

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 22 of 2014

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

Pramod Kumar Mohanty, aged about 41 years, son of Sri Mohanty of Village-Ustapalli, P.O. Payalpada, P.S. Gangapur, Dist-Ganjam.

.....Applicant.

VERSUS

1. Steel Authority of India Ltd. Rourkela Steel Plant, Rourkela, represented through its M.D., Rourkela, Dist.-Sundargarh.
2. Deputy Manager, (PL-Steel), Rourkela Steel Plant, Rourkela, Dist. Sundargarh.
3. Senior Manager, Personnel (W & R), Rourkela Steel Plant, Rourkela, Dist. Sundargarh.
4. The Chief Superintendent (Power Distribution), Rourkela Steel Plant, Rourkela, Dist. Sundargarh.

.....Opposite Parties.

For the applicant : Mr. K. Panigrahi, Counsel

For the respondents: Mr. T.K. Pattnaik, Counsel

Heard & reserved on : 06.03.2020

Order on : 26.05.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant had filed this Transfer Application (in short TA) as W.P. (C) No. 15735/2009 before Hon'ble High Court and it was transferred to this Tribunal vide order dated 13.10.2014 for adjudication. The matter has been registered as TA No. 22 of 2014. The applicant is the son of Sri M. Mohanty who was an employee under the respondent- Steel Authority of India Ltd. (in short SAIL) in its Rourkela Steel Plant. The service of the applicant's father was terminated vide order dated 27.1.1995 (Annexure-11 of the TA) on the ground of medical unfitness. Thereafter, the applicant had filed the OJC No. 4021/2000 since his claim for compassionate appointment was not considered by SAIL. Hon'ble High Court disposed of the said petition with direction to the applicant to file a fresh representation for consideration of the respondents. Accordingly, the applicant's representation has been rejected by the order dated 18.2.2009 (Annexure-20 of the TA), which is challenged in this TA with a

prayer to quash the order dated 15.4.1993 at Annexure-7 & dated 18.2.2009 at Annexure-20 and to direct the respondents to consider the applicant's compassionate appointment in the light of the judgment of Hon'ble Apex Court in the case of Balbir Kaur vs. SAIL & another, reported in Vol.90(2000) CLT 450 and the order dated 23.6.2000 of Hon'ble High Court in OJC No. 16921/1997.

2. The applicant had submitted the representation dated 25.8.2008 (Annex.19) to the respondents stating therein that the applicant's father had been declared permanently disabled by the medical board on 18.8.1994. Hence, the cause of action in this case arose with the period from 18.7.1989 to 23.5.1995 for which the 1989 agreement will be valid. Reference to the judgment of Hon'ble Apex Court in Balbir Kaur case and order dated 23.6.2000 of Hon'ble High Court have been also made in the representation and copies of the said judgments have been enclosed with the representation.
3. The representation was rejected vide the impugned order dated 18.2.2009 (Annex. 20), which states as under:-

"As per records, Company's Medical Board found Sri Mohanty medically unfit on 27.01.1995 just few months before his notional retirement. Sri Mohanty was insisting to declare him medically unfit and to provide employment to his son which was considered in past and expressing inability to accede to his request, his request was rejected and he was communicated by the Department.

As observed by Hon'ble High Court now Sri Mohanty's case is to be examined in terms of judgment of Hon'ble Supreme Court in Balbir Kaur's case.

In Balbir Kaur and connected cases the claim for compassionate employment arose due to death of the employee but in the present case it is not so since Sri Mohanty claims employment due to medical unfitness. Therefore Balbir Kaur's judgment is of little help to the representationists. Further the Hon'ble Supreme Court while reviewing the Balbir Kaur's judgment in Review Petition (C) No. 800 of 2000 vide order dt. 9.8.2000 was pleased to hold that the judgment so rendered was on the basis of the policy prevalent in 1989. In the case of Sri Mohanty he was declared medically unfit on 27.1.1995 when the previous policy was not in force as per Circular dt. 21.11.1992 read with Minutes of meeting of the same date. Further, Sri Mohanty was not eligible for consideration as per the previous policy of 1982 also since he had no qualifying period of service remaining before his notional retirement. Also the policy has been redefined as per the Tripartite Settlement dated 18.12.1998 but giving effect to the discontinuation of erstwhile Second Priority cases, that is, claim for employment under medical unfitness with effect from 21.11.1992.

Therefore, I am of the view that the claim for compassionate employment of Sri Pramod Kumar Mohanty as claimed by the representationists has no merit in terms of the old policy as discussed in Balbir Kaur's case nor his request can be acceded to in terms of the prevalent policy that came into force after 21.11.1992. Therefore the representation is found to be without any merit and the same is accordingly disposed of."

