

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 366 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sri Anjan Kumar Das, Aged about 28 years, S/o-Prafulla Kumar Das Vill-Gothina, PO/PS-Baragol, Dist-Jagatsinghpur.

.....Applicant

-Versus-

1. Chairman and Managing Director, Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, Dist-Sundergarh.
2. The Chief Executive Officer, Rourkela Steel Plant(SAIL) Rourkela, Dist-Sundergarh.
3. Head of Human Resources, Rourkela Steel Plant(SAIL) Rourkela, Dist-Sundergarh.

.....Respondents

For the Applicant : Mr. N. K. Mishra

For the Respondents: Mr. G. K. Mishra

Heard & reserved on: 03.01.2020

Order on: 15.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The Original Application (in short OA) has been filed by the applicant paying for the following reliefs:-

- "i) Admit the Original Application and issue notice to the respondents.*
- ii) To direct the Respondents to produce the Original files containing medical reports and action taken so far;*
- iii) After hearing the parties, allow the Original Application by quashing Annexure-A/4 & A/6 as being illegal and erroneous;*
- iv) To direct the respondent-authorities to consider the applicant's case expeditiously for reinstatement as well as consequential service benefits.*
- v) To pass any other/ orders as may be deemed fit and proper in this case. "*

2. Facts in brief are that the applicant's father was a regular employee under the Respondents, while he sought for premature of retirement on medical ground. This request was accepted by the respondents on 01.02.2014 and he was discharged from company service vide order dated 05.02.2014(Annexure-A/2 of the OA). Thereafter, the applicant applied for appointment on compassionate grounds and he was selected for the post of Executive Assistant(Trainee) vide letter dated 26.09.2014(Annexure-A/3) and it was subject to his medical examination. The applicant was directed to undergo a medical test on 11.10.2014. Thereafter, he was informed that after his medical examination, he had been found to be medically unfit for the post of Executive Assistant(Trainee) since he was stated to have the disease "Diabetes

Mellitus” vide order dated 29.12.2014. The offer of applicant’s appointment vide order dated 26.09.2014(Annexure-A/4) was withdrawn. The applicant averred that he repeatedly approached the authorities for reconsideration with representation for a fresh medical test duly supported by medical examination reports of SCB Medical College and Hospital, Cuttack. Copy of the representation with all medical papers are furnished by the applicant at (Annexure-A/5 of the OA). The same was finally rejected by the respondents vide order dated 31.03.2017(Annexure-A/6), which is challenged in this OA along with the order dated 29.12.2014(Annexure-A/4) by which his appointment order as Executive Assistant(Trainee) was withdrawn.

3. It is stated by the applicant that as per the circular dated 01.01.1996 and 30.08.2011(Annexure-A/7 series), rejections of the claim by the respondents is not sustainable and that his family was distressed after medical invalidation of his father and his claim was justified as per the terms of settlement of the respondents with the National Joint Committee for Steel Industries. It is further stated that the as per the Personnel Policy Circular No. 1007 of the respondents, a person is ineligible for compassionate appointment for the diseases listed in Annexure-A in which Diabetes Mellitus does not figure. It is also stated that in absence of any history of a number of such symptoms, only one blood test cannot indicate the disease Diabetes Mellitus, unless it is followed by the subsequent blood tests associated with adverse physical conditions. He, therefore, he submitted that declaring him to be ineligible for the post of Executive Assistant(Trainee) under the ground of disease of Diabetes and Mellitus is unjust and unreasonable since this disease cannot be a ground for being declared as medically unfit unless it is associated with other adverse health conditions and physical incapacities. It is also stated that the appointment order issued to the applicant was withdrawn unilaterally without giving any opportunity for hearing to the applicant or show cause notice before issue of the letter. It is the claim in the OA that the applicant’s family continues to be distressed.

4. The OA has been filed by the applicant with MA No. 216/18 praying for condonation of delay in filing the OA.

5. Counter has been filed by the respondents in which it is stated that the case of the father of the applicant was duly examined medically and was found to be medically unfit. Thereafter, the father of the applicant was discharged from the company service by virtue of the order dated 05.02.2014. Offer of the appointment was also issued to the applicant for the post of Executive Assistant(Trainee) on compassionate ground. But during medical examination of the applicant, it was found that he was suffering from Diabetes Mellitus. After communication of the rejection of his application dated 29.12.14 for appointment on compassionate ground, the applicant submitted an appeal dated 07.10.2016(Annexure-R/1) enclosing copy of the report of the SCB Medical College and Hospital, Cuttack. It is further stated in the counter that

