

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. TA 10 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. Fatima Khatun (widow), aged about 45 years, for self and as mother guardian of minor son Saquib Qaumar, aged about 14 years and minor daughter Shaziya Nikhat, aged about 10 years.
2. Naushad Ahamed, aged about 27 years,
3. Zeenat Bano, aged about 24 years, W/o Gulam Sarwar.
4. Shabnam Bano, aged about 20 years.
5. Md.Sohail Akhtar Ansari, aged about 19 years.
6. Farhat Bano, aged about 18 years.
7. Saquib Qaumar, minor aged about 14 years.
8. Shaziya Nikhat, minor, aged about 10 years.

(Petitioner No.1 is the widow, petitioner Nos. 2, 5 and 7 are the sons and petitioner Nos. 3,4,6 and 8 are the daughters of Late Jahangir Ansari). All are of Quarter No. H/77, Sector-15, Rourkela, PS-Sector-15, District-Sundargarh, Pin-769003.

.....Applicants

VERSUS

1. Rourkela Steel Plant, Steel Authority of India Ltd., represented through its Managing Director, Rourkela-769011, District-Sundargarh.
2. Senior Manager (PL) MMS, Riourkela Steel Plant, Steel Authority of India Ltd., Rourkela-769011, District-Sundargarh.
3. The Director (Medical and Health Services) Ispat General Hospital, Rourkela Steel Plant, Steel Authority of India Ltd., Rourkela-769011, District-Sundargarh.

.....Respondents

For the applicant : Mr.S.K.Mishra, counsel

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

Heard & reserved on : 25.8.2020

Order on : 7.09.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicants had filed the writ petition OJC No. 11954 of 1998 before Hon'ble High Court, being aggrieved by refusal of the Rourkela Steel Plant (in short referred as RSP), a unit of the Steel Authority of India Ltd. (in short referred as SAIL) to appoint the applicant no. 2 under the Scheme for compassionate appointment of the RSP after premature death of the applicant no. 2's father late Jahangir Ansari (referred as 'deceased employee') while in service. The said writ petition was transferred to this Tribunal vide order dated 12.12.2014 of Hon'ble High Court and on transfer, it has been registered as Transfer Application (in short TA) No. 10/2015 for adjudication. The prayer made by the applicants (petitioners in the writ petition) this petition/application is as under:-

“The Petitioners above named pray that this writ application may kindly be admitted and after hearing parties, appropriate writs may kindly be issued directing the Opposite Parties to give suitable appointment to petitioner No.2 in RSP, to reallocate the quarter, allotted in favour of Late Jahangir Ansari in favour of Petitioner No.2 and to pay the gratuity dues to the petitioners and such order/s, direction/s, writ/s as may be deemed fit and proper may kindly be passed so as to give complete relief to the petitioners.”

Averments of the applicants in the TA

2. The facts of the case as stated in the TA are that the deceased employee while on duty in the RSP fell unconscious on 18.10.1997 and was taken to the hospital for treatment. He was allowed to go to his quarter after treatment and he again fell unconscious. He was again taken to the hospital and was admitted as an indoor patient. After about seven days, he was discharged with advice for seven days rest before resuming normal duties. On 9.1.1998, he was referred to BM Birla Heart Research Centre, Calcutta for further treatment of heart disease (vide the letter at Annexure-1) and he reported there on 12.1.1998 after attending to duties on 11.1.1998. In BM Birla Heart Research Centre (referred as BHRC), the deceased employee

underwent a bypass surgery on 16.1.1998 and was kept in the ICU after the surgery. Unfortunately, he did not regain consciousness and expired on 24.1.1998 as per the death certificate at Annexure-3 of the TA.

3. The applicants tried to ascertain the cause of death and were informed orally by authorities of BHRC that the death of the applicant no. 2's father was due to his heart failure followed by failure of his kidneys, but they refused to give any written report to the applicants stating that it will be sent to the hospital of the RSP, which had referred the patient to them. The applicants approached the hospital authorities and as stated in the TA, the authorities did not write to the BHRC for such a report.

