

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 9 of 2013

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

Lal Horo, aged about 55 years, S/o Late Binsa Horo, Ex-Technician cum Attendant, Town Engineering (Electrical) Dept., Rourkela Steel Plant, Rourkela, resident of Qr.No.C/183, Sector-14, Rourkela-769009, Dist.- Sundargarh, Orissa.

.....Applicant

VERSUS

1. The Chairman, SAIL (Steel Authority of India Limited), Ispat Bhawan, Lodhi Road, New Delhi-110003.
2. The Managing Director, Steel Authority of India Limited, Rourkela Steel Plant, Rourkela-769011, Dist.- Sundargarh (Orissa).
3. The Sr. Manager (TE) Elect/Chargement, SAIL RSP Sec-33KV.
4. The AGM(I/C) TE (ELECT), SAIL RSP, Sector-5, Rourkela.

.....Respondents

For the applicant : Mr.P.R.Dash, counsel

For the respondents: Proxy on behalf of Mr.G.Mishra, counsel

Heard & reserved on : 3.2.2020

Order on : 26.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant had filed the petition before Hon'ble High Court which was transferred to this Tribunal being registered as TA No. 9/2013 in which the following reliefs have been sought for by the applicant:-

“It is therefore, prayed under the aforesaid facts and circumstances of the case considering the averments made in above your Lordships may kindly be graciously pleased enough to issue the rule Nisi asking the Opp. parties as to why the prayer of the petitioner seeking a direction to provide for an alternate employment to his son as appealed vide Annexure-4 shall not be allowed.

And as to why the prayer of the petitioner to provide the benefit as laid down in the Clause 3.4.5.1(f) for providing an employment to his/her son as the petitioner has been invalidated by the Medical Board due to an accident occurred during his course of employment while he was on duty shall not be allowed without insisting him to opt for availing Employees Family benefit scheme and to release all his back wages and other benefits he is entitled for as per the agreement.

And if the Opp. parties fails or failed to show cause or show any insufficient cause your Lordships may kindly be graciously pleased to make the said rule Nisi absolute by way of issuing the writ in the nature of Mandamus or any other writ/writs/direction/directions/order/orders

as deem fit and proper in the interest of justice so as to grant the complete relief(s) to the petitioner.

For which act of kindness the Petitioner shall as in duty bound and remain every pray.”

2. The applicant was an ex-employee under Rourkela Steel Plant (in short RSP) which is one of the steel plants under the Steel Authority Of India Limited (in short SAIL). He had retired after being declared as medically unfit w.e.f. 6.8.2007 (Annexure-1 of the TA) and had applied for compassionate employment of his son as per the policy of the SAIL/RSP. The applicant has averred that he met with an accident while working under the respondent no.2 on 27.8.2001 while on duty. He was hospitalized and given treatment. It is stated that instead of providing treatment at better hospital, he was released from hospital. It is the applicant's case that his ailments due to the accident on 27.8.2001 led finally to his medical disability and discharge from service on being declared medically unfit on 6.8.2007. It is also stated that after being released from the service, he was entitled for the benefits of compassionate appointment as per the Memorandum of Settlement dated 25.7.2001 (in short MOS) between the RSP and the workmen.

3. It is claimed by the applicant in the TA that his medical disability was due to the accident he faced on 20.8.2001 and hence he was entitled for the benefits of the clause 3.4.5.1(F) of the MOS. His grievance is that instead of providing employment to his dependent as per the MOS, the respondents have rejected his claim illegally. The applicant further averred that the respondents are forcing him to avail the Family Benefit Scheme, ignoring his legitimate claim for compassionate employment of his son.

4. The respondents have opposed the OA by filing Counter stating that after the applicant's accident on 27.8.2001 while on duty, he became fit and attended to the duty from 6.10.2001 and continued in the years 2002 to 2006 without any complaint. It is stated in the Counter that the applicant was declared medically unfit by the Medical Board for which he was discharged from service w.e.f. 6.8.2007 under Clause-23 of the Standing Orders and that he was a chronic patient of Epilepsy as declared by the competent Medical Officer of the Company. It is further averred that the applicant's hospitalization on 27.8.2001 was not due to accident but due to Epilepsy problem. It is averred that as per the existing Policy of the RSP, the dependents of the employees retired on medical grounds are not entitled for compassionate appointment.

5. Rejoinder has been filed by the applicant has cited the provisions of the para 3.4.5 (f) of the MOS dated 25.7.2001 which states as under:-

“In case of death or permanent disablement due to the accident arising out of course of employment, employment to one of his/her direct dependants will be provided. However instead of employment the dependant may opt for benefits under employees Family Benefits Scheme (EFBS).”

It is further stated that the authorities have admitted that he was suffering from Post Traumatic Seizure which occurred due to accident, for which, the applicant was entitled for the benefit of compassionate employment.

