

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: BILASPUR

Original Application No.203/00009/2016

Jabalpur, this Tuesday, the 10th day of April, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Sunita Soni,
W/o Late Santosh Kumar Soni
Aged 51 yrs.
Housewife
R/o Qtr. No.7-B,
Street 23
Sector 7 Bhilai
Dist. Durg (CG) PIN 490006

-Applicant

(By Advocate –**Shri B.P. Rao**)

V e r s u s

1. Steel Authority of India Limited,
Through Chief Executive Officer
Bhilai Steel Plant, Bhilai Dist. Durg

2. The Assistant General Manager
(Personnel, Medical and T.A. Deptt.
Bhilai Steel Plant,
Bhilai Dist. Durg
PIN 490001

- Respondents

(By Advocate –**Shri Ashish Surana**)

(Date of reserving the order: 22.02.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been preferred by the applicant against rejection letters for compassionate appointment to her son by the respondents vide letters dated 27.11.2014 (Annexure A-8) and 04.02.2015 (Annexure A-10).

2. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 That, the Hon’ble Tribunal be pleased to call for records of Applicant’s case from the possession of the respondents for its kind perusal and to decide the grievance of the applicant.

8.2 That, the Hon’ble Tribunal be pleased to set aside the impugned letters dated 27.11.2014 (Annexure A-8) and 4.2.2015 (Annexure A-10) in the interest of justice.

8.3 That, the Hon’ble Tribunal be pleased to pass on order, directing the respondents to consider the applicant’s case for appointment to her dependent son in the interest of justice.”

3. Precisely the case of the applicant is that the husband of the applicant namely Santosh Kumar Soni while working as Medical Technician (Registration) in Medical Department in S-9 Grade of Bhilai Steel Plant was suffering from various chronic diseases like kidney and cancer and thus, he was taken under prolonged indoor and outdoor treatment from Main Hospital of Bhilai Steel Plant and during his treatment on 19.09.2014 he passed away leaving behind

wife, 3 daughters and one unemployed son. The applicant's husband was suffered from several pains, various examinations, one by another operations, Blood Transfusion etc. and was taken under treatment by ENT specialist, Nephrologists, Radiologists, Dentists and was kept under ventilators support and he was admitted meals under the care and control of Dietician, but finally he was not saved by doctors and declared him dead for the uncured diagnosed diseases namely Empyema left, c Sepsis, c Mods, c I Respiratory Failure, c Old Operated Carcinoma Rectum etc. The applicant submitted an application dated 02.09.2014 requesting the respondents to declare him permanent medically unfit for job. Accordingly, the respondents referred the case of applicant's husband to emergency medical board and as per their recommendation vide letter dated 13.09.2014 (Annexure A-5) the applicant has been informed that as per emergent medical board's report the applicant's husband was declared as "may be considered for temporary unfit and may be reviewed at later date according to his clinical condition." But unfortunately her husband passed away on 19.09.2014 just after 5 days of receipt of aforesaid letter. The applicant has submitted an application dated 29.09.2014 (Annexure A-6) requesting the respondents to provide compassionate appointment to her son as her husband was died due to suffering

from debilitating disease namely cancer since 1995 and also for kidney failure. The respondents have passed an order dated 09.10.2014 (Annexure A-7), whereby the name of applicant's husband was struck-off from respondent-establishment and released entitled service benefit in favour of wife (applicant). In response to applicant's representation dated 29.09.2014 (Annexure A-6), the respondent No.2 vide letter dated 27.11.2014 (Annexure A-8) informed the applicant that as per their guidelines for dealing with compassionate cases of dependents of permanent medically unfit cases and without disclosing any reasons in the case of applicant's husband's case regretted to consider the compassionate appointment to applicant's son. The applicant again submitted another application dated 27.12.2014 (Annexure A-9) and prayed for review the aforesaid rejection order on the ground that in spite of suffering from cancer and kidney her husband was not declared permanent medically unfit for job and was declared temporary unfit and after struggling for life for continuous 19 days he passed away while in hospital. The respondents vide their letter dated 04.02.2015 (Annexure A-10) once again rejected the case of applicant's son for compassionate appointment on the reasons that her husband was not declared permanent medically unfit for debilitating diseases.

4. The respondents, in their reply, have submitted that the applicant has submitted an application dated 25.02.2015 (Annexure R/1) for claiming benefits under the Employee Family Benefit Scheme, which has not been disclosed in the present Original Application by the applicant. The said application was duly processed by respondents and she has been availing the benefit under the said scheme. The applicant has been getting monthly payment of Rs.47634/- w.e.f. 22.05.2015 and will continue to get this payment upto 30.11.2020 (i.e. normal date of superannuation of Shri Santosh Kumar Soni) vide order dated 24.06.2015 (Annexure R/2). It has been specifically submitted by the respondents that the dependent family members of the deceased employee shall not have any claim for compassionate employment, once an option to avail benefit under the Employee Family Benefit Scheme, is exercised as per Clause 5.1 of circular dated 28.06.2011 (Annexure R/7).

