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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.987 of 2013
Cuttack, this the 27th day of March, 2015

Padmini Nanda & Another

.....Applicants

-Versus-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*



(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 987 OF 2013

Cuttack the 27th day of March, 2015

CORAM

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

1. Padmini Nanda,
aged about 52 years,
W/o. Late Bijay Kumar Nanda,
2. Anil Kumar Nanda,
aged about 52 years,
S/o. Late Bijay Kumar Nanda,

Both are of permanently residing at Jhirpani, P.O./P.S.-Jhirpani,
Rourkela., District-Sundargarh.

...Applicants

(Advocate: M/s. K. Ray, A.K. Baral)

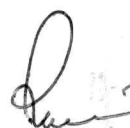
VERSUS

Union of India Represented through

1. Chairman,
Steel Authority of India Ltd.,
Corporate Office, Ispat Bhawan,
Lodhi Road, New Delhi-110003.
2. Chief Executive Officer,
Rourkela Steel Plant,
P.S. Tanagerpalli,
Rourkela, District-Sundargarh.
3. Executive Director (P & A),
Rourkela Steel Plant,
At/P.O-Rourkela, P.S. Tanagerpalli,
District-Sundargarh.
4. Assistant Manager (PL),
Steel & Services, Rourkela Steel Plant,
At/P.O-Rourkela, P.S. Tanagerpalli,
District-Sundargarh.
5. Senior Manager (PL),
Steel & Services, Rourkela Steel Plant,
At/P.O-Rourkela, P.S. Tanagerpalli,
District-Sundargarh.

... Respondents

(Advocate: M/s. N.K. Sahu, B. Swain)



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O.A. No. 987 of 2013
P. Nanda & Another -Vrs- UOI.ORDER**R.C. MISRA, MEMBER (A)** 

The applicants' case are the widow and son respectively of late Bijay Kumar Nanda, a regular employee of the Rourkela Steel Plant, who has expired on 07.06.2006 in the Ispat General Hospital, Rourkela. In this Original Application applicants have prayed for quashing the orders of the Respondents-authorities dated 02.08.2006 and 04.11.2013 vide Annexures-A/3 & A/8, in which their prayer for compassionate appointment has been turned down and for direction to be issued to the Respondents to give compassionate appointment to the applicant No.2 who is the son of the deceased employee.

2. The facts of the case in a nutshell are that after the demise of the deceased employee of the Rourkela Steel Plant, the widow submitted an application for compassionate appointment to be provided in favour of her son. According to the averments made in the O.A. applicant No.1 pursued her prayer with the concerned authorities, i.e., Respondent Nos.3 & 4. In response to her application she was informed by the Assistant Manager (PL), Steel & Services, Rourkela Steel Plant that there was no scope for acceding to her request for compassionate appointment in view of the fact that one of the sons of applicant No.1 was already in employment of the Rourkela Steel Plant. The applicant No.1 submitted a representation to the Managing Director, Steel Authority of India Ltd., Rourkela Steel Plant on 18.04.2007 in which she mentioned that her elder son, Sri Sunil Kumar Nanda was an employee of the Rourkela Steel Plant who had obtained employment on the basis of his own merit. Prior to his father's death he had already married and was living a separate establishment along with his family and therefore, he was not dependent on his father's income at the time of his father's death. By mentioning this fact she made a prayer to the Managing Director that this should not be a disqualification for the applicant No.2 to obtain



an employment on compassionate grounds. This representation was followed up by another representation dated 19.07.2013 made to the C.E.O., SAIL, Rourkela Steel Plant making a mention of the same grounds. It seems that there was a change of name and the designation of the Managing Director to that of the C.E.O., SAIL, Rourkela Steel Plant in the meantime. The applicant No.1 received a communication dated 04.11.2013 from the Sr. Manager (PL) S&S which was a response to her representation dated 19.07.2013. In this connection it was informed to the applicant No.1 that as one of her son viz. Sri Sunil Kumar Nanda was already in the employment of the Rourkela Steel Plant, it was not possible to accede to her request for providing employment to the second son viz. Sri Anil Kumar Nanda on compassionate ground in terms of the policy/rules of the company. The orders of such rejection dated 04.11.2013 and 02.08.2006 are the subjects of challenge in this Original Application.

3. The applicant has averred that the Respondents-authorities have framed a guidelines for dealing with cases of compassionate appointments. The objective of the guidelines is to provide relief to the dependent family members of the employees in case of death, permanent total disablement and medical invalidation. According to the Clause 4.1 of the said guidelines a "Dependent Family Member" means - spouse, son or daughter who was wholly dependent on the employee at the time of his/her death or separation due ^{to} permanent total disablement or separation on medical invalidation of the employee. In the present case it has been pointed out that the elder son of the applicant No.1 joined in the employment of the Respondents on his own merit in the year 1996 i.e., much prior to the death of the employee. After his marriage, the elder son started residing with his own family separately and hence he was not dependent on the deceased employee at the time of death. Therefore, according to applicant, elder son



cannot be considered as a dependent family member. Mentioning this fact the applicants had appealed to the Respondents to make an enquiry as to whether her elder son was residing separately before the death of the deceased employee; but the Respondents did not listen to the said request and without making any factual enquiry, rejected the application for compassionate appointment on the ground that one of the sons is in employment in Rourkela Steel Plant. It is the case of the applicants that the employment of the elder son in the Rourkela Steel Plant should not be construed as a bar to the consideration of compassionate appointment under the guidelines of the Respondents authorities.

