

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00070/17**

Date of order: 27.11.2018

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. B.V.SUDHAKAR, ADMINISTRATIVE MEMBER**

Larni Devi, W/o Late Balram Turi, R/o Village Alargo, PO Bhandaridah,
PS- Nawadih now Chandrapura, District- Bokaro, Jharkhand.

..... Applicant.

- By Advocate: - Dr. H. Waris

-Versus-

1. Union of India through Ministry of Steel. Govt. of India Udyog Bhawan, Dr. Maulana Azad Road, New Delhi-110011.
2. Steel Authority of India Limited, SAIL Refractory Unit through its Chairman-cum-Managing Director Indira Gandhi Marg, Sector-4, Bokaro Steel City At/PO Bokaro Steel City, District-Bokaro PIN-827001.
3. Senior Manager (Personnel & Administrative) SAIL Refractory Unit Bhandaridah At PO/PS District- Bokaro PIN- 829132.
4. Manager (Personnel and Administrative) SAIL Refractory Unit Bhandaridah At/PO/PS Bhandaridah District- Bokaro, PIN-829132.
5. Junior Manager (Personnel & Administrative) SAIL Refractory Unit Bhandaridah At/PO/PS Bhandaridah District- Bokarop, PIN-829132.
6. Assistant General Manager (Personnel & Administrative) SAIL Refractory Unit Bhandaridah At/PO/PS Bhandaridah District- Bokarop, PIN-829132

..... Respondents.

- By Advocate: - Mr. S. Gautam

**O R D E R
[ORAL]**

Per Mr. J. V. Bhairavia, J.M.:- In the instant OA, the applicant aggrieved by decision dated 17/21.12.2016 (Annexure A/4) whereby the application of the applicant for appointment on compassionate ground has been rejected. The applicant has prayed for quashing and

setting aside the said impugned order and further sought relief for issuance of direction upon the respondents to provide compassionate appointment to the son of the applicant, namely, Anand Kumar Turi in SAIL Refractory Unit, Bhandaridah. Alternatively, he has prayed for issuance of direction upon the respondents to consider his case sympathetically for grant of benefit under “Employee Family Benefit Scheme”.

2. The brief facts of the present case as pleaded by the applicant are as under:-

(i) The applicant is a poor widow. Her husband, i.e. Late Balaram Puri while working as Semi Skilled worker R-4 with Production Unit of Bhandaridah Refractory Unit of the respondents had suffered from cancer. He was treated at Bhandaridah Refractory Plant Hospital and Bokaro General Hospital of BSL, SAIL and subsequently he was referred to Apollo Hospital Cancer Centre, Ranchi on 17.03.2009 and there he remained under the treatment of Oncologist of the said Hospital from 24.03.2009 to 25.07.2009. During the treatment, he expired on 24.07.2009 due to Non Hodgkin's Lymphoma Stage IV (BM). Copies of the clinical notes/treatment cum – Death Certificate of said late Balaram Puri has been placed on record (Annexure A/1, A/1/1 & A/1/2 refers).

(ii) It is submitted that the applicant was served with one letter dated 28.12.2009 issued by the respondents regarding admissibility of benefits under “Employee Family Benefit Scheme”/compassionate appointment option and for that purpose she was advised to establish contact with Personnel and Administrative Department of SAIL Refractory Unit (Annexure A/3).

In pursuance to the direction contained in Annexure A/3 the applicant met with the authority concerned and opted for providing compassionate appointment to her son, namely, Anand Kumar Puri for maintenance of her family and accordingly duly submitted an application on 07.01.2010 (Annexure A/4 series refers). The respondents had issued one list dated 28.04.2010 of the applicants who had applied for compassionate appointment and same are pending for consideration, wherein the name of the son of the applicant appeared at sl. No. 9 (Annexure A/5 refers).

(iii) The applicant and her son was waiting for the positive reply from the respondent authorities but had not received any response and therefore the applicant had moved the WP before the Hon'ble High Court for redressal of her grievance by filing WP(S) 6364 of 2014 which was ordered to be dismissed as withdrawn with a liberty to file OA before this Tribunal (Annexure A/8 refers).

(iv) The applicant had moved OA 163/2016 which was disposed of vide order dated 04.08.2016 by this Tribunal with direction to the respondents to consider the pending application of the applicant for compassionate ground appointment as per the applicable rules/circulars/guidelines and to pass a reasoned and speaking order. In response to the said order the respondents have directed the applicant to submit certain documents vide their letter dated 21.10.2016. Accordingly, the applicant has submitted the documents for their consideration. Thereafter, vide impugned order dated 17/21.12.2016 the respondents had informed the applicant that as per the policy of the respondents the son of the applicant is not found eligible to be considered for appointment for compassionate ground. It is further informed that as per letter dated 28.12.2009 the applicant is entitled to receive Employee

Family Benefit Scheme (Annexure A/14). The said impugned order is contrary to the provisions, guidelines and procedure laid down under the policy of the respondents dated 20.02.2010 issued by the Personnel Department.

