

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**TA No. 10 of 2014**

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

1. Nagi Tudu aged about 40 years W/o Late Suna Tudu.
2. Jeeban Tudu aged about 19 years S/o Late Suna Tudu. All are of Vill age Pokharia PO-Sanbhundu PS Tiringi Via Bahalada, Dist-Mayurbhanj at present residing at Balijhodi, near Fakirmohan Vidyalaya PO Sonaparbat Rourkela-16 Dist-Sundargarh.

.....Applicant.

VERSUS

1. Steel Authority of India Ltd. Rourkela Steel Plant represented through its Managing Director At/PO-Rourkela Dist-Sundargarh.
2. General Manager, Personnel and Administration Rourkela Steel plant Rourkela District Sundargarh.
3. Deputy General Manager, Coal Chemical Department, Rourkela Steel Plant Rourkela, District-Sundargarh.

.....Respondents.

For the applicant : Mr. K. Panigrahi, Counsel

For the respondents: Mr. S. K. Padhi, Counsel

Heard & reserved on : 06.03.2020

Order on : 13.05.2020

**O R D E R**

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

The applicants are aggrieved by the decision of the MD Rourkela Steel Plant(in short RSP), a unit of the Steel Authority of India Ltd., by which applicant's request for compassionate appointment was rejected on the ground that the same was received after 12 weeks from the date of death of the late father of the applicant no. 2 who was an employee of RSP. After the death of the applicant no. 2's father, the applicants' request for compassionate appointment under RSP, was declined by the respondents. The applicants had filed OJC No. 705/2000 before Hon'ble High Court to challenge the order dated 08.10.1999 (Annexure-A/5) rejecting the request. The said OJC was transferred to this Tribunal vide order dated 9.4.2014 of Hon'ble High Court and on receipt in this Tribunal, it was registered as Transfer Application (in short TA) No. 10/2014.

2. The applicant's father Suna Tudu while in service under RSP, expired on 15.10.1997. The applicant claims that as per the existing scheme for compassionate appointment he is entitled for compassionate appointment which has been declined by the authorities. It is averred in the TA that as per the 1983 tripartite agreement between the RSP Management and the workers' Union, one of the dependant of the employee who meet with death of disabled permanently, will be entitled for employment in the RSP. In the Tripartite agreement dated 18.7.1989, the said benefit was protected. It is further averred that the same benefits of earlier agreements were continued in Tripartite Agreement dated 24.5.1995 (Annexure-10 of the TA) vide para 5.1, 5.1.1 and 5.1.2 of the said agreement and that the rejection of the applicant's proposal was illegal.

3. It is further stated by the applicant in the TA that the circular dated 1.01.1996 (Annexure-6) on appointment on compassionate ground is not in accordance with the Tripartite agreement dated 24.5.1995 (Annexure-10), for which the said circular is liable to be quashed.

4. Respondents have filed their counter, stating that at the time of the death of Late Suna Tudu, the applicant No.2 was 17 years and no application was made within 12 weeks from date of death seeking employment on compassionate ground in RSP as per the circular dated 1.1.1996 (Annexure-6). His application for such employment was received on 31.3.1998 i.e. after expiry of 23 weeks for which it could not be considered. It is further averred in the counter that the applicant could have applied for the benefits available under the "Employees Family Benefit Scheme" under which the dependent nominee of the deceased will get the last salary drawn by the deceased employee till his notional date of superannuation. But the applicants did not avail the benefit under the said scheme even though they were advised in Annexure-5 to apply under the said scheme.

5. Further, it is stated in the Counter that as per the judgment of Hon'ble Apex Court in a case pertaining to compassionate appointment in SAIL in Civil Appeal No. 6455-6459 of 1998 (SAIL Vs. Awadhesh Singh and Others) has held that the Memorandum of Agreement is not a statutory scheme and therefore, it would be unenforceable an applications under Article 226 of the Constitution of India (copy of judgment at Annexure-B/1 of counter). It is stated that this application is not maintainable as per the said judgment at Annexure-B/1. It is also stated that the agreement of 1989 was no longer in force and hence, no claim as per the said agreement is tenable in law.

