

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/00318/2014

Date of order: 20/12/2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

.....

1. Smt. Neeras Orhaw (age: 49 yrs), W/o. Late Tapan Kumar Orhaw, Ex-Supervisor under G.M/MSP/Ishapore, residing at Sibanika Apartment, C/2, Kantajhar, G.B.Mondal Road Ishapore, Nawabganj, 24 Pgs (N) 743144.
2. Sri Dibakar Orhaw (Age: 24 Yrs), S/o. Late Tapan Kumar Orhaw, Ex-Supervisor under G.M./MSF/Ishapore, residing at Sibanika Apartment, C/2, Kantajhar, G.B.Mondal Road, Ishapore, Nawabganj 24 Pgs (N) 743144.

.....Applicants

-VERSUS-

1. UNION OF INDIA, Service through the Secretary, Ministry of Defence, Govt. of India, Deptt of Home, New Delhi-110001.
2. The Director General of Ordnance Factory Board, Govt. of India, 10A Saheed Khudiram Bose Road, Kol.700001.
3. The Chairman, Ordnance Factory Board, Govt. of India, 10A Saheed Khudiram Bose Road, Kolkata-700001.
4. The General Manager, Metal & Steel Factory, Ishapore Nawabganj, 24 Pgs (N) 743144.
5. The Election Commissioner, Govt. of West Bengal, Kolkata-700001.

.....Respondents

Counsel for the Applicant :Mr.A.K.Bairagi, Advocate
Counsel for the Respondents :Ms.M.Bhattacharyya, Advocate



ORDER

JUSTICE V.C.GUPTA, JM:

Heard Mr.A.K.Bairagi, Learned counsel appearing for the Applicants and Ms. M.Bhattacharyya, the Learned Counsel appearing for the Respondents and perused the records.

2. The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) To pass order/or directions upon the respondent authorities to consider the case of compassionate appointment of the applicant No.2 as per direction of the Hon'ble High Court and CAT/Calcutta Bench denying that the applicant's husband/employee died while on election duty instead of Factory work. Hence, the date of death of the employee by treating as accidental death by quashing the speaking order dt. 6.2.2014 within time bound direction.

(b) To pass such other further order/or orders as your Lordships may deem fit and proper;

(c) Leave may kindly be granted to file this application jointly as per Rule 4 5 (a) of the CAT's procedure Rule, 1987."

The impugned order dated 06.02.2014 rejecting the claim of the applicants reads as under:

"Government of India
Ministry of Defence
Indian Ordnance Factories
Metal & Steel Factory, Ishapore

PO : Ishapore - Nawabganj Dist. - 24 Parganas
(North), West Bengal PIN 743144
Phone No (033) 2593 8400 TO 8407, 2593 8411,
2593 8412, Fax : 033-2593 8333 & 2593 8413



E-mail : msf.ofb@nic.in Web Site :
WWW.msf.gov.in

No.1630/3/LB/RECTT. (24/E-CA) REGD. POST
WITH A/D Dated : 06-02-2014

ORDER

To
 Smt. Neera Orhaw
 W/o. Late Tapan Kr. Orhaw
 H/O Pradip Kumar Ghosh,
 Grocery Shop, Very Para,
 P.O. - Ishapore - Nawabganj,
 Dist - North 24 Parganas
Pin - 743 144.

Sub: Employment assistant on Compassionate ground.

Ref: Hon'ble CAT, Calcutta Bench, Order dated 01-10-2013 in OA No. 1160 of 2013 - Smt. Neera Orhaw & Anr. -vs- UOI & Ors.

WHEREAS, the Hon'ble CAT, Calcutta Bench, vide its Order dated 01-10-2013 (served upon Respondent No.4 on 16-12-2013 through post) was pleased to dispose of O.A. No.1160 of 2013, on the day of admission hearing itself, without giving opportunity to the respondents to submit their version and/or counter reply to the O.A., with the direction upon the respondents to reconsider the case of the applicants in terms of the scheme that was operating in the field as on the date of death of the employee, sympathetically keeping in view that the employee too died while on official duty (election duty) within a period of three months from the date of receipt of copy of this Order.

AND WHEREAS, the Hon'ble Tribunal had observed that the respondents were too harsh in discriminating the present case though the respondents appointed one such candidate only in Metal & Steel Factory, Ishapore because the said candidate's father died within the factory premises while working on machine whereas the respondents found that the father of the applicant died a natural death outside the factory while he was not involved in any production work. Thus



the respondents could not arbitrarily discriminate between the two loses.

AND WHEREAS, in deference to the aforesaid order of the Hon'ble Tribunal, the Competent Authority has re-examined and re-considered the matter relating to compassionate appointment of applicant No.2 in totality in terms of the scheme that was operating in the field as on the date of death of the employee.