4. It is further averred in the TA that the respondents did not release the gratuity dues for the deceased employee, who was the sole bread earner for the family. Representations dated 17.3.1998 (Annexure-4, 5, 6 and 7) were submitted by the applicants requesting compassionate appointment of the applicant no. 2. It is stated in the TA that on receipt of the representations, the respondents deleted the name of the deceased employee from the rolls of the RSP and did not release his legitimate dues and the applicants' request for compassionate appointment was rejected vide order dated 4/5.5.1998 (Annexure-9 of the TA). The applicants submitted further representations at Annexure-10, 11, 12 and 13. The respondents released the dues of the deceased employees except the gratuity and issued the order dated 13.7.1998 (Annexure-14 of the TA) rejecting the request for compassionate appointment of the applicant no. 2.

5. It is urged in the TA that as per the circular dated 1.1.1996 (Annexure-15) of the RSP, since the death of the deceased employee was on account of heart and kidney failure, his son i.e. the applicant no. 2 is entitled for compassionate appointment as per the said circular and the rejection orders at Annexure-9 and 14 are liable to be quashed.

Averments in the Counter filed by the respondents

6. The applicants' request for compassionate appointment is not sustainable in law. For benefit of the families of the employees who expire while in service, the respondents have put the 'Employees' Family Benefit Scheme' (in short FBS) in place vide the circular dated 7.8.1991 (Annexure-A of the Counter). But the applicants did not opt for the said benefit. Reference to the judgment of Hon'ble High Court reported in AIR 1971 Orissa 118 and the judgments in the OJC Nos. 2264/86, 2987/86, 2988/88, 651/87, 701/87 and 3379/87 and the judgment of Hon'ble Apex Court reported in AIR 1987 SC 1015 on similar issue of compassionate appointment have been made in the Counter to resist the claim of the applicants.

7. Regarding compassionate appointment scheme effective from 1.1.1996, it is averred in para 7 of the Counter as under:-

“Under the aforesaid backdrop, the benefit of employment on compassionate ground has undergone several changes and since 1.1.1996, the said benefit is available under 1st Priority category in the following circumstances:-

- (a) Employee who dies owing to an accident arising out of and in course of employment. (The only benefit of Circular dt. 22.9.1982 after other categories were discontinued).*
- (b) The employee whose service is terminated due to total permanent disability arising out of injury on work (introduced by Circular dt. 29.11.1995).*
- (c) The employee who diagnosed by the Company's doctor to be suffering from any of the following disease and dies in Company's hospital or referral hospital while under such treatment.*
 - (i) Failure of kidneys.*
 - (ii) Heart Stroke.*
 - (iii) Cancer.*

The above benefit was introduced vide Circular issued on 1.1.1996 and extended retrospectively w.e.f. 22.11.1992 vide Circular issued on 18.12.1998. Copies of the said circular dt. 1.1.1996 and 18.12.1998 are filed herewith as Annexure-B and B/1 respectively.”

8. It is stated in the Counter that death of the deceased employee, who was referred to BHRC for bypass surgery, was due to multi organ dysfunction

and coronary artery disease as mentioned in the death certificate issued by BHRC. The applicant no. 1 represented the respondents alleging that death of her husband was due to heart stroke which is covered by the circular dated 1.1.1996 (Annexure-15 of the TA). But the respondents after examination of the records concluded that the death was not due to heart stroke as per the death certificate and hence, the applicant no. 2 was not entitled for compassionate appointment as per the circular dated 1.1.1996. The deceased employee was found to be suffering from the disease of “Ischaemic Heart Disease” and “Diabetic Mellitus” and he was being treated at the company’s hospital from time to time and the decision to refer him to BHRC for “Coronary Artery bypass and angioplasty” was taken by the Medical Board of the RSP on 1.1.1998. But the deceased employee collected the referral letter on 9.1.1998. Hence, the allegation of negligence and delay made in the OA was denied.