4. In the counter affidavit filed by the Respondent Nos.2, 3 & 5, it has been submitted that the applicants have no right to be given compassionate appointment. Further, the concerned employee had expired in the year 2006 and since the present O.A. has been filed after a period of seven years, it is barred by limitation. The objective of the Compassionate Appoint Scheme is to immediately come to the rescue of the family in distress. Since a substantial period has already passed in the present case, it cannot be said that the compelling circumstances still exist to show any special favour to the applicant at the cost of several other meritorious candidates in violation of the Article 14 and 16 of the Constitution of India. In this regard, the Respondents have cited the decision of the Hon'ble Apex Court in the case of Local Administration Department Vrs. M. Selvanayagam, reported in **AIR 2011 SC 1880**. It is admitted by the Respondents that the husband of the applicant No.1 was an employee of the Rourkela Steel Plant. As he was suffering from Cancer, his treatments were taken care of by the Respondents by referring him to Tata Memorial Hospital, Mumbai. In spite of such treatment the employee succumbed to the death on 07.06.2006 in the Ispat General Hospital, Rourkela. In this regard, it has been mentioned that the



Respondents Company had introduced a rehabilitation scheme vide a Circular dated 01.01.1996. In terms of the said Scheme, a dependent of the deceased employee who dies of cancer, heart attack or kidney failure is to be considered for employment on compassionate ground, subject to fulfilling the conditions stipulated in the said circular. Clause-3.0 of the circular lays down that such employment will be considered provided none of the dependent of the deceased employees is already in employment of the company. In the present case, late Bijay Kumar Nanda had declared four persons as his family members. One of them was Sri Sunil Kumar Nanda who was the elder son of the deceased employee, ^{and} is already in employment in the Respondents- company. Therefore it is not permissible in terms of the provisions of the Scheme to entertain any request for employment assistance of the applicant No.2 who is the younger son of the deceased on compassionate ground. This fact was brought to the notice of the applicant No.1 vide communication dated 02.08.2006. The counter affidavit at this stage mentions the decision of the Hon'ble Apex Court in the case of Union of India and Another- vrs- Shashank Goswami and Another reported in 2013 (2), SLR- 429 (SC). In this judgment the Hon'ble Apex Court has held that public service appointments are strictly made on the basis of merit on open advertisement. The appointment on compassionate ground is only an exception to the aforesaid requirements and therefore, it cannot be considered as another source of recruitment. It has been further laid down by the Hon'ble Apex Court that the appointments on compassionate ground have to be made in accordance with the rules, regulations and administrative instructions, taking into consideration the financial situation of the family of the deceased. It is further submitted by the Respondents that the applicant No.1 has received the final settlement dues as admissible to her late husband. The applicants did not also apply for the

"Employees Family Benefit Scheme" which ^{was} ~~were~~ introduced by the Respondents company. It is the submission of the Respondents that the applicants could have prayed for availing the benefits under the Scheme since they were not eligible for compassionate appointment. However, the applicants chose not to make any application in this regard. Another point has been raised by the Respondents is that the applicants are relying on the guidelines which came into force w.e.f. 01.09.2011 which is not applicable to the present case where the death occurred in the year 2006. Relying upon the above submissions of the counter affidavit the Respondents have pleaded that the applicants have no valid case/points for consideration for compassionate appointment and therefore, the O.A. being devoid of merit is liable to be dismissed.

5. I have heard the learned counsel for both the sides and perused the records. The learned counsel for both the sides have also submitted their respective written notes of arguments which have been duly considered by me.

6. At the outset I have to deal with the issue of limitation which has been raised by the learned counsel for the Respondents. The argument of the learned counsel is that the application to this Tribunal has been made after expiry of more than seven years from the date of rejection order and therefore, the original application is barred by limitation under Section 21 of the AT Act. In the present case the applicants have challenged two orders of rejection of the Respondents-authorities. The first order is dated 02.08.2006. After this rejection the applicant had made subsequent representation to the C.E.O., SAIL, Rourkela Steel Plant. This representation to the C.E.O. was considered and another order of rejection dated 04.11.2013 was communicated to the applicant. Thereafter, the applicants have filed the Original Application in the Tribunal on 20.12.2013.



7. I, therefore, do not see any merit in the issue of limitation raised by the Respondents. ² Since the applicants have challenged the order dated 04.11.2013, the Original Application obviously is filed within the period of limitation.

