



CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH KOLKATA

OA No.350/00289/2015

Dated of order: 15.02.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Smt. Jaysree Banerjee, wife of Late Tushar Kanti Banerjee, aged about 54 years, by occupation house wife.
2. Sukhdeb Banerjee, son of Late Tushar Kanti Banerjee aged about 32 years, both are residing at 14/5, Mahiskapur Road, B-Zone, PO. Durgapur-5, District-Burdwan-713205.

.....Applicants

For the Applicants: Mr.K.Chakraborty, Counsel

-Versus-

1. Union of India Steel Authority of India Limited, a Government of India undertaking service through its Chairman having its office at Ispat Bhawan, New Delhi service effected through the Regional Office at Kolkata, 10, Lyons Range, Kolkata.
2. Durgapur Steel Plant, an unit of Steel Authority of India Limited service through the General Manager, having its office at Main Administrative Building, Post Office, Durgapur, 3, District Burdwan-713203.
3. The General Manager (Personnel Department), Durgapur Steel Plant, having its office at Main Administrative Building, Post Office 3, District Burdwan-713203.
4. The Deputy General Manager, Wagon Repair Shop, Durgapur Steel Plant, having its office at Main Administrative Building, Post Office Durgapur-3, District Burdwan-713203.
5. The Dy. General Manager (Pers-NW), Durgapur Steel Plant having its office at Main Administrative Building, Post Office Durgapur-3, District Burdwan-713203.

.....Respondents

For the Respondents: Mr.A.Roy, Counsel

ORDER

MS.JAYA DAS GUPTA, AM:

Heard the Learned Counsel for both sides and perused the records.

2. The Applicant No.1 (Smt. Jaysree Banerjee) is the widow OF Late Tushar Kanta Banerjee, the deceased employee and the Applicant No.2 (Sukhdeb Banerjee) the son of the deceased employee, have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, jointly, seeking the following reliefs:

- “(a) To file and prosecute this application jointly under Rule 4 (5) (a) of the A.T. (Procedure) Rules, 1987 since both the applicants pray for the same and similar relief arising out of same and similar cause of action;
- (b) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and withdraw the purported order dated 9.2.2015 being Annexure “P/9” hereto and not to give any or further effect to the same;
- (c) Do issue further mandate upon the respondents their men and agents and each of them to forthwith offer an employment to the applicant no.2 on compassionate ground with retrospective period in terms of the order dated 20.11.2014 passed by this Learned Tribunal in OA No. 557 of 2013;
- (d) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant lis before this learned Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicants;

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- (e) Gant cost in favour of the applicants;
- (f) Pass such other or further order or orders, mandate or mandates, direction or directions or may appear to be fit and proper."

(Extracted as such)

3. The Respondents have filed their counter opposing the prayer of the applicants and the applicants have also filed their rejoinder.

4. The Learned Counsel for the Applicants, placing reliance on the averments made in the OA as well as rejoinder and the annexures appended thereto, submitted that the Respondents although considered the case of the applicant No.2 for appointment on compassionate ground but rejected the same in the impugned order dated 09.02.2015 on the grounds which are not sustainable being contrary to the observation made by this Tribunal in the earlier OA No. 557 of 2013 disposed of on 20.11.2014. Hence the applicants having filed this OA have submitted that they are entitled to the relief claimed in this OA.

On the other hand, the learned counsel appearing for the Respondents-SAIL, placing reliance on the averments made in the counter and the enclosures appended thereto, submitted that the applicants are not entitled to any of the reliefs claimed in this OA and this OA is liable to be dismissed on the grounds that the father of the applicant No.2 died on 09.12.2011 whereas the circular governing the matter of compassionate appointment is dated 31.1.2012 i.e. after the

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death of the employee. After considering all the facts and record and keeping the order of this Tribunal in OA No. 557 of 2013 the authorities concerned considered the case of the applicant No.2 but came to the conclusion that as per the Circular dated 31.01.2012, 22.03.2012 and 10.05.2012, he is not eligible for consideration and accordingly rejected the claim of the applicant No.2 for appointment on compassionate ground. Accordingly, the learned counsel for the Respondents have prayed for the dismissal of this OA.

5. We have considered the rival submissions of the parties. It would suffice to state that the Applicants had earlier approached this Tribunal seeking direction to the Respondents to provide appointment on compassionate ground in favour of the son of the deceased which was disposed of on 20.11.2014 directing the Respondent authorities to consider the claim of the applicants. It is worthwhile to quote the relevant portion of the earlier order dated 20.11.2014 passed by this Bench in OA no. 557 of 2013 at the ^{risk of} ~~sake~~ of repetition which are as under:

" 4.(d) Vide order dated 22.03.2012 in Circular Sl. No. 08/2012 (A-6) an amendment has been made to circular dated 31.1.2012. Para 2 of Circular dated 22.03.2012 mentions "Scheme as mentioned in circular dated 31.01.2012 shall be effective in Durgapur Steel Plant from 01.01.2011 i.e. the scheme has been given retrospective effect.

