

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

TA No.20 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. T. Jacob , Member (A)

1. Sri Swapan Kumar Das, aged about 24 years, S/o
Dinanath Das, now residing at Quarters No. A/528,
Sector – 1, Rourkela.

.....Applicant.

VERSUS

1. Steel Authority of India Limited, represented through
the Chairman, Lodhi Road, New Delhi.
2. Rourkela Steel Plant represented through its Managing
Director, Rourkela District, Sundargarh.

.....Respondents.

For the applicant : Mr. P. K. Mishra, Advocate.
Mr. K. Panigrahi, Advocate.
Mr. B. R. Saring. Advocate.

For the respondents: Mr. N. K. Sahu, Advocate.
Mr. T. K. Pattnaik, Advocate.

Heard & reserved on : 04.03.2021 Order on :09.07.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

1. The OJC No. 7704/1995 was transferred from Hon'ble
High Court of Odisha and numbered as TA 24/2016.
The brief of the case as inter alia averred by the

applicant is that he is seeking compassionate appointment due to the permanent disablement of his father Sri Dinanath Das who was working as Semi Skilled Worker (L-5), Communication department in the Rourkela Steel Plant and found medically unfit on 31.12.1994. Hence he has filed this TA with the following prayers:

It is therefore humbly prayed that your Lordships be graciously pleased to admit the writ application, issue a rule nisi calling upon the opp. Parties to show cause as to why the petitioner shall not be given an appointment under compassionate ground in view of the tripartite agreement entered into;

And if the opp parties fail to show cause or give insufficient cause, make the rule absolute by issuing a writ of mandamus directing the opp.

Parties to give appointment to the petitioner on compassionate ground in any available post under the opp. Party no. 2 as his father has been declared permanently medically unfit to hold the post;

And grant all consequential service benefits accrued to him;

And pass such other order/orders as this Honourable Court deems fit and proper.

2. The respondents in their counter inter alia averred that a Tripartite settlement was signed between the management of Rourkela Steel Plant and it's the then recognized Trade Union, Rourkela Mazdoor Sabha on 18.07.1989 and a scheme known as Employees Family Benefit Scheme was framed and circulated on 07.08.1991 made effective from 01.01.1989 as agreed to in the tripartite settlement (Annexure A). The respondents submitted that as per the tripartite settlement on separation of an employee from the services of the company on account of natural death or permanent total disablement, his nominee/the employee as the case may be on depositing with the company the entire dues towards provident fund and gratuity amount of the employee shall be entitled to monthly payment equivalent to his basic pay plus D last drawn as per the scheme. The respondents submitted that the applicant's father having been declared permanently medically unfit on 31.10.1994 his case is covered under the tripartite settlement dated 18.07.1989. In 1989 settlement there was no provision for compassionate employment in the event of an employee found permanently unfit.

3. The parties have filed rejoinder and reply to rejoinder.
4. Learned counsel for the applicant have relied on some citations including the following:

A. Hon'ble Supreme Court in Civil Appeals No. 11881 and 11882 of 1996 reported in VOL 90 (2000) CLT 450 (SC).

B. Hon'ble Supreme Court in Review Petitions (C) Nos. 800 and 801/2000

5. Learned counsel for the respondents have relied on some citations including the following:

1) Hon'ble High Court of Orissa in AIR 1971 Orissa 118

2) Hon'ble Supreme Court in AIR 1987 SC 1015.

3) Hon'ble Supreme Court in the case of LIC vrs. Mr. A. R. Ambdekar reported in AIR 1994 SC 2148.

4) Hon'ble High Court of Orissa in O.J.C. No. 3161/94.

5) Hon'ble Supreme Court in CR No. 800/2000 in the case of Balbir Kaur and T. K. Minakshai.

