

32

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.413 of 2011

Cuttack this the 3rd day of July, 2014

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bibhuti Bhusan Nayak,
Aged about 31 years
S/o.late Bhagirathi Nayak
Resident of Qrs.No.B/174, Sector-1, Rourkela
District-Sundargarh

...Applicant

By the Advocate(s)-M/s.J.Pal

A.K.Behera
R.N.Mishra
Ms.M.Jesthi

-VERSUS-

1. Steel Authority of India Limited
Rourkela Steel Plant
Rourkela – 769 001 a Company incorporated
Under the Companies Act represented through
Managing Director, Rourkela Steel Plant
Rourkela
Dist-Sundargarh
2. The Executive Director (Personnel and Administration)Steel Authority
of India Limited
Rourkela Steel Plant
Administration Building, 2nd Floor
Personnel department
Rourkela-769 001
3. Senior Manager (PL-General)
Steel Authority of India Limited
Rourkela Steel Plant
Rourkela, District-Sundargarh

...Respondents

By the Advocate(s)-M/s.N.K.Sahoo

B.Swain
S.Kumari Sahoo

Necu

33

ORDERR.C.MISRA, MEMBER(A)

Applicant in the present Original Application has approached the Tribunal praying for a compassionate appointment in the Rourkela Steel Plant, and also for quashing of an order dated 29.4.2011 by which his claim of compassionate appointment has been rejected by the authorities.

2. Coming to the short facts of the case, it is revealed that the father of the applicant, who was a Senior Executive Assistant of the Project Modernization Department in the Rourkela Steel Plant died on 22.12.1997. He was earlier suffering from cardiac problems, and when he became ill in course of duty, he was admitted in the Ispat General Hospital (I.G.H.). However, before his removal to the IGH, he was taken to one Dr.Patri, Heart Specialist at Super Market, Udit Nagar for immediate medical aid. However, the applicant's father expired in the I.G.H. only. In the O.A., I find only one applicant who is the son of the deceased RSP employee. But in the body of the O.A., there is mention of applicant No.1 and 2 which could not be explained. Be that what it may, the applicant's mother approached the authorities of RSP praying for a compassionate appointment in favour of her son on 10.3.1998. This prayer was rejected by the authorities. Another representation was made on 3.10.2001 in which it was cited that in similar cases, the facility was extended. But this representation was also rejected and communication to this effect was sent on 7.6.2002. Thereafter, the applicant and his mother moved the Hon'ble High Court of Odisha in a Writ



Petition. This Writ Petition bearing No.W.P.(C) No.4984 of 2003 was disposed of on 16.12.2010. The relevant part of the orders is quoted below.

"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's 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.

- a) Failure of kidneys
- b) Heart strokes
- c) Cancer

The aforesaid seems to be a bit unreasonable because here is a case, according to the applicants, 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.Pattnaik, 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 Officer. 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 applicants 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 applicants are working, still the indigence is continuing and they have 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 applicants once again.

Accordingly, we set aside the order dated 7.6.2002 passed by the Deputy Manager (PL-General), Rourkela Steel Plant, OP 1 and direct him to consider the case of the applicants sympathetically and pass a reasoned order on the application, of the applicants. We hope and trust that in such type of cases, the authorities taking a pragmatic approach shall take into consideration the Scheme in question".

3. In compliance to the directions of the Hon'ble High Court of Odisha, the RSP authorities considered the matter again and passed a speaking order dated 29.4.2011 rejecting the case of the applicant which has been challenged in the present O.A.

4. In the counter affidavit filed by the Respondents, it has been submitted that the applicant is making an unreasonable claim of compassionate appointment on hereditary basis, instead of availing of a scheme, "Employees Family Benefit Scheme" introduced by Respondents.