9. It is also averred in para 16 of the Counter as under:-

“16.....Save and except that a bare perusal of death certificate issued by B.M. Birla Hospital under Annexure-13 would show that the death was due to Multiorgan disfunction and coronary artery disease (Operated) and not due to Heart Stroke.....”

The contentions of the applicant that the death was due to heart stroke are stated to be false and contrary to the death certificate.

10. It is also stated in the Counter that the applicants’ continuation in the company’s quarter after cessation of service of the deceased employee is illegal and the gratuity amount has not been released since the applicants have not vacated the quarters. Hence, the allegation of non-release of the gratuity dues has been refuted in the Counter.

Averments in the Rejoinder filed by the applicants

11. In the Rejoinder, it is averred that the applicant’s case is covered under the circular dated 1.1.1996 since the doctor of the respondents had diagnosed the father of the applicant no.2 to be suffering from heart disease

and he was referred to BHRC for treatment for “Ischemic Heart Disease” and while under treatment in BHRC, he died. The reports of the BHRC have been attached at Annexure of the Rejoinder to show that the deceased employee was being treated for heart disease. The applicant contends that the fact that the death of applicant no.2’s father (deceased employee) occurred while undergoing treatment for heart disease, his case is covered under the circular dated 1.1.1996 and that refusal of the respondents to consider his case for compassionate appointment since in the death certificate, heart stroke was not mentioned as the cause of death, amounted to harassment.

12. Heard learned counsel for the applicants and respondents and they also filed written notes of submissions. The applicants’ counsel submitted that the case of the applicant no.2 is covered under the circular dated 1.1.1996 as his father was referred to BHRC for treatment of heart disease and he died there while under treatment and though the death certificate did not specifically mentioned “Heart Stroke”, but it mentioned heart disease as cause of death, for which the applicant no.2’s case is covered under the circular dated 1.1.1996. In the written note, the applicants’ counsel cited the judgment of Hon’ble High Court in the case of Steel Authority of India Limited and others vs. Digamber Bhutia and others in W.P. (C) No. 22291/2017 and order of the Tribunal passed in T.A. No. 12/2014. Judgment of Hon’ble Apex Court in the case of Balbir Kaur and another vs. Steel Authority of India Limited and others, AIR 2000 SC 1596. It is also submitted that the judgments cited by the respondents’ counsel are not applicable to this TA since in those case, the claim for compassionate appointment was made after lapse of long years. But in the present TA, the applicants had approached the authorities on 17.3.1998 after death of applicant no.2’s father on 24.1.1998 and the respondents have not taken a stand that it was a belated claim.

13. Learned counsel for the respondents in his written submissions stated that the respondents’ doctor who had treated the deceased employee has filed Counter stating that the employee concerned did not die due to heart stroke and all heart diseases do not amount to heart stroke. It is stated that

nowhere in the treatment record or death certificate, the cause of death had been mentioned to be “Heart Stroke” and hence, the applicants’ claim that the death was due to heart stroke, was incorrect. It is, therefore, submitted that the case is not covered under the circular dated 1.1.1996 and compassionate appointment cannot be permitted when the case was not covered under the scheme. Respondents’ counsel, in his written submissions, referred to the following judgments:-

- (i) L.I.C. of India vs. A.R. Ambedkar (Mrs.) reported in (1994) 2 SCC 718
- (ii) SAIL vs. Madhusudan Das and others, reported in AIR 2009 SC 1153
- (iii) State of J&K & Ors, vs. Sajad Ahmed Mir, reported in 2006 Lab. IC 3988
- (iv) Punjab National Bank & others vs. Ahwini Kumar Taneja, (2004) 7 SCC 265.
- (v) Mahanadi Coalfields Ltd. and others vs. Dhira Kumar Parida, 2016(II)OLR-624