5. On merit, the replying respondents have submitted that the applicant's husband who, as an employee, was not declared permanent medical unfit due to debilitating disease. So, the compassionate appointment cannot be granted. Furthermore, the applicant has applied for Employee Family Benefit Scheme and has been receiving monthly payment of Rs.47634/- w.e.f.

22.05.2015 and the applicant cannot claim for compassionate employment of family member as the benefit of Employee Family Benefit Scheme and compassionate appointment cannot be provided together. The application of compassionate appointment of the applicant's son was rejected on 27.11.2014 (Annexure A-8) and 04.02.2015 (Annexure A-10) and this Original Application has been filed on 01.01.2016 without there being any explanation for delay of more than one year in filing the application before this Tribunal. Hence, the present Original Application is barred by limitation as provided in the Administrative Tribunal's Act 1985. Further, the applicant's husband was admitted for treatment from 31.08.2014 to 19.09.2014 at Jawahar Lal Nehru Hospital & Research Centre Sector-9 and his due care was taken at Bhilai Steel Plant Hospital to restore the health of Shri Santosh Kumar Soni. The applicant has submitted an application dated 02.09.2014 for declaring her husband as permanent medical unfit. The said application was considered on priority on 03.09.2014 (Annexure R/4) and meeting of emergency medical board was held on 03.09.2014 considering the clinical assessment and diagnosis of Shri Santosh Kumar Soni, recommended that "patient may be considered for temporary unfit and may be reviewed at later date according to his clinical condition." So the application submitted

by the applicant was dealt as per Rules by the Medical Board and the decision of Medical Board was duly informed to applicant's husband vide letter dated 13.09.2014 (Annexure R/5). As per the procedure, the name of deceased was struck off from the rolls of Bhilai Steel Plant w.e.f. 19.09.2014 on account of natural death vide letter dated 09.10.2014 (Annexure R/6). The application for grant of compassionate appointment to applicant's son was examined by respondents in accordance with the applicable guidelines for dealing with compassionate appointment cases. Vide letter dated 27.11.2014 (Annexure A/8) it has been informed that the application for compassionate employment cannot be considered for the reasons stated therein based on "Guidelines for dealing with compassionate cases of employment." The copy of guidelines is annexed as Annexure R/7.

6. On 27.12.2014 (Annexure A/9) another application submitted by the applicant requesting to review cause of death of her husband and compassionate employment of her son, was considered by the respondents vide clause 5.3.3 of the guidelines as the death had occurred prior to declaration of employee as permanent medical unfit. The said application was rejected by the respondents.

7. Regarding the order dated 12.05.2015 passed by the Tribunal in T.A. No.77/2013, it has been submitted by the replying respondent that in case of Smt. Dileshwari Bai and in the present case the facts are different. In the case of Dileshwari Bai, the employee passed away in his work place, the Tribunal has directed to consider the case of Smt. Dileshwari Bai in accordance with the standing order.

8. The applicant in her rejoinder submitted that since the applicant's husband was not declared permanent medically unfit with debilitating disease as such her application for compassionate appointment has been rejected. But the case of the applicant is covered by the judgment passed by the Hon'ble Apex Court in the matter of ***Balbir Kour and Another vs. Steel Authority of India Limited*** and other connected case reported in (2000)6 SCC 493, the Hon'ble Supreme Court has held that "compassionate appointment could not therefore be denied on the ground that Family Benefit Scheme was available. Further held, non-payment of gratuity and provident fund to the family, at the time of death of the employee, runs counter to objects of beneficial legislation contained in the Payment of Gratuity Act 1972, so the Family Benefit Scheme cannot in any way be equated with compassionate appointment. So far limitation is concerned, the applicant has submitted that the

rejection letter has been challenged in Original Application within one year i.e. 01.01.2016 as per provision of the Administrative Tribunals Act, 1985.

9. We have heard the learned counsel for the parties and have perused the pleadings and documents annexed therewith.

10. It is an admitted fact that the applicant's husband died on 19.09.2014 due to suffering from various debilitating diseases and he was examined by the Medical Board and was found unfit temporarily which is clear from Annexure A-5 dated 13.09.2014. As per this Annexure A-5, the applicant's husband was considered for temporary unfit and may be reviewed at later date according to his clinical condition. It is pertinent to mention that the applicant's husband was examined on the request of the applicant to declare him permanent medically unfit for job.

11. As per letter dated 04.02.2015 (Annexure A-10), the applicant's husband has expired and reasons for expiry have been mentioned as under:-

"The patient expired in MICU on 19.09.2014 at 4.00AM, and the cause of death with final diagnosis was EMPYMA LEFT, c SEPSIS, c MODS, c I RESPIRATORY FAILURE, c OLD OPERATED CARCINOMA RECTUM ."