6) Hon'ble Supreme Court in Civil Appeal No.s 6455-6459 of 1998 (SAIL & Another vs Awadhesh Singh and others)

6. Heard learned counsel for both the sides and have carefully gone through their pleadings and materials on record.

7. The applicant has prayed for compassionate appointment under the Employees Family Benefit Scheme under 2nd category. It is the stand of the respondents that the benefit given under 2nd and 3rd category under the circular vide Annexure A/8 dated 22.09.1982 have been

withdrawn with retrospective effect as per subsequent scheme circular vide R/B &R/C dated 21.11.1992 in view of the subsequent scheme vide R/A. Learned counsel for the respondents submitted that even if for sake of argument it is accepted that the scheme vide annexure A/8 is applicable still then as per the said scheme the applicant having not fulfilled the required criteria/eligibility is not entitled to any benefit under the said scheme since father of the applicant who was employee under respondent department had already completed 55 years and was 56 years four months and 27 days old on 31.10.1994 on which date he was found medically declared as unfit. He had further submitted that even though exact age of applicant has not been mentioned anywhere in the pleading, in reply to the specific averment made in para 12 of the OA that the father of the applicant is less than 56 years of age, still then he had only two years of service left. As per the eligibility and requirement criteria of the scheme vide annexure A/8 the person who claims benefit for appointment of any of his family members under Employees Family Benefit scheme should have balance of three years of service. Accordingly the applicants are not entitled for any relief under the said scheme.

8. It was submitted by learned counsel for the respondents that the relevant date for consideration as to which scheme is applicable is the date on which the concerned

employee was medically declared as unfit. Accordingly in the present case the relevant date is 31.10.1994. Therefore the subsequent scheme vide R/A dated 07.08.1991 and the circular vide R/B and R/C dated 21.11.1992 are applicable.

9. Learned counsel for the applicant had drawn the attention of the tribunal to several representation filed by the ex-employee i.e. father of the present applicant way back in the year 1991 vide annexure A/14, 15 & 16 dated 11.06.1991, 03.07.1991 & 23.05.1992.

10. It was submitted by learned counsel for the applicant that Hon'ble Supreme Court in Balbir Kaur case has not considered the decision in R/H since R/H was subsequently disposed of on 02.11.2000 after disposal of Balbir Kaur case on 05.05.2000 as another family member was in employment. In the present case no family member of the ex-employee is in service of the respondent department and accordingly the citations vide R/H is not applicable to the facts and circumstances of the present case.

11. Learned counsel for respondents submitted that Balbir Kaur was a case of death and not of permanent disability and he had further submitted that Hon'ble Supreme court had no occasion to deal with circular policy decisions withdrawal of compassionate appointment. He had further submitted that since

permanent disability was on 31.10.1994, therefore Annexure A/8 scheme is not applicable.

12. Hon'ble Apex Court in its order dated 08.08.2003 in Civil Review Petition Nos. 139, 140, 141 & 142 of 2000 had observed at para 4 of the judgment that "4. Without going into the disputed question of fact, I dispose of the review petitions with the following direction. The petitioners in the review petitions i.e. Steel Authority of India Limited shall examine each individual cases to find out as to whether the case is covered under the policy in existence till 1989 or under the new policy which is stated to have been given in force after 1989. If the case is covered under the policy which was in existence till 1989 such case shall be decided in terms of the decision of the Apex Court in the case of Balbir Kaur -v- Steel Authority of India Limited (supra). If the claim is found to be under the new policy which is stated to have been given effect to after 1989, same shall be considered under the new policy. This exercise shall be done by the authorities within a period of three months from the date of communication of this order. With the aforesaid observation and direction, all the review petitions are disposed of". In the judgement 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 Union of India & another vrs Shashnak 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.

13. The father of the applicant was declared permanently medically unfit on 31.10.1994 and by that time the tripartite settlement dated 18.07.1989 has come into force and the subsequent scheme vide R/A dated 07.08.1991 and the circular vide R/B and R/C dated 21.11.1992 are applicable. The citations as relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of the present case.

14. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)