(v) The learned counsel for the applicant further submits that as per Clause no. 3 and clause 9.2 of the said policy the case of the applicant is required to be considered for compassionate ground appointment. The husband of the applicant had suffered from the disease of cancer and due to that he died in the respondents' hospital. He was under treatment till he died. Therefore, the respondents have erroneously rejected the claim of the applicant.

3. On the other hand, the respondents have filed their written statement and denied the contention of the applicant. The learned counsel for the applicant Shri S. Gautam mainly submitted that to bring uniformity in dealing with compassionate employment cases guidelines have been framed and accordingly the procedure to be followed for processing such cases under the guidelines as published by way of circular dated 20.02.2010 of SAIL. The said guidelines dated 20.02.2010 was in vogue at the time of consideration of the case of the applicant. It is submitted that as per clause-3 of the guidelines which covers specifically two types of compassionate cases, i.e. (i) in a case of death or permanent total disablement due to accident 'arising out of and in course of employment' as per NJCS agreement, (ii) and in case of an employee declared incapable to perform his normal duty by the Committee constituted for this purpose, due to his/her physical/mental incapacity due to suffering from chronic debilitating diseases. It is further submitted that as per clause 5.3 of the said guidelines, claim

for compassionate employment may be considered for dependent family members on “medical invalidation” of an employee on specified “debilitating diseases”. The list of debilitating diseases is at Annexure-I of the guidelines. As per clause no. 5.3.3., the employee should have been under treatment in the Company’s sponsored hospital for the above ailments.

It is further submitted that in the cases of sudden death, where the employee was continuing with his normal job and was not under treatment for the above diseases shall not be governed under these guidelines. The date for consideration under the guidelines shall be the date on which the Committee declares an employee as medically invalid. If an employee dies due to disease or otherwise before declaration of Medical invalidation by the Committee then such death shall be considered as natural death and shall be dealt as per clause 9.1 of the Guidelines.

According to clause 9.1 of the policy/guidelines, the cases of natural death while on duty shall not be considered for compassionate employment. In the present case the death of husband of applicant has been considered as “natural death”. Therefore, the dependent family members may avail benefits under Employee Family Benefit Scheme.

It is submitted that during the continuation of the medical treatment till the husband of the applicant expired on 24.07.2009 he had never applied for substitution of family member for the purpose of grant of compassionate appointment. Since he had never intended to do so his case was never put up for medical invalidation category. The Committee have never declared the husband of the

applicant as medically invalid and in absence of any declaration by the competent medical committee for medical invalidation. The case of the applicant was not considered for compassionate appointment as it was not found eligible for the said claim.

4. The learned counsel for the respondents placed reliance on the judgment of Hon'ble Apex Court passed in the case of **S.B.I and Another Vs. Somvir Singh** as reported in (2007) 4 SCC 778 and submitted that the scheme framed by the employer i.e. SAIL herein with regard to grant of compassionate appointment to a dependent of an employee is required to be followed strictly while consideration of the claim of the dependent. He has also placed reliance on the order passed by the Hon'ble High Court of Jharkhand in the case of **Urmila Devi Vs. SAIL and Ors.** decided on 30.01.2013 and submitted that it is held that under the scheme framed by Bokaro Steel Plant, which was in vogue at the relevant time there was no provision for grant of compassionate appointment on the natural death of an employee. The sum and substance of the submission of the learned counsel for the respondents is that as per the guidelines in vogue the deceased employee during his medical treatment ought to have submitted an application for substituting his service in favour of any of the family members on the basis of his medical invalidation. In absence of it, the respondents cannot consider any application of the dependent of the deceased for appointment on compassionate ground as per the guidelines/policy for compassionate ground appointment. Therefore the respondents had immediately informed vide their letter dated 28.12.2009 to the applicant that she is entitled to the benefit under the Employee Family Benefit Scheme. It is submitted that under the Employee

Family Benefit Scheme the respondents have taken proper care to protect the dependant family from any financial crisis by providing substantial amount to maintain their livelihood while offering the applicant to avail the said Scheme. The applicant ought to have taken the benefit of the said scheme which has been already offered to the family. Again the respondents vide their decision dated 17/21.12.2016 informed the applicant about the admissibility of benefit under the employee welfare scheme and also intimated that as per the guidelines/policy in vogue with the SAIL the son of the applicant is not eligible for appointment on compassionate grounds. Therefore, it is submitted that the impugned decision is in consonance with the policy in vogue. Hence, the applicant is not entitled for the relief as sought .

