

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 260/70 of 2016
Cuttack this the 12th day of December, 2017

Smt.Renubala Patra & another...Applicants

-VERSUS-

Steel Authority of India Ltd. & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack this the 12th day of December, 2017

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. Smt.Renubala Patra, aged about years, W/o. late Kishore Chandra Patra.
2. Ramakanta Patra, aged about 34 years, S/o. late Kishore Chandra Patra
Both are residing At-Qr.No.B/445, Fertilizer Township, Rourkela-7, Dist-Sundargarh

...Applicants

By the Advocate(s)-M/s.R.N.Acharya

B.Barik
P.Bhagat

-VERSUS-

1. Steel Authority of India Ltd., represented by its Chairman, Ispat Bhawan, Lothi Road, New Delhi-110 003
2. The Managing Director, Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundargarh
3. The General Manager (F&A), Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundargarh
4. The Executive Director (P&A), Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundargarh

...Respondents

By the Advocate(s)-M/s.D.P.Nanda

R.K.Kanungo
B.P.Panda
S.R.Sahoo
S.Rath (Res.Nos.2 to 4)

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant No.1 is the wife of a deceased employee of Rourkela Steel Plant (RSP) under the Steel Authority of India

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Limited (SAIL) and the applicant No.2 is his son. The deceased SAIL employee late Kishore Chandra Patra had met with a road accident at around 7.45 AM on 8.1.2005 while going to attend the general shift in Oxygen Plant of Rourkela Steel Plant which commences at 8.00 AM. He died shortly after the accident. The first applicant had filed an application before the Executive Director (P&A), Rourkela Steel Plant on 21.2.2005 praying for compassionate appointment to her son (the Applicant No.2 in the present O.A). On 8.3.2005, the applicant no.2 himself had filed an application for compassionate appointment. On 6.4.2005, representation of the applicant no.2 was rejected on the ground that there is no provision for compassionate appointment under the circumstances of the death of Shri Kishore Chandra Patra on 8.1.2005. The applicant no.2 had filed a Writ Petition before the Hon'ble High Court of Orissa in W.P. (C) No.86 of 2008 which was disposed on 18.2.2008 with a direction to the General Manager, RSP to reconsider the case of the petitioner as prayed for in his representation dated 8.3.2005 and to pass a reasoned order within a period of one month. On 14.7.2008, the General Manager (P&A) rejected the representation of the applicant no.1 dated 8.3.2005 on the ground that the case of the applicant is not covered under the circular dated 1.1.1996 of the RSP and that there is no scope for providing employment to the applicant on compassionate ground as per the norms and policy of the Company. The

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applicant had approached the Commissioner for Employees Compensation & Deputy Commissioner, Rourkela under the Workmen Compensation Act. He also approached the Managing Director of SAIL praying for compassionate appointment under the provisions of the Scheme adopted by the SAIL dated 22.9.1982 and in terms of NJCS as well as local tripartite agreement dated 10.2.1984. Since no action was taken on his representation, he approached the Hon'ble High Court of Orissa again in W.P. (C) No.17113 of 2008. The said Writ Petition was disposed of by the Hon'ble High Court on 19.3.2012 with the observation that all matters relating to RSP comes under the jurisdiction of the Central Administrative Tribunal. The applicants have therefore, filed the present O.A. on 19.1.2016 praying for the following reliefs:

- i) The order of rejection passed by the Respondent No.4 vide order No.727 dated 18.10.2008 under Annexure-4 may kindly be quashed.
- ii) Issue direction to the respondent No.1 to provide employment under compassionate ground in favour of applicant no.2 according to his qualification view of Clause-3.4.5.1 (f) of the Memorandum of Settlement dated 25.7.2001;
- iii) The respondents may kindly be directed to pay heavy cost to the applicants due to their unlawful action by not following their own Rules and Regulations under Annexure-7 and Memorandum of Settlement dated 25.7.2001 and passing the order of rejection without any reasoned order which creates unnecessary litigation on the part of the applicants.