8. Thereafter, I have to consider the matter on merit. In this regard, Clause 3.0 of the rehabilitation policy states that compassionate appointment to a dependent family members will be considered in case none of the dependent members of the distressed employee is already in employment of the company. The admitted facts of the case are that the elder son of the applicant No.1 had got an employment in the Rourkela Steel Plant on the basis of his merit long before the death of the concerned employee. According to the submissions made by the applicants, the elder son who is married was residing with his own family in a separate ² ~~mess~~ since 17.06.2004 and, therefore, was not a dependent at the time of the death of the employee. It is noticed that the applicant submitted a representation to the Executive Director (P&A) of the Rourkela Steel Plant on 08.08.2006 and enclosed an affidavit in which it was submitted that during life time of her deceased husband her elder son Sri Sunil Kumar Nanda had separated from the family and was residing along with his own family members in a separate ² ~~mess~~ at House No.B-170, Koel Nagar, Rourkela-14 since 17.06.2004 without taking care of the mother and her family members. However, the Respondents authorities did not attach any importance to the affidavit nor did they make any enquiry regarding the claim of the applicant. Had an inquiry been conducted, the actual situation regarding the claims of the applicants that elder son is living separately with his own family from the year 2004 could have come to light. The relevant issue to be resolved in this case is whether in a given situation like this, the elder son could be treated as dependent member of the family of the deceased and if so whether the Respondents-authorities are justified

in rejecting the claim of compassionate appointment by virtue of Clause 3.0 of the Rehabilitation Policy on the ground that the elder son is already in employment in the Rourkela Steel Plant.

9. The facts of the case point out that the elder son had obtained his appointment in the year 1996 i.e., 10 years before the death of his father. It was claimed by the applicants that the elder son was also living separately after his marriage in the year 2004 and thereafter, in the year 2006, the concerned employee expired. Therefore, the elder son should not have been treated as a dependent family member if the facts of the case as claimed by the applicant are verified and found to be correct. However, the Respondents chose not to make any enquiry on the affidavit shown by the applicant No.1 and rejected the case of the applicants in the year 2006 and again in the year 2013 only on the ground that the elder son being the dependent family member is already in the employment in the Rourkela Steel Plant, thus attracting the provision of Clause 3.0 of the guidelines. Viewed from this angle, the orders at Annexures A/3 & A/8 cannot be accepted as those arise out of non-application of mind. There, is no doubt that compassionate appointment cannot be claimed as a matter of right. The Respondents-authorities have to consider each case as per the guidelines and take a decision based upon the laid down parameters regarding the indigent condition of the family of the deceased employee. But when the applicant had given a declaration that her elder son was living separately since long, this claim should not have been ignored without making any factual investigation into such claim. The Respondents- authorities are supposed to consider the prayer of the applicant for compassionate appointment under the applicable guidelines and should not simply reject the claim on the ground that one of the sons is in employment in



Rourkela Steel Plant. They have also closed the door on any further consideration based upon the laid down criteria. The learned counsel for the applicant cited an order of the Hon'ble High Court of Calcutta i.e., Sanjay Kumar Panda V. State of West Bengal & Ors. as reported in 1993 1 CLR 806. The petitioner's application was rejected on the ground that it was made five years after the death of his father and also on the grounds that one of his brother was already given appointment on compassionate ground. Hon'ble High Court of Calcutta held that this refusal was wrongful as there was no limitation prescribed for making application for appointment on compassionate ground and as the petitioner's brother was in employment before the death of the father, but not on compassionate grounds. The learned counsel for the Respondents has cited the case of Food Corporation of India Vrs. Ram Kesh Yadav & another decided by the Hon'ble Apex Court and reported in (2007) 9 Supreme Court Cases 531. In this case the Hon'ble Apex Court has held that the employer cannot be directed by the Court to give compassionate appointment contrary to the scheme. However, in the present case there is no question of giving a direction of relaxing various provisions of the rehabilitation policies with a view to providing appointment. In fact the Respondents authorities are obliged to follow the guidelines scrupulously while considering the case for the compassionate appointment. However, as already discussed above the issue is whether they should consider the elder brother of the applicant No.2 who is already employed by the Rourkela Steel Plant to be a dependent member of the family at the time of the death of the concerned employee or otherwise. If it is established in course of factual investigation that the elder brother having got employment in the year 1996 on the basis of merit and thereafter being married was living separately with his own family since the year 2004, then the argument of the Respondents that the present



applicant is disqualified for compassionate appointment under the relevant guidelines will lose its force.

10. Resultantly, order dated 04.11.2013 (Annexure-A/8) is quashed. The Senior Manager (PI.) Steel & Services, Rourkela Steel Plant (Respondent No.5) is directed to cause an inquiry about the status of the elder son, as submitted by the applicant No.1, by way of an affidavit. Based upon the outcome of the inquiry, Respondents may further proceed for reconsideration of the case of the applicant in accordance with the guidelines and take a decision in this regard within a period of 90 days from the date of receipt of this order.

11. With the observation and direction as above, the Original Application is disposed of. No costs.


(R.C. MISRA)
MEMBER(A)