

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 12 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Smt. Begum Bibi, aged about 46 years W/o late Asgar Ali.
2. Sk. Afjal Ali, aged about 28 years, Son of late Asgar Ali.

Both are residents of Qrs No. H/522 Sector-5 Rourkela, District-Sundargarh.

.....Applicant.

VERSUS

1. Steel Authority of India Ltd. represented through its Managing Director, Rourkela Steel Plant, At/P.O. -Rourkela, District-Sundargarh.
2. Deputy General Manager, CRM(E), Steel Authority of India, Rourkela Steel plant, District Sundargarh.
3. Assistant General Manager, CRM(E), Steel Authority of India, Rourkela Steel Plant, At/P.O. Rourkela, District-Sundargarh.

.....Opposite Parties.

For the applicant : Mr. S. Mohanty, Counsel

For the respondents: Mr. N.K. Sahu, Counsel

Heard & reserved on : 16.03.2020

Order on : 13.05.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant had filed the W.P. (C) No. 9289/2005 before Hon'ble High Court challenging the orders of the respondents at Annexure 4 and 6 of the TA rejecting the request of the applicant no. 1 that her appeals dated 27.2.2003 and dated 17.6.2003 respectively to provide employment of her son (applicant no.2) on compassionate ground were rejected. Vide order dated 11.7.2014, the said writ petition was transferred to this Tribunal and it was registered as Transfer Application (in short TA) No. 12 of 2014.

2. Late husband of the applicant no.1 was working as a Technician under the unit of the Steel Authority of India Limited (in short SAIL) at Rourkela. It is stated in the TA that while attending the duty on 27.1.2003 in B-shift, he felt uneasy and left for his home at around 7.30 pm on a bi-cycle. While returning home, he met with a road accident injuring him severely and he was admitted to Ispat General Hospital (in short IGH). He died on 5.2.2003 while undergoing

the treatment in IGH and his death certificate is at Annexure-2. Since the husband of the applicant no. 1 was the only earning member of the family, she moved a representation dated 27.2.2003 (Annexure-3) for employment to her elder son (applicant no. 2) on compassionate ground. Vide order dated 5.5.2003 (Annexure-4) the respondents informed that the request for employment was not accepted. Another representation filed was also rejected vide order dated 30.7.2003 (Annexure-6). Both these orders have been impugned in this TA.

3. The grounds mentioned in the TA are that no reason has been furnished as to why the representation was rejected and the circular dated 22.9.1982 of SAIL, the applicant no. 2 is entitled for compassionate appointment as requested. It is also averred that the family is facing serious problem on account of the death of the husband of the applicant no. 1. It is urged in the TA that the impugned orders are bad in law.

4. Counter has been filed by the respondents stating that as per the policy formulated in 1982-1983 for compassionate appointment, the first priority was for the persons who died in accident arising out of and in course of employment. Second priority was for the employees whose services were terminated due to permanent medical unfitness and third priority was for the employees who died natural death. This policy was changed and the category of cases for second and third priority was made ineligible for compassionate appointment w.e.f. 21.11.1992. As per the policy circular dated 1.1.1996, compassionate appointment was available for the employees who died or became medically unfit due to accidents/injury in course of employment and for the employees who died naturally due to diseases like failure of kidney, heart stroke and cancer. It is stated that under the policy and subsequent settlement dated 18.12.1998, there is no scope for compassionate appointment of the applicant no. 2.

5. The applicants have filed Rejoinder, stating that the husband of the applicant no.1 was on duty on the date of his death and he expired during course of employment. It is also stated that due to ill health of the father of the applicant no.2, he was under treatment and was declared fit for duty on 27.1.2003. He had accordingly joined in B shift on 27.1.2003. Copy of the medical certificate is enclosed at Annexure-9 of the Rejoinder. It is further averred that as per the Memorandum of Agreement dated 23.7.2001, the applicants' case for compassionate appointment is admissible [para 3.4(5)(f)].

6. Heard learned counsel for the applicant, who stressed on the point that the accident of the applicant no. 1's husband on 27.1.2003 when he was returning from duty was in course of employment as he was returning home from

workplace before end of his shift as he felt uneasy. The applicant's counsel also filed a written note of argument enclosing a copy of the judgment dated 8.9.1999 of Hon'ble High Court in the case Steel Authority of India Ltd., Rourkela Steel Plant vs. Jema in Misc. Appeal No. 746/1997 and judgment in the case of Bisra Stone Lime Company vs. Subasini Naik to strengthen his argument that the accident on 27.1.2003 of the applicant no.1's husband was in course of employment.