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2. It is the contention of the applicants that rejection of the application for compassionate appointment of the applicant no.2 passed by the General Manager (P&A) pursuant to the direction of the Hon'ble High Court in W.P. (C) No.86 of 2008 is illegal and improper and therefore, the same is liable to be set aside. The applicants in the present O.A. have mainly relied on the circular dated 10.2.1984 at A/7 and the Memorandum of Settlement between the Management of RSP and its Workmen dated 25.7.2001 to support their case for compassionate appointment.

3. The Respondents in their counter-reply filed on 11.04.2017 have challenged the claim of the applicants. It is their contention that late Kishore Chandra Patra was working as Senior Technician in Tonnage Oxygen Plant of Rourkela Steel Plant. While on his way to work on 8.1.2005 at about 7.45 A.M. he had a fainting attack and fell down from the motor bike. He was taken first to the Fertilizer Hospital and subsequently to Ispat General Hospital where he was declared dead at about 8.35 AM. The prayer for compassionate appointment by the applicant no.2 is not maintainable since it is not covered under the provisions as contained in the Personnel Policy Circular dated 1.1.1996 which provides for consideration of compassionate appointment only for the wards of employees who die while under treatment at the Company's Hospital or referral hospital for failure of kidney, heart strokes and cancer.

In the present case, the deceased employee did not die of any of these complaints. The respondents claim that the applicants' family has already been given an amount of Rs.2,63,900 under the Workmen's Compensation Act. The R.S.P. being a Public Sector Unit is governed by its own rules and procedures while recruiting a person and therefore, there is no scope for compassionate appointment to the applicant no.2 in violation of Article 16 of the Constitution of India. The respondents have cited a number of judgments to support their claim and have stated that compassionate appointment is not a matter of right and should be given only to deserving cases [LIC of India vs. A.R. Ambekar (1994) 2 SCC 718, SAIL vs. Madhusudan Das & Ors, JT 2008 (12) 642, State of J&K & Ors. vs. Sajad Ahmed Mir 2006 Lab. IC 3988]. The Respondents have also challenged the claim of the applicants for employment under the Memorandum of Agreement and have cited the judgment of the Hon'ble Supreme Court in the case of SAIL & Another vs. Awadesh Singh & Ors. [(2001) 10 SCC 621] to argue that Memorandum of Agreement is not a statutory scheme and therefore would be unenforceable in an application under Article 226 of the Constitution. Respondents have also argued that the O.A. filed by the applicants is barred by limitation.

4. I have heard the learned counsels from both the sides and perused the documents submitted by them. As regards limitation, the documents show that the applicants approached



various fora including the Hon'ble High Court of Orissa and the relevant forum under the Workmen's Compensation Act to get relief due to the sudden demise of late K.C.Patra. The application under the Workmen's Compensation Act was disposed by the Commissioner on 12.2.2014. This order was challenged by the SAIL before the Hon'ble High Court which disposed of the appeal on 8.10.2014 upholding the order of the Commissioner. In view of that the marginal delay in filing this O.A. in January, 2016 is condoned and the case is taken up for consideration on merit.

5. The applicants have challenged the order dated 18.10.2008 (A/4) passed by the General Manager(P&A) rejecting the prayer of the applicant no.2 for compassionate appointment. The relevant extract from the said order is as follows:

"While considering his representation dt. 8.3.2005 and the other . 18.7.2008 as referred to above, I find that the entire medical records were sent to Director I/c. (M&HS) for examination and opinion as to whether as per medical record his case deserves consideration for compassionate employment in terms of the circular No.PL/RR-20(2) dt.1.1.1996. A medical Board constituted by Director I/c. (M&HS) appears to have examined all medical records pertaining to the treatment of late K.C.Patra and is of the view that the case of the petitioner is not covered under Circular dt. 1.1.1996. The opinion of the Medical Board has been confirmed by the Director I/c. (M&HS).

In his representations R.K.Patra claiming to be the son of late K.C.Patra, PL No.33123, Ex.Sr. Technician, TOP-I Department requests for employment after the death of his father on 8.1.2005 on compassionate ground on the basis of

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the circular dtd. 1.1.96 stating that his father had heart problem and he was under treatment at IGH and died while going to attend duty.