AND WHEREAS, it is stated that Shri Sunil Chandra Mondal met with fatal accident inside the Factory premises while working on machine for production work on 01-01-2010 and thereafter died on the same day. Accordingly, as per OFB, Kolkata Instruction No.3005 dated 28-05-2004 as well as Instruction No.3251/A/A 19-07-2010, case of Shri Nitu Mondal (son of the deceased employee) was considered as a Factory accident. The provision contained in said OFB's Instructions are appended below:-

Instruction No.3005

"The term 'factory accident while on duty' is to be used in a restrictive way and with abundant caution to prevent its expanded or loose interpretation. The case for invoking the dispensation should be restricted to **accidents(s) of fatal nature only** and that too, which take place during the performance of the work/job.

Instruction No.3251/A/A

".....request for compassionate appointments received from the dependent of the Govt. Servant **died for accident while on duty** should be processed immediately, on priority basis and the first available vacancy will be utilized for appointment to the dependent of the deceased provided he/she qualifies in terms of DOPT orders cited above. **Other cases of Compassionate Appointment will be processed as per existing system**".

In this connection, attention is also drawn to **Section 3 of Workmen Compensation Act, 1923** which reads as follows:

"If personal injury is caused to a workman by accident arising out of and in the course of his

employment, his employer shall be liable to pay compensation in accordance with the provision of this Chapter."

It is stated that death arising out of employment inside the factory **due to accident** is only considered as Factory accident. Death taking place inside the factory due to natural ailment including cardiac problem not arising out of employment is not considered as Factory accident. Same logic has been applied to the current case of death due to cardiac problem during election duty. The death had not arisen out of duty due to accident but taken place during/ in course of duty. This is evident from the medical certificate /document submitted by individual prior to election duty vide his representation dated 25-02-2006. If this is considered as death arisen out of duty or accident, it creates reverse discrimination in favour of death outside the Factory not arising out of duty. This is not the intent of Law or Govt. rules or the Hon'ble Court's order. It is against the fact and law to consider the death in the instant case as death arisen out of employment or accident on duty either inside or outside.

AND WHEREAS, it is a fact that death of Shri Tapan Kumar Orhaw was due to cardiac attack as evident from submission of his son Shri Dibakar Orhaw before the MSF Authority during personal hearing provided to him on 24-05-2013 as well as news published in the Ananda Bazar Patrika, Kolkata edition on 28th April, 2006. Post Mortem report dated 27-04-2006 to this effect. Death was due to acute infarction leading to heart failure which was ante mortem in nature. Therefore, it is crystal clear that death of Shri Tapan Kumar Orhaw was not an accident arising out of his employment. Moreover, due to death of the individual during election duty, Respondent No.5 i.e. the Office of the District Magistrate & District Election Officer, 24 Parganas (North), had paid compensation to the tune of Rs. 5 (Five) lakhs to the widow of Late Orhaw. Thus, by no means, the respondents had arbitrarily discriminated between two losses.

AND WHEREAS, with reference to para 7 of the aforesaid CAT's Order where the Ld. Tribunal did appreciate the Hon'ble High Court, Calcutta, judgement/Order dated 26-04-2013 in WPCT No.425 of

2012 that the persons who had secured less than 56 marks in 2006 were appointed in 2007 and even in 2009 and 2010. In this connection, it is reiterated that the individuals who secured less than 56 points and got appointments under compassionate ground in the year 2007, 2009 and 2010, were considered under pre-revised scale that too before coming into force of the Revised Instruction dated 22-01-2010 and 14-05-2010 issued by the Ministry of Defence, New Delhi. In the case of the applicants, the B.O.O. allotted 40 points only under the pre-revised scale in the year 2006 and the same was rightly submitted by the respondents in the affidavit-in-opposition (Para-7) to the WPCT No.425 of 2012 that had the respondents considered the case of the petitioner based on revised rates of Family Pension and Terminal benefits after 6th CPC as per the aforesaid Revised Circular, although the same was not applicable in their case, they would get 56 points. It was also mentioned therein that if the above mentioned revised 56 points would be taken into consideration instead of erstwhile 40 points, although the same was not applicable in their case, it is natural that in such circumstances score points of each and every individuals who were awarded more score points than the petitioners/applicants in the years 2006-07, 2007-08 and 2008-09 in the pre-revised rate would also secure more points than that of the petitioners/applicants in the revised rate. Consequently, case of the present applicant could not reach the level of zone of consideration for appointment on compassionate ground due to the limited vacancies within the ceiling limit of 5% of the DR quota.

AND THEREFORE, after re-considering the matter in totality in terms of the prevalent scheme of 2001 which was operating in the filed as on the date of death of Shri Tapan Kumar Orhaw, the request of the applicants were rightly regretted since death of Shri Orhaw was not an accident arisen out of duty but due to health disorder. Moreover, it is observed that due to death of the individual during election duty Respondent No.5 i.e. the Office of the District Magistrate & District Election Officer, 24 Parganas (North), had paid compensation to the tune of Rs. 5 (Five) lakhs to the widow of Late Orhaw. Thus, by no means, the respondents had arbitrarily discriminated between two cases. As such, it is regretted to intimate you that your

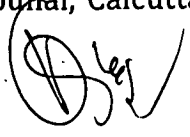


case, after due re-consideration as per the direction dated 01-10-2013 of the Hon'ble CAT, Calcutta Bench, is not found fit for compassionate appointment on merit and is now treated as closed.