6. Rejoinder is filed by the applicant raising the issue whether the case can be rejected on the ground that the application was not received within 12 weeks time from the date of death, as it was received after 5 months 15 days (23 weeks) after the date of death and whether such refusal is as for the ratio of the judgment of Hon'ble Apex Court in Vol.90(2000) CLT 450(SC) (Copy at Annexure-11) and OJC No. 16921/1997(Annexure-12 of Rejoinder). It is stated that the applicant being illiterate and minor, the respondents could have supplied copy of the guidelines soon after death so as to enable him to apply for compassionate appointment. It is stated that since circular at Annexure-A/1 does not provide the time limit of 12 weeks, rejecting the application on that ground was not sustainable. The case of the applicant no.2 for compassionate appointment is stated to be justified in view of the settled provision of law.

7. Heard learned counsel for applicant and the respondents who reiterated the averments in their respective pleadings. Applicant's counsel filed a note on chronology of events and also stressed on the judgment of Hon'ble Apex Court in Vol.90(2000) CLT 450 in the case of Balbir Kaur vs. SAIL & Another to buttress the claim of the applicant for employment on compassionate ground.

8. Learned counsel for the respondents filed a written notes of submissions citing the following judgments :-

- (i) *A Umarani V. Registrar, Cooperative Societies & Ors.* AIR 2004 SC 4504.
- (ii) *MGB Gramin Bank V. Chakrawarti Singh*(2014) 13 SCC 583.
- (iii) *Indian Bank & Ors. V. Promila & Anr.* In Civil Appeal No. 2798/2010.
- (iv) Judgment dated 26.02.2020 of the Tribunal in TA No. 9/2013.
- (v) *SAIL & Anr. V. Awadhesh Singh & Ors* (Annexure-B/ 1) of counter).
- (vi) *Local Administrative Deptt. V. M. Selvanayagars @ Kumar Velu,* (2011) 13 SCC 42.

It is further stated that the judgments cited in Rejoinder are not applicable since in the case of Balbir Kaur(Supra), it has been clarified by Hon'ble Apex Court in Review Petition (C) No.801 of 2000 which was disposed of vide order dated 9.8.2000, clarifying that judgment in Balbir Kaur was restricted to cases covered under old policy and it was open for the employer to bring new policies on compassionate appointment.

9. It is noticed that applicants have not specifically challenged the provision of the circular dated 1.1.1996 (Annexure-6) relating to the scheme for employment on compassionate ground (in short EOCG) by which a time limit of 12 weeks maximum has been fixed for submission of the application for compassionate employment, although the applicants have prayed that the provisions in the said circular be ignored and the applicant no. 2 be provided

with employment on compassionate ground by virtue of the agreement at Annexure-10 of the TA . It is seen that all provisions of the agreement have not been furnished at Annexure-10 of the TA. When a circular or scheme on compassionate employment, duly approved by the authorities of SAIL is in place, it is required to be considered as per the said circular/scheme. As per the law laid down by Hon'ble Apex Court, compassionate appointment is an exception to the constitutional scheme for appointment in public sector organisation and it can be considered only against an approved scheme 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.

10. 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. In the case of Union of India & Another Vs. Shashank Goswami and another, AIR 2012 SC 2294, Hon'ble Apex Court has held that the compassionate appointment cannot be claimed as a matter of right and such a claim cannot be upheld on the touch stone of the Article-14 of 16 of the Constitution of India.

11. In the case of Chakrawarti Singh(supra) cited by respondents' counsel, it is held that compassionate appointment is not to be claimed as a matter of right automatically, but such appointment is to be considered automatically in accordance with the scheme. Similar view is reiterated in the judgment in the case of Promila (supra) that compassionate appointment has to be considered in accordance with the scheme for compassionate appointment.