Ordinarily going by the above guidelines/procedure of the Durgapur Steel Plant, Medial Board should have been constituted on or after 22.03.2012 (the original order is at Annexure A-6) which was latter given retrospective effect from 01.01.2011 vide order dated

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22.03.2012. Such order of DSP (SAIL) was absolutely defective because it did not specify how cases of employee dying in between 01.01.2011 to 22.03.2012 will be dealt with i.e. the Intermediate period.

(f) Fire breaking out in the AMRI Hospital on 09.12.2011 is an act of God over which none has any control. Sri Tushar Kanti Banerjee, if not died of fire could well have remained alive beyond 2012 when the concerned D.O. came into effect. Accordingly, the Medical Board could have been set up and the applicant No.2 would have got a chance to be considered for appointment on compassionate ground. Can the respondent authorities say with certainty that if the fire did not break out at AMRI Hospital on 08.12.2011, the applicant would have died before 2012 i.e. when the relevant G.O. was issued.

Such mechanical and simplistic dealings of human sufferings cannot be agreed to for the cause of natural justice.

(g) The death of Sri Tushar Kanti Banerjee is due to a fire which was totally unpredictable and unnatural. Therefore, it cannot be said that the applicant died of natural causes. In fact he died of unnatural cause and accordingly such portion of 5.3.3 of guideline and procedure dated 31.1.2012 which refers to natural death will not apply in this case.

(h) In 2003 (3) SCC 272 (Sardar Amarjit Singh Kalra and Others V Promod Gupta and Others) Constitution Bench of the Hon'ble Apex Court held that "Laws of procedure is to regulate, effectively assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizens. A new horizon opened holding that procedural laws must be liberally construed to make it workable and to advance ends of justice. Technical objection which tend to be stumbling blocks to defeat and aiding substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. This principle of law has been followed subsequently by the Apex Court in the case of N.Balaji V Virendra Singh and others reported in 2004 (8) SCC 312 (Three Judges). Said view accepted by Constitution Bench later on, in the case of Sarah Mathew v Institute of Cardiovascular Diseases and others reported in 2014 (2) SCC 62. It was the view of Apex Court long back in the

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year 1976 in the case of State of Punjab and another V Shyam Lal Murani, 1976 (1) SCC 719 that "Procedural law is not tyrant but servant, not an obstruction but an aid of justice". Procedural prescription are to be handmaid and not mistress, a lubricant not resistant, in the administration of justice is the view passed in the case of State of Punjab and Another v Shyam Lal Murari which has been followed in the year 2005 in the case of Raj Kumar Yadav V S.Kumar (2005, AIR SCW 1647 (Three Judges).

(i) Hence orders of the respondent authorities on 22.12.2012 and 22.02.2013 given under RTI reference (Annexure A-7 to the OA) rejecting the claim of the applicants are quashed and set aside. The DSP authorities will consider the application made by Smt. Jaysree Banerjee, widow of Late Tushar Kanti Banerjee for compassionate appointment of her son dated 05.04.2012 and dispose of the same within a period of two months after getting this order. Decision taken in the matter will be conveyed to the applicants within two weeks thereafter."

7. The aforesaid order of this Tribunal hold the field as no review or appeal was preferred thereon by any of the parties and, obviously, therefore, in compliance of the said order, the authorities concerned considered the case of the applicant No.2 but rejected the claim of the applicants vide order dated 08.02.2015 by reiterating the points and grounds and the circular dated 31.1.2012, 22.3.2012 and 10.5.2012; based on which the case of the applicant No.2 was earlier rejected even though those grounds were overruled by this Tribunal in the earlier OA, referred to supra. There is no discretion left with the authorities concerned to issue an order rejecting the claim of the applicant, in the name of the compliance of the judicial order without adhering to the observations issued by the court in order. The authorities concerned/Respondents were obliged to obey and implement the direction in letter and spirit without any reservation. If

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they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the order. Without challenging the direction or seeking clarification, the SAIL authorities could not have circumvented the same in the name of compliance of the order. Difficulty in implementation of an order passed by the Court, howsoever grave its effect may be, is no answer for its non-compliance in letter and spirit [Ref. **K.A. Ansari v. Indian Airlines Ltd.**, (2009) 2 SCC 164]. On examination of the impugned order dated 09.02.2015 with reference to the earlier order vis-a-vis the law cited above, we find that there is substantial force in the submission of the learned counsel for the Applicants that the impugned order is liable to be quashed. Accordingly, the impugned order dated 09.02.2015 (Annexure-A/9) is hereby quashed and the matter is remitted back to the Respondents authorities to reconsider the case of the applicant No.2, keeping in mind the observation and directions made in the earlier order of this Tribunal dated 20.11.2014 in OA No. 557 of 2013, after granting an opportunity of being heard to the Applicant No.2, and communicate the decision in a well reasoned order to the applicant No.2. The entire drill shall be completed and complied with within a period of 02 (two) months from the date of receipt of a copy of this order.

8. This OA stands allowed to the extent stated above. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judl.)