors. v. K.R. Vishwanath (2005) 7 SCC 206, one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated.*
17. *In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge*

was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal.”

(40) Recently, the Apex Court in the case of **Steel Authority of India Ltd. Vs. Gouri Devi** : AIR 2022 SC 783 has held that once it is proved that in spite of the death of the bread winner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution of India.

(41) In the light of the foregoing discussion, it is noted that compassionate appointment has always been considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law, but it is not the case. In any case, appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to

have a vested right for appointment on compassionate grounds. Thus, we are of the opinion that the Tribunal has failed to consider the aforesaid aspects of the matter which vitiates the impugned order dated 19.07.2019 passed by the Tribunal.

CONCLUSION

(42) For the aforesaid reasons and since the law stands settled that appointment on compassionate ground is not an alternative mode of direct recruitment but it is a speedy remedy to overcome the consequences of untimely death of their breadwinner, this Court is of the considered opinion that the impugned orders, dated 19.07.2019 and 21.03.2023, passed by the Tribunal cannot be sustained in the eyes of law and as such are hereby set-aside.

(43) As a sequel to the above, both the Writ Petitions filed by petitioners/BSNL authorities are **allowed**. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Om Prakash Shukla, J.) (Devendra Kumar Upadhyaya, J.)

Order Date :- 11th May, 2023

Ajit/-