

[illegible]

Mr. B. Mohanty, advocate.

Heard & reserved on : 12.11.2020

Order on :03.12.2020

O R D E R

Per Mr. Swarup Kumar Mihsra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To admit the OA and to quash the office order dated 09.03.2015 (Annex.A/6) holding that the same is illegal, arbitrary and without jurisdiction;*
- (ii) *To hold that the Respondent No. 1 & 3 purposefully defying the judicial orders just to deprive the applicant to get the employment under Compassionate ground;*
- (iii) *To direct the Managing Director, RSP, Rourkela representing the respondent no. 1 personally will look into the matter and will pass order after due verification/inquiry about the financial condition of the family;*
- (iv) *To direct the respondents to extend the consequential relief and benefits to the applicant;*
- (v) *And/or pass any other order/orders as deemed fit and proper.*

2. The case of the applicant as averred in brief in the OA is that the father of the applicant died in harness on 22.12.1997 at about 11.45 a.m. due to heart failure while discharging official duties and he breathed his last in the Ispat General Hospital where he was taken to, from the plant, for treatment. The widow of the employee i.e. mother of the applicant approached the respondents on 10.03.1998 for consideration of compassionate appointment for the applicant but Deputy Manager (PL-G) of the Rourkela Steel Plant vide letter dated 09th July, 1998 rejected the application indicating therein that

“your request has been duly examined and we regret to inform you that as per the existing rules of the Company, there is no scope to provide employment to your son on compassionate ground.” The applicant further submitted that since the ground of rejection was unreasonable, the applicant once again submitted application on 03.10.2001 indicating instances of three cases where such relief has been granted. But the respondents rejected the application once again vide letter dated 07.06.2002 (Annexure A/1). The applicant approached the Hon’ble High Court of Orissa against the order dated 07.06.2002 in which the respondents vide their counter affidavit filed on 02.06.2006 (Annexure A/2) took the ground that “there exists no record of company’s hospital or referral hospital to suggest that the death of late Bhagirathi Nayak was due to “heat Stroke”and it was mentioned that the deceased employee had absconded from duty and there was no intimation to OHC about complication if any suffered by him. Hon’ble High Court in WP(C) No. 4984/2003 vide its order dated 16.12.2010 (Annexure A/3) disposed of the same by setting aside the order dated 07.06.2002 passed by the respondents and directed him to consider the case of the applicant sympathetically and pass a reasoned order on the application of the applicants. The respondents once again considered the claim of the applicant and rejected the same vide order dated 29.04.2011 (Annexure A/4) with self same grounds taken earlier. The applicant then approached this Tribunal in OA No. 413/2011 against the order dated 29.04.2011 and the Tribunal vide order dated 03.07.2014 (Annexure A/5) remanded the matter for fresh consideration and directed that respondent no. 1 is only competent authority in the matter and before taking any decision in the matter the authority must ascertain the present condition of the family. The

respondents i.e. Chief Executive Officer Rourkela Steel Plant once again rejected the claim of the applicant vide their order dated 09.03.2015 (Annexure A/6) communicated to the applicant by AGM (PL) vide his letter dated 10.03.2015 (Annexure A/7). Hence this OA.

3. The respondents in their counter inter alia averred that in due compliance of the order of the Hon'ble High Court of Orissa the application for compassionate appointment of the applicant was examined with reference to the circumstances leading to the death of the employee, the financial condition of their family and whether in such circumstances the terms and conditions of the scheme as contemplated in the personal policy circular dated 01.01.1996 (Annexure R/1) were considered and rejected since it was not found to have covered under the aforesaid scheme. The respondents further submitted that in compliance to the order of this Tribunal dated 03.07.2014 the Chief Executive Officer (erstwhile Managing Director) re-examined the case of the applicant taking into account all the observations of the Hon'ble High Court of Orissa vis-a-vis the relevant scheme in question and passed a speaking and reasoned order dated 09.03.2015. The respondents submitted that the compassionate employment cannot be demanded as sole source of rehabilitation particularly in respect of case like the applicant and the respondent company had introduced a welfare scheme for rehabilitation of dependents under Employee Family Benefit Scheme (Annexure R/2) w.e.f. 01.01.1989 under which the dependent nominee receives the financial benefit on monthly basis i.e. the basic pay plus DA last drawn by the deceased employee till the date of notional superannuation of the deceased employee but the mother of the applicant demanded compassionate appointment. The respondents further averred that the father of the

applicant on 22.12.1997 after attending the office absconded from duty at about 10.00 am and at about 12.15 pm he was brought dead to Ispat General hospital. The respondents submitted that the company had established Occupational Health Service Centre with adequate treatment facilities and in case and employee suffers any medical complication he/she has to report at OHSC for necessary treatment and if required as per advice of doctor of OHSC the employee is referred to Ispat General Hospital and in the case of the applicant there was no report to OHSC and he had already expired by the time he was brought to Ispat General Hospital, the copy of death certificate dated 26.03.1998 issued by Ispat General hospital is at Annexure A/3. The respondents further submitted that the mother of applicant submitted an application for compassionate appointment on the basis of a certificate dated 10.01.1998 issued by one Dr. G. G. Patri of Godhuli Clinic indicating that the death of her husband on 22.12.1997 was due to heart attack. The respondent submitted that the claim of the applicant that he is fulfilling the conditions as contemplated under the policy (Annexure R/1) is misconceived and the same is also not supported by the report of Medical Officer who conducted post mortem.