Issues for decision and discussion

14. On perusal of the pleadings and submissions by both the parties, the issue that is to be answered in this case is ***whether death of the father of the applicant no.2 was due to a disease specified in circular dated 1.1.1996 or not.*** Respondents’ case is that from the death certificate it cannot be said that death of the father of the applicant no.2 was not due to “Heart Stroke” as revealed from the death certificate and hence, the claim of the applicant no.2 is not admissible under the said circular dated 1.1.1996 and his claim has been rejected vide the letter dated 13.07.1998 (Annexure-14 of the TA) for that reason. The applicant contests such contentions of the respondents in view of the facts and circumstances relating to the illness and death of the applicant no.2’s father who was suffering from heart disease and was referred to BHRC for further treatment where he died during the treatment after operation and argues that it was unfair to reject the claim because heart stroke has not been mentioned in the death certificate.

15. It is undisputed that the circular dated 1.1.1996 (Annexure-15 of the TA and Annexure-B of the Counter) is applicable to this case. Relevant portions of the said circular regarding eligibility and procedure for consideration of the cases for compassionate appointment are as under:-

“2. Eligibility

2.1 An employee diagnosed to be suffering from any of the following ailments by the Company’s Doctor evidenced by the Company’s Medical records and availing of treatment on that account in the Company’s Hospital or referred Hospital and dying while under such treatment will be covered under this Scheme.

- a) Failure of kidneys*
- b) Heart Strokes*
- c) Cancer*

2.2. For the purpose of this Scheme “direct dependent” shall mean only an unemployed son or if there is no such son, an unemployed unmarried daughter.

3.....

4. Procedure

The eligible direct dependent as at 2.2 above of the eligible deceased employee as at 2.1 above, shall be considered for employment as per the following procedure.

4.1 The spouse or in the absence of the spouse, one of the direct dependents of the deceased employee shall submit an application to S.M. (P&A) through the Head of the Department of the deceased employee enclosing copies of all the relevant documents after 2 weeks of the death and before completion 12 weeks from the date of demise requesting for employment of an eligible direct dependent for consideration. The nomination once made can not be changed thereafter. Failure to make the application for such employment within 12 weeks will not, however, affect the nominee of the deceased employee to apply for the benefit under the provisions of Employees’ Family benefit Scheme.

4.2 Only on being fully satisfied with regard to the coverage of the case as at (2), (3) and (4.1) above, the Management shall consider the nominated grounds as equivalent to 1st priority, subject to fulfilment of the recruitment procedure and formalities.”

From the above provisions of the Scheme for compassionate appointment as per the circular dated 1.1.1996, it is clear that the direct dependent of the deceased employee is required to apply for the benefit of compassionate appointment with ‘all the relevant documents’ within 12 weeks from the date of death and the respondents will have to be fully satisfied about the coverage of the case ‘as at (2), (3) and (4.1) above’ before taking a decision in the matter. It is noticed that there is no provision in the circular that the claim will have to be decided only the basis of the cause of as specified in the death certificate issued by the medical authorities.

16. The respondents in their letter of rejection dated 13.7.1998 (Annexure-14 of the TA) have not mentioned any reason for rejecting the claim. In the Counter, the reason for rejection is stated in para 8 as under:-

“8.....It was found that the death of late Ansari was not due to heart stroke. As per medical science the disease of heart stroke is called “Acute Myocardial Infraction” where as the death certificate revealed the patient was expired not due to above ailment/complication but due to some other disease which is not a disease listed in Annexure-15. Therefore, there was no scope for petitioner No.2 to be considered for employment and on this score the several representation made by the petitioner No. 1 was not acceded to. The representations of petitioner No.1 was accordingly disposed of.....”

17. It is also averred in para 16 of the Counter as under:-

“16.....The averments regarding details of treatment given and fact leading to the death of the deceased in B.M. Birla Heart Research Centre, Calcutta, the same being not within the knowledge of the Opp. Party deserves no comment. Save and except that a bare perusal of death certificate issued by B.M. Birla Hospital under Annexure-13 would show that the death was due to Multiorgan disfunction and coronary artery disease (Operated), and not due to Heart Stroke.....”