4. Counter has been filed by the respondents opposing the TA. It is averred in the Counter that new policy was introduced in 1995/1996 in which compassionate employment was provided only for (a) the employee who dies owing to an accident arising out of and in course of employment, (b) the employee whose service is terminated due to total permanent disability arising out of injury on work and (c) the employee who is diagnosed by the company's

doctor and to be suffering from failure of kidneys or heart stroke or cancer and dies in Company's hospital or referred hospital while under treatment for above diseases. The new policy circular dated 29.11.1995 and 1.1.1996 are at Annexure B and C of the Counter. It is also stated that Hon'ble High Court took note of the order of Hon'ble Apex Court in the review filed on Balbir Kaur's judgment and it was directed to SAIL to examine the cases and if a case is under the policy in existence till 1989, then it will be decided as per the judgment in the case of Balbir Kaur (supra). If a claim is under new policy given effect to after 1989, it will be considered as per the new policy. Order of Hon'ble High Court has been enclosed at Annexure-F of the Counter. It is also stated that as on 27.1.1995, when the applicant's father was allowed to retire on medical unfitness, he was more than 56 years of age and hence, the applicant is not entitled for compassionate employment. Hence, the claim of the applicant is contrary to the settled position of law in view of the judgments copy of which are enclosed at Annexure E, F and G of the Counter.

5. Rejoinder has been filed by applicant, stating that in 1992, when the applicant's father first submitted his representation to refer him to medical board, he was aged about 54 and he was before 56th year, since the date of birth of his father was 24.05.1938. But he was discharged from service on 27.1 1995 after being medically examined on 3.8.1994. It is claimed in the Rejoinder that by not referring to the medical board, the respondents have not acted as per para 23 of the Standing Order of the Company. Hence, the applicant claimed that as per the circular for compassionate appointment dated 22.9.1982 (Annexure-A) of the Counter), the applicant is entitled for the compassionate appointment. For the delay in the decision due to the respondents, the applicant's case cannot be rejected based on the circular dated 1.1.1996 (Annexure-B of the Counter).

6. Applicant has also filed an additional rejoinder dated 7.2.2019 stating that the respondents have delayed the decision to refer his father for medical examination although he had applied on 20.10.1992 and due to such delay, there is shortage of qualifying period of service for compassionate appointment. It is also stated that the respondent no.1 has filed an affidavit in OJC No.7704 of 1995 transferred to the Tribunal as T.A.No.20/2015, admitting that compassionate appointment has been allowed in a number of cases after 21.11.1992. It is averred that the decision to withdraw the benefit of compassionate appointment retrospectively with effect from 21.11.1992 by the Tripartite Settlement dated 18.12.1998, was incorrect. Judgment dated 22.4.2004 of the Hon'ble High Court in Civil Review Nos.108/2000 and 32/2001, Civil Appeal No.21237-21238/2004 and order dated 20.2.2008 of Hon'ble High Court passed in CONTC No.394/2004 and order dated 3.2.2004

of the Hon'ble High court in OJC No.7704/1995 have been enclosed to the Additional Rejoinder. The circular dated 30.8.2011 (Annexure-29) has also been enclosed providing for compassionate appointment in case of medical invalidation due to debilitating diseases.

7. Respondents have filed the reply to the Rejoinder and Additional Rejoinder dated 7.2.2019 denying the contentions of the applicant in the light of the judgments of Hon'ble Apex Court and Hon'ble High court of Orissa. The contentions in the counter are reiterated in the reply. It is stated that the judgment in the case of Balbir Kaur (supra) is confined to interpretation of 1989 Policy vis-a-vis the earlier Policy as explained in the counter. It is also stated that the judgments cited by the applicant are in the context of different facts and hence, these will not be applicable to the applicant's case.

8. Heard learned counsel for the applicant who also submitted a written note of submission mainly reiterating the contentions of the applicant in his pleadings. Learned counsel for the respondents was also heard who also submitted a written note of submissions. It is stated that the applicant's case is not coming within the circular dated 22.9.1982 (Annexure-A of the Counter) or dated 21.11.1992 (Annexure-15 of the TA). Learned counsel for the respondents also submitted that first two sons of the applicant were not interested for the compassionate appointment and that in view of the clarification of Hon'ble Apex Court in the Review Petition No. 800/2000 in the case of Balbir Kaur vs. SAIL, it was clarified the case pertained to 1989 agreement and that the applicant's case is coming within the next agreement on 18.7.1995 which was made effective from 21.11.1992. Hence, it was argued that since declaration of medical unfitness of the applicant's father was effective from 27.1.1995, for which 1989 agreement which remained effective till 1992, will not be applicable to this case. Learned counsel for the applicant countered this submission by stating that due to delay in referring the case of the applicant's father to the medical board there was a delay in getting the discharge order and as stated in Rejoinder and Additional Rejoinder, the applicant's father had represented for referring him to medical board in 1992 when he was aged 54 years when he was eligible for the Scheme of Compassionate Appointment.

9. We have considered the submissions of learned counsels of both the parties and also perused the material available on record. The first question that needs to be answered relates to acceptability of the applicant's contention that his father's medical unfitness should be treated from the year 1992 when he represented the authorities for referring his case to medical board, but the authorities delayed such reference till 1994 and relieved him from 27.1.1995.