12. In view of the settled law as per the judgments of Hon'ble Apex Court on the subject as discussed above, the compassionate appointment is to be considered in accordance with the scheme on the subject as approved by the competent authority. In the present TA, the scheme for compassionate appointment that was in force at the time death of the father of the applicant no.2. is as per the circular dated 1.1.1996, copy of which is at Annexure-6 of the TA. If this circular is ignored as prayed for in the TA, then no compassionate appointment can be considered by virtue of the tripartite agreement alone which is not a statutory rule as per the judgment of Hon'ble Apex Court (Annexure-B/1 of the counter) in the case of Awadhesh Singh (supra). There is no justification furnished in the TA against any specific

provision of the circular dated 1.1.1996 or such provision has not been specifically impugned in the TA. Hence, the prayer of the applicant to consider the case of the applicant no. 2 for compassionate appointment ignoring provision of the circular dated 1.1.1996(Annexure-6 of the TA) and to consider it as per Annexure-10 cannot be accepted.

13. Applicant has cited the judgment of Hon'ble Apex Court in the case of Balbir Kaur (supra), copy of which is enclosed at Annexure-11 of the rejoinder. In this judgment, the issue was whether the compassionate appointment can be refused by the SAIL authorities on the ground that the Family Benefit Scheme is in force has been introduced. Hon'ble High Court of Orissa has held that in view of the Family Benefit Scheme, the compassionate appointment would not arise. The said order of Hon'ble High Court was challenged by the petitioner in this case. After examining the agreement in force and the Family Benefit Scheme vis-a-vis the Payment of Gratuity Act, 1972, it was held by Hon'ble Apex Court that some of the provisions of the Family Benefit Scheme run counter to the Payment of Gratuity Act, 1972 and that the existing rules do not specifically prohibit compassionate appointment after introduction of the Family Benefit Scheme. Hence, the impugned order of Hon'ble High Court was set aside by Hon'ble Apex Court and the respondents were directed to consider the appellant for compassionate appointment. This judgment will not be helpful to the applicant No. 2 since in his as the request was not made within the time as stipulated in the scheme as per circular dated 1.1.1996 (Annexure-6 of the TA) and his case was not rejected for the same reason as in the case of Balbir Kaur (supra).

14. Further, the respondents' counsel has furnished copy of the order of Hon'ble Apex Court in Review Petition (C) No. 800 of 2000 in Balbir Kaur & Anr. Vs. SAIL and Ors with the written notes of submissions in which, it is clarified that the dispute in the case related to 1989 agreement. Present case in TA No. 10/2014, the request was considered as per circular dated 1.1.1996 and not as per the agreement. For these reasons, the judgment in the case of Balbir Kaur (supra) will not be of any help for the case of the applicants.

15. The applicant has also cited the judgment of Hon'ble High Court in OJC No. 16921/1997. But the law as per this judgment cannot be applied to the present TA since Hon'ble Apex Court in the SLP filed by SAIL against the judgment of Hon'ble High Court has observed as under:-

*“ Prima facie, we do not agree with the view expressed by the High Court and while leaving the question of law open, dismiss these Special Leave Petition confirming to the facts of the present case.”*

Further, in the above judgments cited by the applicants, the circular dated 1.1.1996 in compassionate appointment was not under consideration. The case of the applicant no. 2 has been rejected by authorities on the ground of non-submission of the request for compassionate appointment within the time of 12 weeks stipulated in the circular dated 1.1.1996, which was not considered by Hon'ble High Court in OJC No. 16921/1997.

16. In the judgment in OJC No. 16921/1997, the direction to the SAIL in the operative part of the judgment was to consider the case of the dependent of the employee concerned for compassionate appointment as per the scheme in force. There was no direction to allow benefit of compassionate appointment to the dependent even if he/she was not eligible for the said benefit. In the circumstances, the judgment of Hon'ble High Court in O.J.C. No. 16921/1997 will not be helpful for their case.

17. In view of the discussions above, the grounds advanced by the applicants in the TA are found to be not convincing and we are unable to find any infirmity in the decision taken by the respondents in refusing the request for compassionate appointment of the applicant no.2 by applying the provision of the circular dated 1.1.1996 (Annexure-6 of the TA). TA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

pms