18. It is clear from the above contentions of the respondents that the applicants' case for compassionate appointment has been rejected only on the basis of the death certificate, which did not mention the cause of death to be due to 'Heart Strokes'. There is nothing on record to show that the respondents, after receipt of the applicants' claim for compassionate appointment, had inquired from BHRC authorities whether heart stroke could be the cause of death, since the death certificate mentioned coronary heart disease. The respondents have concluded about the cause of death only from the cause the death certificate in spite of the fact that the deceased employee was suffering from heart ailments for which he was operated in BHRC and during his treatment after operation for heart disease, he expired due to multi-organ dysfunction and coronary heart disease as stated in the death certificate. The applicant in Rejoinder stated that the death certificate mentioned the cause of death to be coronary heart disease i.e. due to cardiac problem and it did not mention heart attack, for which his case was unfairly rejected by the respondents.

19. Respondents' counsel has relied on the judgment in the case of Madhusudan Das (supra), in which the dispute was on the question whether the death of the deceased employee in that case occurred in course of employment. Hon'ble High Court had held in that case that the death was in course of employment and Hon'ble Apex Court did not uphold the aforesaid finding. In this TA, the nature of dispute is different and hence, the cited judgment will not be applicable to the present case. In the case of Aswini Kumar Taneja (supra), the issue was whether the retirement benefits can be taken into consideration for determining financial hardship of the family of the deceased employee and hence, the judgment is factually distinguishable.

20. Learned counsel for the respondents has also relied on the judgment of Hon'ble High Court in the case of Dhira Kumar Panda (supra) in which the issue was consideration of the claim for compassionate appointment raised after a delay which was not explained by the respondent. Further, the deceased employee, as a *badli* workman did not complete the required number of days required to avail the benefit of compassionate appointment. In this TA, it is not the case of the respondents that the applicant had approached the court after a delay. In this TA, death of applicant no.2's father was on 24.1.1998 and the application for compassionate appointment was submitted on 20.3.1998 followed by representation on 18.6.1998. The case was rejected vide letter dated 13.7.1998 (Annexure-14) and the applicant filed the writ petition bearing OJC No. 11954 of 1998 on 28.8.1998 and the said writ petition has been transferred to the Tribunal for adjudication as this TA. Therefore, it cannot be said that in the present case, the claim for compassionate appointment has been filed before this Tribunal with a delay. Therefore, the judgment in the case of Dhira Kumar Panda (supra) will be of no assistance to the respondents.

21. Learned counsel for the applicant has relied on the judgment of Hon'ble High Court in the case of Digamber Bhutia (supra). In that case the respondent had a certificate of a private doctor stating the cause of death of the deceased employee in that case to be due to heart stroke, which had not been accepted by the authorities. Hence, that judgment will not be helpful

for the applicant. Similarly in the case of Smt. Begum Bibi (supra) in TA No. 12/2014 of this Bench of the Tribunal, the dispute was whether the death had occurred in course of employment or not, for which that judgment will have no application to the TA in hand. In Balbir Kaur (supra), the benefit of compassionate appointment was refused due to Employees' Family Benefit Scheme and the petitioner-employee was held to be entitled for the scheme of compassionate appointment as per the policy in force.

22. In the present TA, the applicant's claim was first rejected vide letter dated 4/5.5.1998 (Annexure-9 of the TA) without mentioning any reason for such a decision. Then after a number of representations by the applicants, copies of which have been annexed at Annexure 10,11,12 and 13 of the TA requesting for reconsideration of the case, the respondents issued the rejection letter dated 13.7.1998 (Annexure-14 of the TA) and no reason was mentioned in the said letter. The applicant in para 20 of the TA avers that the said letter dated 13.7.1998 is contrary to the provisions of the scheme, which has been denied in the Counter. It is noticed that there is no document furnished by the parties in their pleadings to show that the applicant was informed about the reason of rejection of his case before his filing of this TA.