Sd/-
(S. Chatterjee)
Asst. Works Manager.Admin.-I
For General Manager"

3. The undisputed fact of the matter is that the husband of applicant No.1 and father of applicant No.2 namely Late Tapan Kumar Orhaw was working as Supervisor under the General Manager, Metal & Steel Factory, Ishapore, who while on election duty, died due to heart attack on 27.04.2006. The case of applicant no.2 was considered for appointment on compassionate ground but the same was declined to him on the ground that he secured lesser point in comparison to others. Thereafter, the applicants challenged the said order of rejection before this Bench which was also dismissed. Against the said order of this Bench, the applicants approached the Hon'ble High Court of Calcutta in WPC No. 425 of 2012 which was disposed of on 26.04.2013. Relevant portion of the order is quoted herein below for ready reference:

"The Petitioners are aggrieved because their application for appointment of the Petitioner No.2 on compassionate grounds on the death of his father has been rejected. The Petitioner No.1 is the wife of Tapan Kumar Orhaw and the Petitioner No.2 is the son. The application was submitted by the petitioner No.2 for appointment initially in 2006 and thereafter, again in 2007. The application was rejected as the score obtained by the Petitioners was very low. Aggrieved by that order the Petitioner filed O.A.1573 of 2010 before the Central Administrative Tribunal, Calcutta Bench. By an order of



10th October, 2012 the Administrative Tribunal dismissed the application on the ground that the Petitioner No.2 had scored only 40 points whereas the cut off was 54 points.

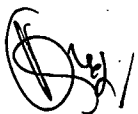
An affidavit-in-opposition has been filed in this Court by the Respondents indicating that the revised points allotted to the applicants are 56. A supplementary affidavit has also been filed by the Respondents in which they have mentioned the names of the persons appointed on compassionate grounds and the points obtained by them. We have noticed that in the year of consideration (2006) persons who have scored less than 56 points have been appointed on compassionate grounds in 2007. Even in 2009 and 2010 the persons with less than 56 points have been appointed.

In these circumstances, we feel that interest of justice would be subserved by directing the Respondents to reconsider the claim of the appointment of the Petitioner No.2 on compassionate grounds.

Accordingly, the impugned orders dated 12th June, 2007, 14th May, 2008, 17th March, 2009 and 1st June, 2009 are quashed. The impugned order of the Tribunal in OA-1573 of 2010 is also quashed and set aside. The Respondents shall reconsider the case of the Petitioner No.2 for employment on compassionate grounds within six months from today after affording a personal hearing to the Petitioner No.2.

Certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities."

4. The aforesaid order of the Hon'ble High Court speaks that the Respondents have filed an affidavit disclosing therein that the revised points allotted to the applicants were 56. The order of the Hon'ble High Court also discloses that the Respondents have also filed a supplementary affidavit disclosing therein the names of the persons appointed on compassionate ground and the points



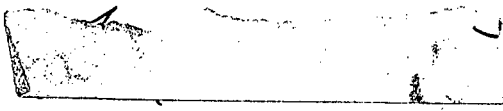
obtained by them wherefrom, the Hon'ble High Court noticed that in the year of consideration (2006) persons who have scored less than 56 points were appointed on compassionate grounds in 2007, 2009 and even in 2010. Despite the specific orders of the Hon'ble High Court, cited supra, the Respondents have not disclosed anywhere in the speaking order that under what circumstances persons securing lesser points were appointed in 2006, 2009 and 2010. Hence, we are of the considered view that the impugned order is not in consonance with the order of the Hon'ble High Court, cited supra and, therefore, is not sustainable.

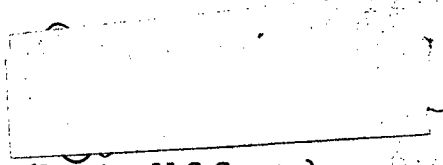
5. So far as the other part of the order in giving priority to the cases of accident in the premises is concerned, we find no illegality on the same.

6. In view of the above, we remit the matter back to the Respondents to consider/reconsider the case of the applicant No.2 for appointment on compassionate ground strictly in accordance with the order of the Hon'ble High Court, Calcutta, cited supra, by specifying the points secured by each and every candidates appointed on compassionate ground, during 2006 to 2010 and the reasons for granting the appointment to the candidates who had secured lesser than 56 points and not granting such appointment to the applicant No.2. The entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.



7. This OA is accordingly disposed of. No costs.


(Jaya Das Gupta)
Member (Admn.)


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

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