Taking into consideration the aforesaid facts and circumstances and the opinion of Director I/c (M&HS), I find that this is not a case covered under the circular dt. 1.1.96 which deals with cases of compassionate employment if an employee dies due to the disease enlisted therein after a prolonged treatment at the company's hospital or at a referral hospital. Keeping in view that Medical Boards report, there is no scope to provide employment on compassionate ground as per norm/policy of the company. His representation is thus disposed of".

6. The Medical Certificate issued by the Statistical & Record Section of the Ispat General Hospital, Rourkela on 15.1.2005 mentions that late K.C.Patra was brought dead to the I.G.H. on 8.1.2005 at 8.35 AM. It is apparent that the deceased SAIL employee was taken to the Fertilizer Plant Hospital immediately after his accident while travelling to his place of work. The Emergency Register of the said hospital has recorded under the column Diagnosis "fainting attack". His condition was comatose, B.P. was not recordable. Under the remarks column it was mentioned that the "deceased fell from motor bike near B. Block transformer at 7.45 AM on 8.1.2005 as reported by his son while going to duty".

7. The guideline issued under the Circular dated 1.1.1996 reads as follows:

"Conditions for extension of benefit of employment on compassionate grounds under 1st priority in certain cases of death.

Scope- The Scheme shall be applicable to all regular employees of Rourkela steel Plant including Executives.

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 referral 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 employed son or if there is no such son, an unemployed unmarried daughter.

8. The Commissioner for Employees Compensation & Deputy Commissioner Labour, Rourkela had come to the conclusion that the deceased employee was on his way to work and therefore awarded a compensation to the heirs. In the order passed by the Deputy Commissioner, there is a mention about the Police report wherein it has been mentioned that as per the statement given by the son to the Police his father was suffering from cardiac disease and had been admitted to IGH two times. The Deputy Commissioner, Rourkela had come to the conclusion that the deceased employee was on his way to work and therefore awarded compensation to the legal heirs. The applicant has relied on the Personnel Policy Circular No.432 dated 10.2.1984. In the interest of clarity, it is necessary

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to quote the relevant paragraph of the said Personnel Policy Circular.

"In pursuance of the Memorandum of Settlement dt. 1.6.1983 between the Management of Rourkela Steel Plant and the Rourkela Mazdoor Sabha (Recognized Union), the Workmen's Compensation benefits will be extended to the employees of Rourkela Steel Plant meeting with accident resulting in injury during journey from the residence to place of work and back within one hour of the start or end of their duty hours causing death or permanent/temporary disablement, provided that the accident takes on the normal route of journey between residence and the place of work.

For the above purpose, the normal route shall be the shortest normal route between the place of work and the employees quarters/residence and the subject to fulfillment of the following conditions:

That the accident takes place on a road, i.e., a road belonging to the Company or a public road. If the employee adopts a short-cut and performs his journey through a field, nullah or hillock while going to the place of work or returning home and meets with an accident he will not be eligible for payment of compensation.

The employee uses the normal route: For example, an employee staying in a sector located on the eastern side of the Hamipur Road or in Sector 6 or 18 uses the Ring Road from the Aerodrome/Uditnagar side, he will not be taken to be using the shortest normal route".

9. Subsequently a Memorandum of Settlement was signed between the Management of RSP and its Workmen represented through Rourkela Shramik Sangh on 25.7.2001. Clauses-(d)(e) and (f) of Section 3.4.5.1 read as follows:

- d) Workmen's Compensation benefit will continue to be extended to injury cases

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causing death or permanent/temporary disablement arising during journey from residence to place of work and back within one hour of the start or end of his duty hour provided that the accident takes place on the normal route of journey to the place of work.

e) If an employee is displaced due to accident arising out of and during the course of employment, he/she will get full wages and dearness allowance from the date of accident till the employee is declared fit by the Company's medical officer as per the existing practice.

f) In case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/her direct dependent will be provided. However, instead of employment the dependent may opt for benefits under Employees Family Benefit Scheme (EFBS).