23. The respondents in their Counter have mentioned two reasons for rejecting the case. The first ground was that the applicants had not availed the benefit under the employees family benefit scheme and have opted for the scheme of compassionate appointment. The second ground advanced in the Counter is that the applicants' claim for compassionate appointment is not covered under the scheme as per the circular dated 1.1.1996 since as per the death certificate (Annexure-3 of the TA), the cause of death of the deceased employee was not due to 'Heart Stroke'.

24. Regarding the first ground, no rule or policy decision of the respondents has been furnished to show that after launching of the employees family benefit scheme, the scheme for compassionate appointment will not be in force. In the light of law decided by Hon'ble Apex Court in the case of Balbir

Kaur (supra), when such a scheme as per the circular dated 1.1.1996 is in force, the applicants cannot be forced not to claim the benefits as admissible under the said circular and opt for the employees family benefit scheme. Hence, the applicants' claim could not have been rejected on that ground.

25. Regarding the other ground that the applicants' case was not covered under the circular dated 1.1.1996, it is obvious from the Counter that such conclusion has been drawn only on the basis of the cause of death as mentioned in the death certificate (Annexure-3 of the TA) of the deceased employee as discussed in paragraph 18 of this order. No further inquiry and report from BHRC was called for by the respondents to ascertain whether 'Heart Stroke' could have been one of the cause of death besides the reason mentioned in the death certificate, taking into consideration the fact that the deceased employee was admittedly being treated for heart disease for which he was operated and while under treatment after operation, the patient had expired. One of the cause of death was "coronary artery disease (operated)" as mentioned in the death certificate, which shows that the deceased employee's death was due to heart disease which could have aggravated during treatment and heart strokes could have been one of the cause although it was not mentioned in the death certificate. **Further, another cause of death as mentioned in the death certificate was "Multi-organ dysfunction" which could have included failure of heart and/or kidneys also. "Failure of kidney" is one specified disease in circular dated 1.1.1996 as extracted in paragraph 15 of this order, for which the benefit of compassionate appointment is permissible.** Without inquiry or further report from the treating medical institution to ascertain whether 'Heart Strokes' and/or "Failure of kidneys" could have been a cause of death of the deceased employee in view of the background of the ailments for which the deceased employee was referred to BHRC, it cannot be said that the death was not due to a disease specified in the circular dated 1.1.1996. The possibility of "Heart Strokes" and/or "Failure of kidneys" being one of the cause of death cannot be ruled out in this case in spite of the respondents' plea that coronary heart disease is medically different from heart stroke. It is noticed that the procedure for decision as laid down by the circular dated

1.1.1996 (extracted in paragraph 15 of this order) does not stipulate that the cause of death is to be determined only on the basis of the death certificate. All relevant facts, circumstances and documents are required to be taken into consideration while examining the claims under the said circular. Instead, the respondents have relied only on the death certificate for their decision to reject the claim of the applicant no. 2 in this case.

26. Lastly, the respondents referred to some the judgments in the Counter in which it was held that compassionate appointment cannot be taken as a source of appointment in public sector, which must be open to all eligible candidates. But it is also a settled law that when there is a scheme for compassionate appointment, the claims for the same are required to be considered strictly in accordance with such scheme and such claim cannot be rejected without examining all relevant facts and circumstances as laid down in the scheme.

27. In view of the facts and circumstances of the case as discussed in the preceding paragraphs, the issue formulated in paragraph 14 of this order is answered in affirmative and in favour of the applicant since the cause of death cannot be said to be not due to one of the diseases specified in the circular dated 1.1.1996 and the claim of the applicant no. 2 for compassionate appointment has not been considered by the respondents as per the provisions of the scheme in the circular dated 1.1.1996. Therefore, the respondents are directed to reconsider the claim in accordance with the circular dated 1.1.1996 (Annexure-B of the Counter), keeping in mind the observations made in this order and communicate their decision to the applicant no. 2 after such reconsideration through a speaking and reasoned order within four months from the date of receipt of a copy of this order.

28. This TA is allowed to the extent as above with no order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