6. Heard learned counsel for the applicant and the respondents, who have also filed their respective written Notes of Submissions. It is submitted on behalf of the applicant that the respondents have not established that there was previous instance of Epilepsy prior to the accident. It is stated that the cause of Post Traumatic Brain disorder was caused by the injury in course of employment, which ultimately resulted in his medical unfitness. The judgments in the following cases have been cited in the written note of submission filed by the applicant's counsel:-

- i) Bisra Stone Lime Company Ltd. -vs- Subasini Nayak [2009 (1) OLR P-250]
- ii) Balbir Kaur -vs- Steel Authority of India Ltd. [AIR 2000 SC P-1596]
- iii) Sri V.Sivamurthey -vs- State of Andhra Pradesh & Ors. [2008 SCC Vol. 13 P-730]
- iv) Balbir Kaur & Anr. -vs- Steel Authority of India Ltd. & Ors. [Review Petition (C) No. 800 of 2000 in Civil Appeal No. 11881 of 1996]

7. Learned counsel for the respondents has filed his written note of submission citing the judgments in the following cases :

- i) A.Umarani -vs- Registrar, Co-operative Societies & Ors. [(2004) 7 SCC 112]
- ii) MGB Gramin Bank -vs- Chakrawarti Singh [(2014) 13 SCC 583]
- iii) Union of India & Ors. -vs- Rajesh Kumar Gond [(2014) 13 SCC 588]
- iv) Local Administration Department & Anr. -vs- M.Selvanayagam Alias Kumaravelu [(2011) 13 SCC 42]
- v) Bhubaneswari Panigraph & Anr. -vs- Union of India & Ors. [TA No. 29/2015 of CAT, Cuttack Bench]

8. It is stated in the written submission filed by the respondents' counsel that on 27.8.2001 in the injury report the Medical Officer (Annexure-2 of the TA) noted that the applicant has a “known case of epilepsy” which means that the applicant was suffering from chronic seizure disorder prior to the accident on 27.8.2001. It is stated that under the new policy of the respondents, the medical unfitness was not the criteria for grant of compassionate appointment for which the applicant's son cannot be appointed on compassionate ground. It is also stated that the medical certificate at Annexure B/1 of the Counter clearly states that the applicant was under the treatment from 27.8.2001 to 29.8.2001 for epilepsy. In this report no sign of any injury has been mentioned. It is further submitted that the respondents have never admitted that the

applicant has suffered any injury during the course of employment and therefore the applicant is not covered under the new policy for compassionate appointment.

9. In the case of Subasini Naik (supra) cited by the applicant's counsel, it was held by Hon'ble High Court as under:-

“From the evidence on record, it is abundantly clear that the deceased while on 'B' shift duty as a Security Guard complained of pain and feeling uncomfortable, requested for being relieved from duty. In spite of such request, he was not relieved of his duty and instead he was asked to continue till his reliever in 'C' shift duty arrived. The deceased workman was forced to continue on duty till arrival of his reliever at about 10 OM and immediately thereafter he was shifted to BSL Hospital of the appellant company, where he was admitted in a semi-conscious condition at 10.40 PM as per Ext.1. Subsequently as his condition deteriorated, he was referred by the treating doctor of BSL Hospital to IGH, Rourkela, and was transferred to IGH, Rourkela at 11.50 PM, where he died during treatment, on the next day, i.e. 8.1.2000, at about 4.30 PM hence it can be safely concluded that the death of the deceased workman had a causal connection with his employment as a Security Guard, which was a contributory cause and accelerated his death and therefore the said death of the deceased workman arose out of and in course of his employment.”

In the cited case, the workman died after an accident and hence, death was on account of the employment. In this OA, the facts are different. The applicant alleges that his medical unfitness for which he was discharged on 6.8.2007 from service, was on account of the accident he met in the mines on 27.8.2001. There is no medical report on record submitted by the applicant in support of such a contention. On the other hand, the respondents have pointed out that the injury report for 27.8.2001 at Annexure-2 had a note of the doctor as “known case of Epilepsy” and such entry was not objected by the applicant. The cited judgment is, therefore, factually distinguishable.

10. In the case of Balbir Kaur (supra), the death of the ex-employee was on 22.11.1992 and the benefit of compassionate appointment was considered with reference to the Tripartite Agreement in 1983 and 1989, which had the provision of the compassionate employment for the dependent was available for the employees in case of natural death. But the present applicant was declared medically unfit in 2007, and by that time that old agreement was replaced by a new agreement/policy, which did not have the provision of compassionate employment for the cases like that of the applicant. Hence, the cited judgment will be of no assistance to the applicant.

11. In the case of A. Umarani (supra) cited by the respondents' counsel, it was held that the appointment made in violation of the statutory rules, ignoring minimum educational qualification would be illegal and no direction can be given to provide compassionate appointment in contravention to the existing schemes/rules. In the case of Chakrawarti Singh (supra), it was held

that the compassionate appointment has to be considered as per the scheme and if the scheme does not permit any compassionate appointment, it cannot be claimed as a legal right.

12. Having regard to the pleadings and submissions by both the parties, it is undisputed that the applicant's discharge w.e.f. 6.8.2007 on the ground of medical unfitness would not be covered as per the new MOS in which there is no provision of compassionate appointment for discharge after being medically unfit. However, compassionate appointment is available if the medical unfitness arises out of injury on work. The applicant has argued that his medical unfitness is linked to the accident on 27.8.2001, and that, he was entitled for the benefit of compassionate employment for his dependent. As discussed earlier, there is no medical report on record containing opinion of a Medical Officer in which it is opined that the medical unfitness of the applicant was linked to the accident on 27.8.2001. The applicant has reiterated such contention without giving any document or medical certificate in support of such contention.

13. Further, nothing is available on record to disprove the contention of the respondents in para 8 of the Counter that the applicant was working continuously as per his duty from 2002 to 2006 without any complaint. The pleadings of the applicant do not contradict such a contention.

14. From above discussions and the materials produced before us, we are of the view that there is nothing on record to prove that the applicant's medical condition leading to his discharge w.e.f. 6.8.2007 was linked to the accident/injury sustained by the applicant in the place of duty as claimed by the applicant. Hence, as per the MOS dated 25.7.2001, the applicant is not entitled for the benefit of compassionate appointment. Accordingly, there is no scope for this Tribunal to interfere in the matter.

15. The OA is accordingly dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)