The second relevant question is whether the case of the applicant is to be considered as per the circular dated 22.9.1982 (Annexure-A of Counter) as urged by the applicant, or by the circular dated 1.1.1996 on the basis of the settlement in 1995 w.e.f. 1992 as contended by the respondents.

10. Regarding the first question, it is noticed that there is no specific prayer made in the TA to shift the date of termination of services of the applicant's father to a date prior to the date when his services were terminated on medical ground, with necessary justifications. It is contended by the applicant that his father had represented in 1992 to refer his case to the medical board, but no action was taken on it by the authorities till 1994. There is nothing on record to show that the alleged inaction of the authorities not to refer the applicant's father to medical board was legally challenged in appropriate forum. It is seen that the same issue of the date of medical unfitness of the applicant's father was not raised in OJC No. 4021/2000 as seen from the order dated 25.6.2008 (Annexure-18). In other words, the decision of the respondents to terminate services of the applicant's father was not challenged by the applicant or his father. In the circumstances, we have to answer the first question of the preceding paragraph is that the applicant's contention in this regard is not acceptable basing on the material available on record. This would imply that the date of termination of service of the applicant's father is to be treated as 27.1.1995 when the order at Annexure-11 of the TA was issued by the authorities and since by that date, the applicant's father had already entered 56th year of age his date of birth being 24.5.1938 (para 11 of the TA), the applicant was ineligible for compassionate appointment as per the circular dated 22.9.1982 (Annexure-A of the Counter) under which the employment of the dependent of an employee is possible if his services are terminated as per order 23 of Standing Order after putting in the minimum service of 10 years and the employee should be declared permanently unfit for the job before entering 56th year of age so that they should have a balance of at least three years of service at the time of declaration of medical unfitness. Even if the averment at para 2 (ii) of the Rejoinder that his father was declared medically unfit on 3.8.1994 is accepted to be correct, then also the answer to the above question will be the same, which is against the applicant.

11. Learned counsel for the applicant relies heavily on the judgment in the case of Balbir Kaur (supra) reported in Vol. 90 (2000) C.L.T. 450 (S.C.). In that case, the issue was whether the compassionate appointment can be refused by the SAIL authorities on the ground that the Family Benefit Scheme has been introduced and whether the dependent of an employee can refuse the Family Benefit Scheme and instead, opt for compassionate appointment. Hon'ble High Court of Orissa in that case had held that since the Family Benefit Scheme was

in force, the benefit of compassionate appointment would not be admissible. The said order of Hon'ble High Court was challenged by the petitioner and 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. Nowhere in the judgment it is laid down that the compassionate appointment will be allowed without considering the eligibility of the dependent of an employee for such benefit. Hence, we are of the view that the cited judgment in the case of Balbir Kaur (supra) will not be of any assistance to the applicant's case.

12. Another judgment relied upon by the applicant's counsel is the order dated 23.6.2000 (Annexure-22 of the Rejoinder) in O.J.C. No. 16921/1997, in which, the direction to the SAIL in the operative part of the judgment was to call for option from the petitioner to opt for Family Benefit Scheme or for compassionate appointment as per the scheme valid for second priority cases and to consider the said option of the petitioner in accordance with the circular/tripartite agreement and grant the benefit as per law. There is no direction to treat the year of application of the employee for medical examination as the date of his medical unfitness for the purpose of the eligibility for the employee's dependent for compassionate appointment, or to allow the benefit of compassionate appointment to the dependent even if he/she was not eligible for the said benefit as per the existing rules. In the circumstances, the judgment in O.J.C. No. 16921/1997 will not be helpful for their case, particularly in view of the discussions in paragraph-10 of this order.

13. The judgment dated 22.4.2004 (Annexure-24 to the Additional Rejoinder) of the Hon'ble High Court in Civil Review Nos.108/2000 and 32/2001 has been relied upon by the applicant. Those petitions were filed by both the petitioner and SAIL for reviewing the judgment dated 23.6.2000 passed in OJC No.16921/1997. The Review Petition filed by the petitioner-employee for some additional benefits and by the SAIL authorities were dismissed. There is nothing in the judgments cited by the applicant to justify the claim of the applicant about his eligibility for compassionate appointment as per the rule/scheme applicable.

14. As per the law laid down by Hon'ble Apex Court in catena of cases regarding compassionate appointment, it is an exception to the constitutional

scheme for appointment in public sector organisation 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. In the judgment of Hon'ble Apex Court in the case of Bhavani Prasad Sonkar Vs. Union of India in Civil Appeal No. 5101/2005, it has been held that 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 approved 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 such requests. 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 claim cannot be upheld on the touch stone of the Article-14 of 16 of the Constitution of India.

15. In view of the above discussions, we do not find any merit in the submissions of the applicant in this O.A. and as discussed in paragraph -10 of this order, the applicant was not eligible for the benefit of compassionate appointment as per the policy circular dated 22.9.1982 (Annexure-A of the Counter), which is relied upon by the applicant. As a result, we do not find any infirmity in the decision taken in the matter by the respondents. The TA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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