4. The applicant in their rejoinder averred that it is observed by the Hon'ble High Court so also this Tribunal in earlier proceedings that when the administration is admitting his joining in duty at 10.00am on the relevant day and no such proof is available that he had left the office without information, it can be safely presumed that he was within the campus and admitted by the co-workers in the Ispat Hospital due to his seriousness and that both the Hon'ble High Court and this Tribunal had held that the rejection of applicant's claim on the ground that he is not fulfilling the conditions of the scheme is bad in law for which the

matter was remanded to the appropriate authority for consideration. It was further submitted that if at all death has not been occurred within the hospital there was no occasion for the Ispat Hospital to conduct autopsy and when no proof is available with the respondents that the ex-employee left plant premises after reporting at 10.00 am it can be safely presumed that that the death occurred while he was in duty.

5. It is relevant to extract the order of the Hon'ble High Court of Orissa order dated 16.12.2010 in WP (C) No. 4984/2002:

"According to the learned counsel for the petitioners, as per the scheme called "conditions" for extension of benefit of employment on compassionate ground under 1st priority in certain causes of death", one of the family members of said Bhagirathi Nayak is entitled to get an employment on compassionate ground but he has been denied the said benefit.

A counter affidavit has been filed by the OP Rourkela Steel Plant taking a stand that the petitioners are not entitled to get the benefit on compassionate ground as per the scheme because there was no evidence that the deceased had availed the treatment in the company hospital or referral hospital and died while under treatment for failure of kidneys, heart strokes or cancer.

On the last occasion on 23.11.2010, we had directed the O.P.s to produce the post mortem report of the deceased. Now Mr. J. Pattnaik learned senior counsel for the RSP produced a document, which is an application made by petitioner no. 1 to the RSP authority, enclosing therewith autopsy report of the deceased in which the doctor has opined that possibility of death due to heart failure cannot be ruled out but the definite opinion regarding cause of death would be known if the viscera report is produced. The case of the petitioners is that the deceased Bhagirathi Nayak died during the course of his employment in RSP. The eligibility criteria which has been laid down by the RSP in clause 2.1 of the Scheme is quoted hereunder:

"2.1 An employee diagnosed to be suffering from any of the following ailments by the Company Doctor evidenced by the Company's Medical records and availing of treatment on that account in the company's hospital or referral hospital and dying while under such treatment will be covered under this scheme.

Failure of Kidneys

Heart Stroke

Cancer.

The aforesaid seems to be a bit unreasonable because here is a case, according to the petitioners, if it is correct that the deceased suffered heart attack while he was in duty and it is an admitted fact that the deceased entered into the company premises by putting his signature in his attendance register. But thereafter his exit was not recorded. Taking a cue from the situation Mr. Pattanik, learned counsel for the RSP takes a stand that the deceased was mysteriously absconded from his work place and later on brought dead to the company hospital where the autopsy was also made subsequently. There was no report to that effect even to the hospital as well as the project office. The situation where a person suffers from heart stroke or sudden illness, what happens during that circumstances, which is not within one's control and what his other co-workers did to save his life is also not within his control. Further according to Mr. Pattnaik the compassionate appointment cannot be made available to the petitioners as they have approached this court at a belated stage i.e. six years after the death of Bhagirathi Nayak, he was not an indigent person as one of his sons was doing business somewhere.

We are not on that. If the petitioners are working, still indigence is continuing and they are entitled to the benefit subject to the conditions laid down in the scheme. In our considered opinion, the RSP authorities should take into account the circumstances under which the death of the deceased took place and the indigence of his family and consider the case of the petitioners once again.

Accordingly, we set aside the order dated 07.06.2002 passed by the Deputy Manager (PL-General) Rourkela Steel Plant, OP 1 and direct him to consider the case of the petitioners sympathetically and pass a reasoned order on the application of the petitioners. We hope and trust that in such type of cases, the authorities taking a pragmatic approach shall take into consideration the scheme in question.

With the aforesaid observation/direction, this writ petition is disposed of."

