

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 637 of 2015

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

1. Binaya Kumar Ekka, aged about 24 years, S/o Late Baidyanath Ekka.
2. Basanti Ekka aged about 58 years, W/o Late Baidyanath Ekka,

Both are of Village/Post- Laing Colony, Via-Kansabahal, PS-
Rajagangpur, Dist.-Sundargarh.

.....Applicant

VERSUS

1. Steel Authority of India Limited, represented through the Managing Director, Rourkela Steel Plant, Rourkela, Dist.- Sundargarh-769011.
2. Dy. General Manager, Roll Shop, Rourkela Steel Plant, Rourkela, Dist.-Sundargarh-769011.
3. Senior Manager (PL=G&P), Rourkela Steel Plant, Rourkela, Dist.-Sundargarh-769011.

.....Respondents

For the applicant : None

For the respondents: Mr.H.M.Dhal, counsel

Heard & reserved on : 12.10.2020 Order on : 20.10.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in the present OA :

"That the facts and circumstances stated above the Hon'ble Tribunal may kindly be pleased to admit the original application and issue notice to respondents to show cause as to why the order under Annexure-A/4 shall not be quashed and in the event if the respondents show no cause or show insufficient cause this Hon'ble Tribunal may kindly be pleased to quash the Annexure A/4 and direct to the respondents to consider/reconsider the matter and give appointment to the applicant No.1 to any post befitting to his qualification under the Rehabilitation Assistance Scheme/Compassionate ground.

And pass any other order/orders giving complete relief to the applicants.

And for this act of kindness the applicants as in duty bound shall every pray."

2. The applicant no. 1 had applied for appointment on compassionate ground after death of his father who was working as Private Secretary in Personnel Department of Rourkela Steel Plant (in short RSP) and while in service, he expired on 31.8.2008. Late father of the applicant no. 1 fell down from the cycle

while returning from his duty and expired while undergoing treatment. A copy of the death certificate and legal heir certificates are enclosed at Annexure-A/1 and A/2 of the OA. Since he was the only earning member of the family, which was displaced due to acquisition of their land for setting up of RSP, vide the certificate at Annexure-A/3 of the OA. It is averred by the applicants that no action was taken by the respondents on the request for compassionate appointment till 9.3.2010 when an order was issued (Annexure-A/4) rejecting the request without specifying any reason for the same.

3. The applicants approached the respondent no. 1 to reconsider the matter and since no decision was taken, the applicants filed the writ petition WP(C) No. 1360/2015 before Hon'ble High Court. The said petition was disposed of vide order dated 6.2.2015 (Annexure-A/5) with liberty to the applicant to file the OA before this Tribunal. Hence the OA has been filed by the applicant mainly on the ground that the impugned order at Annexure-A/4 has been passed whimsically and arbitrarily without exercising their discretion under the scheme for compassionate appointment.

4. Counter has been filed by the respondents stating that the respondents have formulated a scheme called 'Employees Family Benefit' (in short EFB) under which the dependent nominee of a deceased employee is allowed the benefit of last salary of the deceased employee till his notional superannuation date, on deposit of the PF and gratuity benefits receivable by the legal heirs. A copy of the said scheme is enclosed at Annexure-R/1 of the Counter. It is further averred that after death of the father of the applicant no. 1, his widow i.e. the applicant no. 2 submitted an application for the benefit under the EFB scheme and from 17.02.2009, she was allowed the benefit of Rs. 19,272/- per month from 17.2.2009 till 30.9.2016 vide the order dated 4.3.2009 (Annexure-R/3 of the Counter). It is also stated that since the applicants have availed the benefits under the EFB, they are not eligible for benefits under the compassionate appointment scheme.

5. The respondents have also relied on the judgment of Hon'ble Apex Court in the case of **State of J&K & Ors. vs. Sajad Ahmed Mir, 2006 Lab IC 3988 and LIC of India vs. A.R. Ambedkar, (1994) 2 SCC 718** to oppose the claim of the applicants in the OA.

6. No Rejoinder has been filed by the applicant. When the matter was taken up for hearing on 12.10.2020, the applicant was absent. No one was present on behalf of the applicant on previous dates i.e. on 4.8.2020, 9.9.2020 and 6.10.2020. Hence, the matter was considered under the rule 15 of the CAT (Procedure) Rules, 1987 in absence of the applicant. Learned counsel for the

respondents was heard. He submitted that after death of the applicant's father on 31.8.2008, the applicant no.2, who is the mother of the applicant no.1, applied for availing the benefits under the EFB scheme vide her application dated 3.1.2009 (Annexure-R/2 of the Counter). As per the said application, the respondents sanctioned the amount of Rs. 19,272/- per month from 17.2.2009 till 30.9.2016 which was the date when the deceased employee would have retired. It was further submitted that the applicants having received the financial benefits under the EFB scheme from 2009 to 2016 are not entitled for compassionate appointment. Respondents' counsel further submitted that the applicant no. 1 applied for compassionate appointment after about 7 years of death of his father is barred by limitation and it is contrary to the law laid down by Hon'ble Apex Court in the case of Sajad Ahmed Mir (supra) and A.R. Ambedkar (supra).

7. The pleadings on record by both the parties have been considered by me. It is stated in the OA that the applicant had first applied for compassionate appointment in 2009, but such request was rejected by the respondents vide order dated 9.3.2010 (Annexure-A/4). Thereafter, another representation dated 6.2.2014 (Annexure-A/5) filed by the applicant no.2 for compassionate appointment of her son (applicant no.1) and writ petition No. 1360 of 2015 was filed due to inaction of the respondents and the said writ petition was disposed of with liberty to the applicant to file the OA before this Tribunal. Accordingly, the applicants have filed this OA challenging the order dated 9.3.2010. As per the provisions of the Administrative Tribunals Act, 1985, to challenge the validity of the order dated 9.3.2010, it was necessary to file a separate application explaining the delay from 9.3.2010 till the representation dated 6.2.2014 was filed before the respondents for reconsideration of the claim. There is nothing on record to show that Hon'ble High Court had condoned such delay. Therefore, in absence of a separate application for condoning the delay of about four years from the date of rejection, it has to be concluded that the OA is barred by limitation.

8. It is the settled law that compassionate appointment cannot be claimed as a matter of right and it has to be considered in accordance with the approved scheme/rules in order to mitigate immediate financial distress to the family due to death of the bread earner for the family. The person claiming the benefit of compassionate appointment has to establish his eligibility for consideration as per the provisions of the scheme. No rule or executive instructions of the respondents has been furnished by the applicant to prove that he was eligible to be considered for the benefit of compassionate appointment as per the aforesaid rule or executive instructions governing compassionate appointment.

In absence of such rules or instructions, the applicant has not established his eligibility for the benefit of compassionate appointment as claimed.

9. Further, after availing the benefit under the EFB scheme, it is not shown that the applicants' family still faced with financial distress after death of the deceased employee which was required to be mitigated. In fact the applicants have not disclosed in the OA the fact that they had availed the benefits under EFB after death of the father of the applicant no.1 and contentions in the Counter regarding their availing the EFB benefit, has not been contradicted in applicants' pleadings on record. Thus, the applicants have not disclosed important information relating to the financial condition of their family.

10. For the reasons mentioned above, the OA is liable to be dismissed both on the ground of delay as well as on merit. Hence, it is dismissed. No cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

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