5. The applicant has filed rejoinder and reiterated the submissions made in the OA. Additionally, the learned counsel for the applicant has submitted that as per the guidelines as referred hereinabove once the name of the son of the applicant was placed in waiting list for providing compassionate appointment which amounts to acceptance of the application of applicant and as per the provision under clause no. 10(d) the respondents ought to have issued the appointment in favour of the son of the applicant. It is further submitted that the family has lost the bread earner and they are illiterate and belonging to a very poor strata of the society. The learned counsel for the applicant, therefore, prayed that in the interest of justice alternatively appropriate financial benefits be granted to the applicant by the respondents under the Employee Family Benefit Scheme also by providing some relaxation by way of installment in depositing the amount of gratuity or any other

amount (if paid to the applicant) in lieu of extending the benefit under such Scheme.

6. Heard the parties and perused the records.

7. It is settled principle of law that compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or public authority. The request has to be considered strictly in accordance with the governing scheme and no discretion as such is left with any authority to make compassionate appointment dehors the scheme as held by Hon'ble Apex Court in the case of **Bhawani Prasad Sonkar Vs. Union of India & ors** reported in (2011) 4 SCC 209.

In the present case, it is noticed that the case of the applicant has been considered by the respondents in accordance with the guidelines dated 20.02.2010 which was in vogue at the relevant time of the death of the husband of the applicant. It is not in dispute that the husband of the applicant while he was on duty had suffered with the illness of serious disease of cancer and remained under medical treatment for a considerable long period. He was under treatment with the hospital run by the respondent and subsequently he was advised to take medical treatment at the recognized cancer centre of the respondents, i.e. Apollo Hospital at Ranchi where he died on 24.07.2009.

It is noticed that from 17.03.2009 to 24.07.2009 the husband of the applicant was under medical treatment. Though the applicant was under the treatment of company sponsored hospital, but his debilitating disease i.e. cancer (advance) was not examined by the Committee for the purpose of declaration of his medical invalidation.

It is not in dispute that the husband of the applicant had never submitted any application before the respondent authorities for compassionate appointment due to his debilitating disease. Therefore, his case was not put up before the competent committee for the purpose of issuance of declaration of medical invalidation. Since there was no application with the respondents' Department for substitution of employee due to debilitating disease in the case of applicant, the case or the claim for compassionate appointment of dependent family member was not considered by the respondents. It is further noticed that as per the provision of clause 5.3.3 of the scheme in vogue with the respondents SAIL, the compassionate employment can only be considered on medical invalidation of the employee on specified debilitating disease. It is also provided under the said policy that if an employee dies due to disease or otherwise before declaration of medical invalidation by the Committee, then such death shall be considered as natural death and shall be dealt as per clause 9.1 of the Guidelines. Clause 9.1 of the said guidelines/scheme is as under:-

“ 9.1: cases of natural death while on duty shall not be considered for compassionate employment. The dependent family members may avail benefits under Employee Family Benefit Scheme.”

Based on the above provisions, the respondents have regretted the case of the applicant for appointment on compassionate grounds.

8. Considering the undisputed fact, we are in agreement with the submission made by the learned counsel for the respondents about their decision for not accepting the claim of the applicant vide their

decision dated 17/21.12.2016. The judgments relied upon by the learned counsel for the respondents are squarely applicable in the facts and circumstances of the present case.

9. Under the circumstances and the discussions made hereinabove we do not find any infirmity in the impugned decision of the respondents. Therefore, the claim of the applicant for grant of appointment on compassionate ground was held to be rightly regretted by the respondents. Hence, the applicant is not entitled for the prayer for direction upon the respondents with respect to reconsideration of claim for compassionate appointment.

10. So far the alternative prayer sought by the applicant with regard to extension of benefit of Employee Family Benefit Scheme is concerned, we find that the same was offered by the respondents in their various letters as referred hereinabove. In this regard, the learned counsel for the applicant has submitted that considering the penury condition of the applicant and also considering the social backwardness of the family, it is necessary to direct the respondents while considering the request of the applicant for grant of benefit under Employee Family by way of providing some installment in depositing the requisite Benefit Scheme the applicant/family be granted facility of installment for depositing any amount required for the purpose of availing the said benefit of the said Scheme.

11. We are of the considered opinion that considering the penury condition of the applicant and her family, It is open for the applicant to apply for the benefit under the "Employee Family Benefit Scheme"

of the respondents. It is appropriate to direct the respondents to extend all possible assistance to the applicant also by providing the facility of installment for depositing any amount for the purpose of extending the benefit of Employee Family Benefit Scheme. In view of the above observation, liberty is granted to the applicant to apply for such benefit under the scheme within 30 days from the date of receipt of this order and respondents are hereby directed to consider the same in the light of above discussions within 90 days. The OA is disposed of accordingly. No order as to costs.

[B.V. Sudhakar]/M[A]

[Jayesh V. Bhairavia]/M[J]

Srk.