



**Bharat Sanchar Nigam Limited**  
[A Government of India Enterprises]  
**Corporate Office**  
**5<sup>th</sup> floor, Bharat Sanchar Bhawan, Janpath, NEW DELHI-110001.**  
**[Personnel – IV Section]**

Dated 16/11/2010

To,

**All Head of Circles**  
Bharat Sanchar Nigam Limited.

**Sub:** Challenging Court Judgments/ Defending Court cases, in case of Compassionate Ground Appointments (CGA), based on weightage point system, where the claims for CGA is made. on the basis of death occurrence/ Medically invalidation during the currency of old scheme.

Sir,

I am directed to enclose herewith CAT Ahmedabad Judgment in OA No. 377/2008 dated 28/08/2009 in which CAT Ahmedabad bench (Copy enclosed) has upheld/observed that the weightage point system is a perfect system for determining the viability/indigency of a family, for Compassionate Appointment, and at the same time it also eliminate the element of corruption & nepotism which were the base of challenge in the Court of Law by the non selected CGA applicants claiming appointment.

In the light of the above CAT Ahmedabad Judgment, it is therefore enjoined upon all to challenge/defend/argue the court judgments/cases which revolve around old scheme for Compassionate Ground Appointments, in which death/ medical invalidation occurred before the implementation of the new scheme.

**Encl:** As above.

Your's sincerely

*A.K. Singh*

16-11-10  
**(A.K. Singh)**

AGM (P-IV)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

OAI377/2008

CORAM :

DATE : 28 /08 /2009

HON'BLE MR. SHANKAR PRASAD : MEMBER(A)  
HON'BLE DR. K. B. SURESH : MEMBER(J)

Himmatbhai Chimanbhai Patel,  
Merol, Taluka Godhra.  
Dist - Panchmahals.  
Pin code - 389120.

.....APPLICANT

ADVOCATE : MR. R. O. GIDIYA

v/s

1. BSNL through  
General Manager,  
BSNL, Telephone Ddpt.  
C. G. Road, Ahmedabad-380006.
2. Divisional Engineer (Admn.)  
Through General Manager,  
BSNL, Godhra-389001.

.....RESPONDENTS

ADVOCATE : MR. N. V. DIXIT

ORDER

PER HON'BLE DR. K. B. SURESH, MEMBER(J)

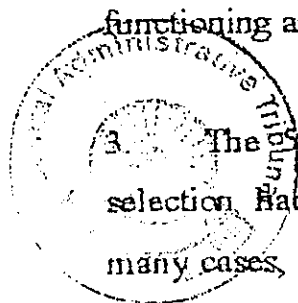
The applicant claims that his father, who was a Govt. servant who retired on medical grounds on 23.4.2005 and he applied for appointment on compassionate ground on 25.07.2005 but the respondents vide its order dated 23.06.2008 had



rejected his contention on the ground that he secured only 49 points out of the minimum required marks of 55 and therefore would not be within the test of indigence and therefore was unable to be considered for compassionate appointment. The applicant had thereafter filed an appeal, which was also rejected by the respondents vide their letter dated 19.08.2008. The applicant is challenging both these orders before this Tribunal.

2. How can compassion be dispassionately viewed and answered thereto, is the crux of the matter here. A servant serving the Government suddenly departs this world leaving behind his family destitute and what should be the point of focus in which the government should view, this issue of destitution, can be said to be the point of contention. But at the same time, it is to be remembered that government employment must also be given out in conformity with rules of selection warranted by Article 14, 15 and 16 of the Constitution of India. In order to survive the mandate of Constitutional validity, rules for compassionate appointment must contain within it, such objective measurement of points in order to ensure that Constitutional validity stated above, is kept in tact. In other words, appointment available in general pool diverted out of aid discriminatorily granted to dependent of employees, who died in harness, even though those employees can be considered as a class giving into the Constitutional differentiation, it will, however, have to satisfy the test of reasonableness and non arbitrariness in its functioning and contents.

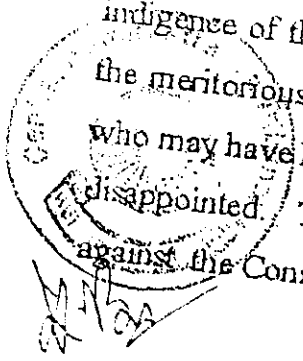
3. The 5% reservation under compassionate appointment and modality of selection had given rise of complaint galore and following judicial discussions in many cases, the Government was compelled to make qualitative changes to the already existed rules and regulations. It just relates to bring in objective changes in the scenario so that allegation of nepotism and non application of mind by



*WMA*

concerned officials can be brought down to the minimum. Therefore the Govt. of India, in exercise of its powers modulated and modified the extant rules to bring it into conformity to the theories of objectivity as much as possible and thus arose a weightage point system which appears to be prime facie just and non-arbitrary and also has the advantage of qualitative assessing each person in accordance with the weightage system.