According to the counter affidavit, the applicant's father acquired assets disproportionate to his income, and faced disciplinary action, during his employment in RSP. Further, it was learnt by the Respondents from reliable sources that the family members of the deceased employee have substantial earnings from their business. They have a dwelling house which is approximately of a value of Rs.50 lakhs. Suffice it to say that the applicant is of sound financial status. The family members remained in unauthorized



occupation of Company's quarters, giving rise to protracted litigation.

Another objection raised by Respondents is that as per the Company's policy applicant is not entitled to compassionate appointment. According to extant policy, the case of employee who is diagnosed by the Company's doctor to be suffering from any of the following diseases and dies in Company's hospital or referral hospital while under such treatment is covered.

- i) Failure of kidneys
- ii) Heart stroke
- iii) Cancer

5. In the present case, applicant's father on 22.12.1997 had absconded from duty at 10 AM and at 12.15 PM was brought dead to the Ispat General Hospital. The applicant's ill health was not reported to the Occupational Health Service Centre which is near the work place.

6. Even though there was a certificate by one Dr.G.C.Patri that the death of applicant's father was due to heart attack, the medical records of the applicant's father did not have any information which would enable the applicant to avail of the benefit of compassionate appointment. The Respondents believed that the certificate of Dr.Patri was obtained from him 18 days after the death of applicant's father only with a view to obtaining the above facility. These facts do not constitute a compliance of the extant policy of Respondents regarding compassionate appointment. The Respondents have therefore asserted that the applicant is not eligible for compassionate appointment as per the policy of the Company. They have



37

O.A.No.413 of 2011

also pleaded that the circumstances in which applicant's father was brought dead to I.G.H. are mysterious. His medical records as available with Respondent authorities do not support the claim of the applicant for compassionate appointment.

7. The Respondents have submitted that in compliance to the Hon'ble High Court's orders in W.P. (C) No. 4984/03, the authorities have examined the matter afresh and there is no cause of action for the applicant to re-agitate the issue once again by abusing the process of the Tribunal. The Respondent authorities have followed the directions of the Hon'ble High Court of Odisha and reconsidered the circumstances of the death of the applicant's father, the financial status of the family, and the scheme and policy of compassionate appointment in vogue, and finally came to the conclusion that the claim of compassionate appointment cannot be acceded to.

8. With the above submissions, the respondents have prayed for dismissal of the O.A.

9.

xx xx xxx



10. The Hon'ble Apex Court in several judgments have stated clearly the law with regard to compassionate appointment, which cannot be claimed as a normal source of recruitment. The policy of public employment has to be governed by Articles 14 and 16 of the Constitution. However, compassionate appointment is to be considered under such a scheme as formulated by the concerned authorities, with the avowed objective of giving employment to an eligible family member of the deceased employee, to help the family to tide over the immediate distress caused due to the sudden death of the employee. It is now the settled law that there should not be a consideration of compassionate appointment beyond or outside the scheme of such a nature as formulated by the authorities. Claim for compassionate appointment should not be agitated as a matter of right several years after the death of the employee, since the scheme is meant to help the distressed family to tide over the immediate financial difficulty.



39

11. Having accepted the position of law as stated above, the issue for adjudication in the present matter is whether the order passed by the authorities on 29.4.2011 by following the directions of Hon'ble High Court in W.P. (C) No.4984 of 2003 dated 16.12.2010 fully complies with the said directions, the circumstances of the death of applicant's father as well as the policy of the SAIL with regard to eligibility for compassionate appointment. Having discussed the situation, the Hon'ble High Court observed that the policy "seems to be a bit unreasonable". Finally, the Hon'ble High Court directed that in their 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. The Hon'ble High Court also gave the observation, "we hope and trust that in such type of cases, the authorities taking a pragmatic approach shall take into consideration the scheme in question".

12. The speaking order dated 29.4.2011, 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 O.A., 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 a bit unreasonable. There is no discussion or compliance of this



40

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 observation 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.



Y)

15. With the aforesaid observation and direction, O.A. is disposed of. No costs.


(R.C.MISRA)
MEMBER(A)

BKS