7. Learned counsel for the respondents was heard. He opposed the submission that the accident on 27.1.2003 had nothing to do with the employment and such type of cases are not covered under the scheme of compassionate appointment as per the circular dated 1.1.1996 as explained in the Counter. He pointed out to the reasons mentioned in para 3 of the Counter to state that the applicants' claim for compassionate appointment is not admissible. The written note of submission was also filed by respondents' counsel with the judgment of Hon'ble Apex Court in the case of SAIL vs. Madhusudan Das and others and in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja, AIR 1995 SC 881 in support of the respondents' case.

8. We have perused the pleadings on record and considered the submissions of learned counsels for both the parties. Since the death of the husband of the applicant no.1 was on 5.2.2003, the circular dated 1.1.1996 will be applicable for the applicants' request for compassionate appointment. The question that needs to be answered in this case is whether the accident of the applicant no.1's husband on 27.1.2003 at around 7.30 pm when he was returning home from duty in 'B' shift and subsequent death on 5.2.2003 out of the injury can be considered to be the death out of or in course of his employment. The case of the applicant is that in view of the judgment of Hon'ble High Court cited by applicants' counsel, the death is in course of employment for which the applicants will be entitled for the benefit of compassionate appointment and the answer to the above question will be in affirmative and the rejection of the case by the respondents is not sustainable. The respondents' plea, on the other hand, will imply that the answer to the said question is in negative.

9. In the case of Jema (supra), the dispute related to the compensation awarded under the Employees' Compensation Act, 1923 (in short EC Act) and whether the death was in course of employment. Regarding facts of the case, the employee was going home during lunch break when the accident occurred on the road after which he was hospitalized and died after some days. The SAIL took the stand that the death was not in course of employment. After examining the case laws and the circular of SAIL in this regard, it was held by Hon'ble High Court as under:-

“6. There is no dispute that under Ext. D, a tripartite settlement, some settlement had been effected between the Steel Authority of India and its employees. The main terms of the settlement are available in Ext. B which purports to be "Personnel Policy Circular No. 423, dated February 10, 1984". Clause 1 of the said circular is as follows:

"In pursuance of the Memorandum of Settlement dated June 1, 1983 between the Management of Rourkela Steel Plant and the Rourkela Mazdoor Sabha (Recognised Union), the Workmen's Compensation benefit will be extended to the employees of Rourkela Steel Plant meeting with accident resulting in injury during journey from the residence to place of work and back within one hour of the start or end of their duty hours causing death or permanent/temporary disablement, provided that the accident takes place on the normal route of journey between residence and the place of work."

.....

12. In the present case, the deceased had left his place of work for the purpose of taking lunch and the accident had taken place on a road which was, though within the factory premises, being maintained by the Steel Authority of India. Of course, it was accessible to other members of the public, but it was also meant to be used by the employees of the Steel Plant for the purpose of their ingress and egress from the factory premises. Since the road was also accessible to members of the public, definitely there was some possibility of accident being caused by them and this risk can be said to be incidental to the employment of the employee. Thus, it can be visualised that there was a causal connection between the employment and the accident. Moreover, in view of the principle contained in the Circular which has received judicial recognition of this Court in the decision reported in Steel Authority of India Ltd. Rourkela v. Kanchanbala Mohanty, 1994-II-LLJ-1167 (Ori) it can be held that not only the accident was in course of employment, it also arose out of employment. There was sufficient causal connection between the employment and the accident.”

10. Similarly, in the case of Subasini Naik (supra), whether the death in course of employment was the dispute. In this case, the employee while on duty as Security Guard complained of chest pain and requested to be relieved. But he was asked to continue till his reliever in the next shift reported for duty. Thereafter, he was shifted to hospital where he died during the treatment. It was observed by Hon’ble High Court from the facts that the death had a connection with his employment and refused to interfere with the award of the Commissioner under the E.C. Act, 1923.