4. The applicant is not challenging the validity of the weightage system as such, but he alleges that this is a new scheme and since his cause arose for consideration prior to this alleged new system came into being, he is entitled for consideration of the same in terms of the earlier existing system. This challenge is to be viewed in twin parameters. The compassionate appointment as a discriminative process whereby a person not going through the normal selective process is being granted Govt. employment. Even though it is granted as a temporary alleviation of destitution, it emerges out as a permanent employment granted to persons who are not meritorious and in discrimination to others. Viewing in this angle, the complaint of the applicant may have little force because as a recipient of discriminatory process, they have fewer grounds of complaint. In addition, the present scheme only brings a qualitative change in the weightage system which is objective and a more appropriate assessment. It takes away arbitrary power of concerned official. It brings in a yardstick for measurement of indigency. In short, it is merely a continuation of the earlier process. The only difference is that a new weightage system is to make it more objective. Had indigence of the applicant be able to be tested under a non discriminative policy, the meritorious many, would still get employment while the non meritorious and who may have have to be dependent on favours from concerned authority, may be disappointed. Thus it can be seen that the views canvassed by the applicant is against the Constitutional provisions of Article 14, 15 and 16. Thus they are not



valid in the eye of law.

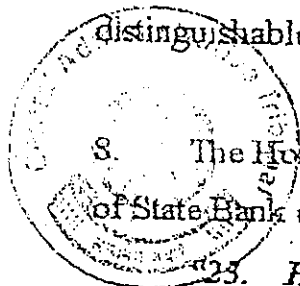
5. The learned counsel for the respondents has placed reliance on the decisions of Apex Court in *Abhishek Kumar vs. State of Haryana and Ors.*, 2006 (13) Scale 658; *State Bank of India & Ors. vs. Jaspal Kaur* and the decision of Hon'ble High Court in *SCA 7044/09 G.D.Dharajiya vs. State of Gujarat & 2 others*.

6. The father of the applicant in *Abhishek Kumar (supra)* died on 10.2.2001 while in office. An application for compassionate appointment had been submitted promptly. The request for compassionate appointment was turned down both in Yamuna Nagar District, where the deceased father was working or in Karnal, where he an applicant had been sought for. The Haryana Govt. modified the rules in 2003. The Writ Petition was dismissed on the basis of the new rule. The case of the appellant before the Apex Court was that he was required to be considered in terms of the rules which were in existence in 2001 and in terms of the Statewise list prepared under those rules, the applicant was entitled to appointment in Karnal. The Apex Court allowed the Civil Appeal.

7. The above narrated facts indicate that there was a change in the scheme itself from State-wise list to district-wise list and hence, the Apex Court had directed consideration as per the old scheme. The decision is clearly distinguishable.

8. The Hon'ble Supreme Court of India in 2007(2) SCC (L&S) 578 in the case of *State Bank of India and others v/s Jaspal Kaur* has in para-23 held as under :

23. Hence a major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments can not be made. In the present case the



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financial condition of the respondent's family is not one of destitution, the appellants have already paid a sum of Rs. 4,57,607 as terminal benefits (after deducting Rs. 19,183 towards liabilities); a sum of Rs. 2055 p.m. was being paid towards family pension and monthly income under Staff Mutual Welfare Scheme and in addition the total monthly income of the family comes to Rs. 5855 (monthly pension of Rs. 2055 + 3800 p.m. a notional interest on the investment of Rs. 4,57,607). The competent fact-finding authority on the basis of the above, financial details had arrived at the conclusion that the financial condition of the family is not penurious and that the family earns sufficient income to maintain themselves. Hence appointment on compassionate ground was not granted to the respondent. We, however do not feel the necessity to interfere with this order of the Bank Authority on the fact situation of this case."

9. The decision in State Bank of India (supra) is on the subject that compassionate appointment cannot be claimed by way of right. The same has no relevance to the issue raised in the present OA.

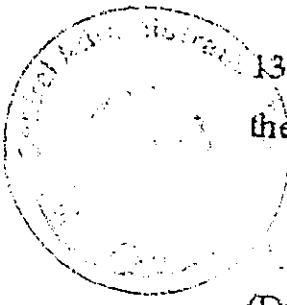
10. The father of the applicant in SCA 7044 of 2009 G.D. Dharajiya (supra) had died while in service on 07.03.06. The Govt. policy at the relevant point of time provided that the income criteria was not required to be considered and compassionate appointment was to be made irrespective of income/financial position of the applicant/heir of the deceased employee. The case of the applicant was rejected in terms of new policy. It provided that the family pension and other retirement benefits can be taken into account. The facts in this case are clearly distinguishable.

11. Therefore, going by above proposition which now stands finally established we do not think that it would be appropriate to interfere in the matter especially since the weight age system has proven itself to be valid and will eliminate the element of corruption and nepotism; which were the base of challenge in the Court of law by the non selected persons claiming appointment

on compassionate ground.

12. We also find that there is no challenge to the marks assigned by the respondents in terms of this exercise.

13. In view of what has been discussed above, there is no merit in the O.A. and the same deserves to be dismissed. It is dismissed. No costs.



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*Signature*  
(Dr. B. Suresh)  
Member(J)

*Handwritten signature*  
(Shankar Prasad)  
Member(A)

cmj/

Prepared by *VRB*  
*02/09/09*  
Compared by  
TRUE COPY

*Handwritten signature*  
Section Officer (J)  
Central Administrative Tribunal  
Ahmedabad Bench