10. Taking a comprehensive view of the present O.A. it is quite obvious that Sri K.C.Patra had died on his way to duty. While riding the bike his head reeled and he fell down unconscious on the road. The judgment of the Hon'ble Supreme Court in SAIL & Another vs. Awadhesh Singh & Ors. (2001) 10 SCC 621 had specifically stated that a Memorandum of Agreement is not a statutory scheme and would be unenforceable in an application under Article 226 of the Constitution of India. However, the point in dispute in the above case was whether the Memorandum of Agreement with the National Joint Committee for Steel Industry permits an appointment on the death of an employee to one of the

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dependents of the deceased employee if some other dependent of the deceased employee is already in service. The facts in the present case are different. No other employee of the applicant's family is in service and therefore, the issue of compassionate appointment to the applicant no.2 due to the death of his father while going to duty is quite open. The Memorandum of Settlement between the Management of RSP and Rourkela Shramik Singh quite clearly stipulates that when an employee dies while going to work his ward should be eligible for compassionate appointment (Section-3.4.5.1.(f)). The applicant No.2 is eligible for compassionate appointment under the Memorandum of Settlement dated 25.7.2001 read with the Policy of 1984. The applicants have relied on the judgments of Hon'ble Supreme Court in Balbir Kaur and Another vs. SAIL & Ors. (2000) 6 SCC 493, Jagmohan Lal vs. Union of India (O.A.No.332/ 00016/2016 disposed of on 25.2.2016 by CAT, Lucknow Bench). In Balbir Kaur case (supra), the Hon'ble Supreme Court had analyzed in detail the compassionate appointment policy of SAIL. Para-11 of the judgment reads as follows:

- "11. Turning on to the factual aspects once again, it is not that compassionate appointments have never been effected. Steel Authority of India was in fact providing compassionate employment to one dependant of an employee dying in harness or permanently disabled. As a matter of fact on 22.9.1982 the respondent Steel Authority, further issued the circular pertaining to appointments on compassionate grounds. The circular

however for the first time introduced categorization of compassionate employment as First Priority Cases, Second Priority Cases and Third Priority Cases. The circular reads as below:

"The system of compassionate appointments was reviewed in a meeting of the Advisory Committee recently. On the lines of the discussions, the system may be operated in future as given below:

1. First Priority Cases:

- (a) Employment of a dependant of an employee who dies owing to an accident arising out of and in the course of employment.
- b) Employment of a dependant of an employee who dies in a road accident while on duty or while coming to or going back from duty.

The existing practice will continue".

11. I have taken note of the case laws cited by the respondents on compassionate appointment. In addition to the cases cited by the respondents, in a catena of judgments, the Hon'ble Supreme Court has reiterated that compassionate appointment cannot be given as a matter of right and should be given to deserving cases to tide over the immediate needs of the family. However, the authorities of SAIL in their wisdom have introduced the compassionate appointment scheme for the wards of the employees dying in harness.

In **Haryana SEB vs. Naresh Tanswar (1996) 8 SCC 23**,
Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481,
Haryana SEB vs. Krishna Devi (2002) 10 SCC 246, **State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412** and **National**

Hydroelectric Power Corporation vs. Nanak Chand (2004)

12 SCC 487, the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In **State Bank of India vs. Anju Jain (2008) 8SCC 475**, the Hon'ble Supreme Court had pertinently observed the following.

"Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment".

12. The case of the applicant no.2 is squarely covered by the judgment in BalbirKaur case (supra). The applicant comes under the First Priority Cases as discussed in the above-mentioned judgment. The Respondents are accordingly directed to reconsider the case of the applicant no.2 applying

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the provision as stipulated in Section 3.4.5.1 (f) of the Memorandum of Settlement dated 25.7.2001 and pass appropriate orders within a period of eight weeks from the date of receipt of this order.

14. The O.A. is allowed to the above extent only. No costs.

(DR. MRUTYUNJAY SARANGI)
MEMBER(A)

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