6. The relevant portion of this Tribunal order dated 03.07.2014 in OA No. 413/2011 is as under:

"12. The speaking order dated 29.04.2011, by the Senior Manager (PL-General), SAIL dwells upon the circumstances of death of applicant's father, the departmental proceeding launched because of disproportionate assets, and the present income of the family from various sources. However, in the present OA the learned counsel for Respondents did not obtain any information on the affidavit of the applicant regarding his present indigent condition. The Hon'ble High court had made an observation that the policy seems to be bit unreasonable. There is no discussion or compliance of this observation in the speaking order. The authority that has issued the speaking order i.e, Senior Manager (PL-General) is apparently not the authority that can discuss about the policy. Because of this deficiency, the speaking order cannot be termed as a full compliance of the orders of Hon'ble High Court. I also feel that when there is an observation about the unreasonableness of the policy of compassionate appointment, it is only the Respondent No. 1 i.e. the Managing Director of RSP who alone is competent to consider the observation of Hon'ble High Court, and pass suitable orders. The directions of the Hon'ble High Court should have been observed in letter and spirit, within the scheme of compassionate

appointment. Such is not the case here, since the observation of the Hon'ble High Court about policy was not discussed, and the matter was not disposed of at a sufficiently high level which alone could consider this aspect.

13. I therefore take a view that the matter needs to be remanded to Respondent No. 1 i.e. Managing Director of RSP who will take into account all the observations of Hon'ble High Court in their order, and pass a reasoned and speaking order in the matter and communicate to the applicant within a period of two months from the date of receipt of this order. Accordingly, the order dated 29.4.2011 at Annexure-7 is quashed and the matter is remanded to Respondent No. 1 for reconsideration on the basis of issues that have been indicated above.

14. Ordered accordingly."

7. The fact that the deceased employee had entered the factory premises of the respondents and joined in his duty at 10.00 am on 22.12.1997 is not disputed. The further fact that he was brought dead to the hospital of the respondents on the same day at about 12.15 pm is not disputed. The said hospital i.e. IGH is situated within the campus of the respondents factory area. The death certificate vide R/3 has been filed by the respondents. The plea taken by the respondents that the employee has absconded from the duty that day till his dead body was brought to IGH hospital on the same day at 12.15 pm is not supported by any document produced in this case from the side of the respondents. Neither they have shown any entry made in any register or near the entrance or exit of the factory premises to show that he had gone out of the factory area of the respondents on that date before his death. The plea taken by them that he might have died due to some other cause is not acceptable in the absence of any document to that effect filed from the side of respondents, in view of the fact that the doctor have opined that the death might have been due to heart attack. The best materials if available with the respondents, in this regard has not been produced before this Tribunal in support of the stand taken by them that the employee has absconded from duty on that

day and had died due to any other cause or reason. To saddle the applicants with the burden of proving the same is quite unreasonable in the facts and circumstances of this case and a reasonable inference can be drawn by a prudent reasonable person that the employee had died within the factory area of the respondents. The opinion of the doctor that the death may be due to heart attack cannot be lightly brushed aside.

8. The observation of Hon'ble High Court in their order dated 16.12.2010 passed in writ petition in question as extracted in para 5 of this order should have been given due weightage and consideration by the respondents while rejecting the claim of the applicants. The vague stand taken by the respondents in this regard and the evasive reply made by them in their counter is not believable and it appears that they have tried to suppress the truth only to reject the claim of the applicant. The fact that no post-mortem report was produced by them in this case and that no sincere step was taken for production of viscera report by the respondents cannot also be overlooked. Therefore taking into consideration the totality of the circumstances this Tribunal finds that the employee had died during course of employment, within the factory of the respondents and the claim made by the applicant that the employee died due to heart attack has to be accepted in the absence of any materials to the contrary reasonably expected to be produced from the side of the respondents.
9. The fact remains that the applicant has been knocking at the door of Hon'ble High Court as well as this Tribunal to get justice in their favour, they have been approaching the authorities to get relief in question, therefore in the circumstances the mere fact that they approached the court after about 6 years from the death of employee

cannot be used against them to deny the benefit of compassionate appointment. The said delay was not intentional taking into consideration the helpless condition of the applicant and his financial condition it cannot be said that the said delay was intentional or that there was any laches on his part. Therefore the delay if any in filing the case cannot be sole ground to reject the claim of the applicant to come to conclusion that he is not an indigent person without making due and proper inquiry about his financial condition. This tribunal finds the rejection of the application of the applicant for compassionate appointment as made by the respondents vide Annexure A/6 is unreasonable and therefore arbitrary. Hence the order of rejection made by the respondents vide Annexure A/6 is quashed. The matter is remitted back for fresh consideration in accordance with law. While doing so, this Tribunal makes it categorical that this Tribunal has found that the death of deceased employee was during the course of employment and he has died due to heart attack . Accordingly the respondent nol. 1 is to consider the application of applicant for compassionate appointment afresh in accordance with law within a period of three months from the date of receipt of copy of this order and to communicate his decision by a reasoned and speaking order within the said period of three months. We make it clear that the findings made by us in this case in favour of the applicant is not open to be again decided by the respondents but they have to consider his application on merit.

10. The OA is accordingly disposed of with above observation but in the circumstances without any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)