11. In the case of Madhusudan Das (supra), Late Bhagirathi Das, while working as a Security Guard, died and after his death, his son requested for compassionate appointment which was refused by the SAIL. It was observed by Hon’ble Apex Court as under:-

“12. The averments made in the writ petition, therefore, did not suggest that any accident had taken place resulting in death of the said Bhagirathi Das. It was also not suggested that he died as a result of stress of work. It has also not been pointed out that he was employed in a hazardous job which resulted in his death.

It is true that he was asked to work in continuous shift. We are informed at the bar that the rule covering the subject is that it was upto the employee concerned to accept the offer of the management or not to accept.

The management, thus, could not force him to continue to perform his duties in the morning shift. It was, therefore, necessary for the respondent No. 1 to plead in the writ petition that the death of Bhagirathi Das occurred because of stress in the work or his work was otherwise hazardous in nature.”

With above observations, it was held by Hon'ble Apex Court that the death did not occur out of and in course of employment for which the son of the late employee was not entitled for compassionate appointment.

12. Learned counsel for the respondents has also cited the judgment in the case of Bai Valu Raja (supra), the deceased employee was a salt worker and while going to the workplace, he had to cross a creek by a boat. On 12.6.1952, the boat carrying the late employee and others capsized resulting in the death of the employee. The dispute in that case was whether the death was out of and in course of employment for the purpose of the E.C. Act, 1923. It was held by Hon'ble Apex Court in that case as under:-

“7. As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.”

After considering the facts of the case, it was held that the death was not out of and in course of the employment.

13. It is the settled position of law laid down by Hon'ble Apex Court relating to the compassionate appointment that it is an exception to the constitutional scheme for appointment in public sector organisations and it can be considered only against an approved scheme in order to mitigate the sudden financial difficulties faced by the family of the deceased employee. As per the judgment of Hon'ble Apex Court in the case of Bhavani Prasad Sonkar Vs. Union of India in Civil Appeal No. 5101/2005, such appointment on compassionate ground cannot be allowed in absence of rules or regulations issued by the concerned authority and such a request is required to be considered strictly in accordance with the scheme. In the case of Rajasthan State Road Transport Corporation Vs. Danish Khan (2019) 2 SCC (L&S) 711, it is held that the provisions of the scheme for compassionate appointment is to be adhered to while considering requests for such benefit.

14. In this case, the prayer of the applicant for compassionate appointment is admissible as per the circular of the SAIL dated 1.1.1996 if the death of the father of the applicant no.2 is considered to be a death out of and in course of employment, based on the facts and circumstances of the case. Respondents' counsel has cited the judgment of Hon'ble Apex Court in the case of Bai Valu Raja (supra) to argue that the death in this case was not in course of the

employment. The applicants' counsel has cited the judgment of Hon'ble High Court in the case of Jema (supra) to argue that the death is out of and in course of the employment. The death in Bai Valu Raja case was on account of capsize of the boat in which many other persons who were non-workers were there and there was no arrangement between the boat owner and the employer for transport of the workers. Further, as observed in the judgment of Hon'ble High Court in paragraph 6 that as per the Personnel Policy Circular No. 423 dated 10.2.1984, the workmen's compensation benefit is to be extended in case of death due to accident from residence to place of work on normal route within one hour of the start or end of duty hour. Hence,, taking into consideration the specific facts of the case, we are of the considered view that in present OA, the facts of the case as on record are different from the facts of the case of Bai Valu Raja (supra) and similar to the facts of the case of Jema (supra) in which the accident occurred on the road between the factory and the residence and hence, the judgment of Hon'ble High Court dated 8.9.1999 in the case of Jema (supra) will squarely cover this case.

15. In the circumstances as discussed above and following the judgment of Hon'ble High Court in the case of Jema (supra) cited by the applicants' counsel, we hold that the death of the applicant no. 1's husband was death out of and in course of the employment and unable to accept the contentions of the respondents in this case. Thus, the answer to the question in paragraph 8 of this order has to be in affirmative and the applicant no. 2 will be entitled for being considered for compassionate appointment in terms of the circular dated 1.1.1996. Accordingly, the impugned orders at Annexure-4 and 6 rejecting his prayer are set aside and the matter is remitted to the respondents to reconsider the case of the applicant no. 2 for compassionate appointment in accordance with the scheme for compassionate appointment and pass an appropriate speaking order to communicate the decision taken in this regard to the applicants within 3 (three) months from the date of receipt of this order.

16. The TA stands allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)