So, on perusal of Annexure A-10, it is clear that the husband of the applicant was suffering from various debilitating diseases and c Old Operated Carcinoma Rectum was also one of the reasons for

expiry of the husband of the applicant. It is also the fact that the Medical Board has declared the husband of the applicant unfit but temporarily. The Medical Board was constituted on the request of the applicant and the husband of the applicant was examined by the Medical Board on 03.09.2014. However, the Medical Board has pointed out that the “patient may be considered for temporary unfit and may be reviewed at later date according to his clinical condition”. It is also the fact that the husband of the applicant died on 19.09.2014 i.e. just after 5 days from the date of report of the medical board. It is clear from the various documents annexed with this Original Application from Annexure A-1 to A-4, that the husband of the applicant was suffering from various diseases and the patient has expired due to uncured diagnosed diseases namely Empyema left, c Sepsis, c Mods, c I Respiratory Failure, c Old Operated Carcinoma Rectum. So it is clear from this Annexure A-10 that one of the causes is c Old Operated Carcinoma Rectum. He was earlier operated for carcinoma rectum meaning thereby ‘carcinoma rectum’ is itself the incidence of hereditary nonpolyposis colorectal cancer.

12. The replying respondents have taken specific stand that the husband of the applicant was not found unfit permanently. But on the other hand, it is also the fact that the applicant’s husband has

died just after 5 days from the date he was considered as temporary unfit by the medical board. Although, the medical board had observed unfit but temporary but as per annexure A-10, the one of the reasons given for expiry of the applicant's husband is c Old Operated Carcinoma Rectum. So, from the documents attached with Annexure A-1 to Annexure A-4 and as per pleadings made in the Original Application, itself proved that the husband of the applicant was operated for carcinoma rectum and has died due to this disease.

13. As per Annexure A-12, circular No.M&R-19/2009 dated 21.05.2009 issued by the respondent-department which is the scheme for providing the compassionate employment in permanent medical unfit cases (other than cases arising out of and in course of employment). It has been specifically prescribed that the competent authority has approved the following scheme for providing compassionate employment to dependent of ex-employees who have been declared as permanent medical unfit due to any one of the following diseases (1) Kidney Ailment (2) Cancer (3) Heart Related Diseases (4) Paralysis.

14. In the instant case, it is the fact that the applicant's husband was suffering from various diseases and is covered by Annexure A-12 circular issued by the respondent-authority, but the only

impediment is that the medical board has not declared the patient permanent medically unfit, though the applicant was in critical condition and was also examined by the Medical Board on 13.09.2014. It is pertinent to mention that this Medical Board was constituted in emergent condition. It is also clear as per Annexure A-5 that the Medical Board has found and considered him for temporary unfit. It is pertinent to mention that after 5 days of medical board report the patient has expired on 19.09.2014 and the reasons for expiry are including the old operated carcinoma rectum.

15. In view of the above, we are of the opinion that the case of the applicant is wholly covered by Annexure A-12. The first objection taken by the replying respondents that the husband of the applicant is not declared permanent medical unfit is not sustainable in the present circumstances because the circular (Annexure A-12) coupled with medical board's report (Annexure A-10) which itself proved that the condition of the applicant's husband was critical and the medical board was constituted in emergent condition.

16. Regarding the second objection put forth by the replying respondents that the applicant has opted with the benefit under the Employee Benefit Scheme, so the applicant cannot claim for compassionate appointment. The counsel for the applicant has relied upon the judgment passed by Hon'ble High Court of

Jharkhand at Ranchi L.P.A. No.152/2010 as titled as Steel Authority of India Limited vs. Smt. Shaila Sinha & Ors. decided on order dated 03.01.2012. The relevant Para 9 of the judgment is as under.

"9. We have considered the submission of learned counsel for the appellant and we found that Hon'ble Supreme Court in paragraph 13 of the Balbir Kaur's case clearly held that "But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments." The observation made by Hon'ble Supreme Court in paragraph 18 cannot be read in isolation to the above issue and we cannot hold that once the benefit is availed by petitioner under Family Benefit Scheme, he shall automatically be dis-entitled to compassionate appointment. On this point, we may make it clear that compassionate appointment as held by Hon'ble Supreme Court is not a right but at the same time the employer with the help of this plea cannot take arbitrary decision to deny the appointment when the benefit under the scheme has been offered non else by the employer itself."

17. The learned counsel for the applicant has also relied upon the judgment of Hon'ble Apex Court in the matter of Balbir Kaur and another vs. Steel Authority of India Limited and others in Civil Appeal No.11881/1996 decided on 05.05.2000, whereby the Hon'ble Apex Court has held that the Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointment.

18. In view of the above, the orders dated 27.11.2014 (Annexure A-8) and 04.02.2015 (Annexure A-10) passed by the respondents,

are quashed and set aside. The respondents are directed to consider the case of the applicant for compassionate appointment in view of our observation as above within the period of 60 days on receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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