as per the regulation for medical examination of candidates for appointment in SAIL, re-medical examination can be considered provided such a request is made within 21 days of the date being declared medically unfit. It is stated that the respondents being a public sector unit as to act as rules and procedure and norms. It is further submitted by the respondents in their counter that the cause of action arose in 2014 when the applicant's candidature was rejected. But the appeal was filed in the year 2016 and the OA is filed after a long gap of time. The judgments cited by respondents are in the case of P.S Sadasivaswamy Vs. State of T.N. AIR 1974 SC 2271, in the case of LIC India Vs. A.R Ambedkar, reported in (1994)2 SCC-718 and SAIL Vrs. Madhusudan Das and Others, reported in JT 2008(12) SC 642 in support of their contentions. It is, therefore, stated that the claim of the applicant for compassionate appointment will not be sustainable in law and that issue of compassionate appointment is an exception to the general rules of recruitment and no rights accrued to the applicant, which can be enforced in the present OA.

6. No rejoinder has been filed by the applicant for the counter.

7. Heard learned counsel for the applicant and the respondents and considered the pleadings on record. The respondents have objected to the OA on the ground of delay and the medical condition of the applicant. The case of the applicant is that his candidature should not have been rejected on the ground of the illness Diabetes Mellitus and his case deserves reconsideration in view of the fresh medical report of SCB Medical College and Hospital. The respondents' case is that as per the rules, the applicant should have applied for medical re-examination within 21 days from the date of communication of his medical examination result.

8. Regarding the question of delay in filing the OA, it is seen that the applicant has submitted an application dated 07.10.2016 to the respondents, requesting re-medical examination as stated in the order dated 31.03.2017(Annexure-A/6). The said application dated 07.10.2016 was rejected vide order dated 31.03.2017(Annexure-A/6) rejecting the request of the applicant for re-medical examination as per the rules of the company. The order dated 31.03.2017 was issued by the respondents in absence of any direction of the Tribunal or any of the Court and no ground of delay has been mentioned in the said order. Hence, the said order gives rise to a fresh cause of action. Since the applicant submitted representations at Annexure-A/5 series after order dated 31.03.2017, which are not specifically denied in the counter, the applicant will get one year and 6 months from 31.03.2017 to file the OA. Hence, the ground that the OA is hit by limitation or delay is not tenable.

9. Respondents have referred to the judgment in the case of the P. Sadasivaswamy(supra), in which the dispute which was raised after a lapse of

14 years related to promotion of junior, for which the appeal was dismissed. In the case of A.R. Ambedkar(supra), Hon'ble High Court directed appointment on compassionate ground, which was set aside by Hon'ble Apex Court as the rejection of the case was as per the prevalent scheme. In the case of Madhusudan Das(Supra), the dispute was whether death occurred on account of death due to accident arising out of and in course of employment to enable consideration of the case for compassionate appointment as per the rules prevalent at that time. It is clear that in all these cases referred in the counter, the facts are different from the facts of the present OA. Hence, the cited judgment will not be helpful for the respondents.

10. In the circumstances, the grounds mentioned in MA No.216/2018 with prayer for condoning the delay are found to be satisfactory and hence, the MA No. 216/18 is allowed condoning the delay, if any, in filing the OA.

11. Another ground of the respondents is that the applicant failed to approach the authorities for re-medical examination within the time stipulated in the rules. It is seen that the order dated 29.12.2014(Annexure-A/4) by which the applicant was informed that he was found medically unfit due to Diabetes Mellitus, did not inform the applicant that as per the rules, he can move for re-medical examination within any specific time limit. Hence, the applicant cannot be faulted for not applying for re-medical examination within the time stipulated under the rules after communication of order dated 29.12.2014(Annexure-A/4). Further, as stated in the OA, copy of his medical examination report by which he was found having Diabetes Mellitus, was not communicated to the applicant.

12. In view of the above discussions, the OA is allowed by quashing the impugned order dated 31.03.2017(Annexure-A/6) and directing the respondents to allow the applicant's request for re-medical examination of the applicant as per the rules. If the applicant is found medically fit after his re-medical examination as above, then the applicant's case for compassionate appointment as Executive Assistant(Trainee) or in any other suitable post is to be considered by the respondents as per provisions of law and decision in this regard is to be communicated by the respondents/competent authority to the applicant within three months from the date of receipt of a copy of this order. There will be no order as to cost.

(Gokul Chandra Pati)
Member(Admn.)