

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00064/16**

Date of order: 29.11.2018

C O R A M

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

Om Prakash Dubey, S/o Virendra Kumar Dubey, R/o Village:- Konmndra, PO- Chapri, PS- Bhawnipur, Dist:- Garhwa (Jharkhand).

..... Applicant.

- By Advocate: - Mr. M.K. Sinha with Debarsi Mondal

-Versus-

1. Steel Authority of India Limited, Raw Materials Division, Kolkata through its Executive Director, Pin Code- 700071.
2. Steel Authority of India Limited, Raw Materials Division, Bhawanatghpur Limestone (Mines), PO & PS- Bhawanathpur Township, Dist. Garhwa through its Deputy General Manager (Mines)- Pin Code- 822129.
3. G.M. (P&W) Raw, Materials Division, Steel Authority of India Limited, Kolkata, Pin Code- 700071.
4. Senior Manager (P&A), Steel Authority of India Ltd., Raw Material Division, Bhawanthpur Limestone Mines, PO & PS- Bhawanathpur Township, Dist. Garhwa, Pin Code- 822129.
5. Deputy Manager (Mining), Steel Authority of India Limited, Raw Materials Division, Bhawanthpur Limestone Mines, PO & PS- Bhawanthpur Township, Dist. Garhwa, Pin Code- 822129.
6. General Manager, Steel Authority of India Ltd., Raw Materials Division Bhawanthpur Limestone Mines, PO & PS - Bhawanthpur Limestone Mines, PO & PS Bhawanthpur Township, Dist. Garhwa, Pin Code- 822129.

..... Respondents.

7. Bokaro Steel Worker's Union through its General Secretary, B.N. Choubey, having its registered office at III/B Qr. No. 247, Bokaro Steel City, PO & PS- BOKaro Steel City, Pin Code-827001.

... Proforma Respondent.

- By Advocate: - Mr. S. Gautam

O R D E R
[ORAL]

Per Mr. J. V. Bhairavia, J.M.:- In the instant OA, the applicant is aggrieved by decision dated 23/24.09.2011 (Annexure A/8) and 30.10.2015 (Annexure MA-1) whereby the application of the applicant for appointment on compassionate ground has been regretted as it does not come under the provisions of NJCS agreement for providing employment, i.e. prevailing policy of the company. The applicant has prayed for quashing and setting aside the said impugned orders and further sought relief for issuance of direction upon the respondents to provide compassionate appointment to the applicant, namely, Om Prakash Dubey in SAIL Raw Material Division, Bhawanathpur Limestone Mines, District- Garwah, Jharkhand. 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 as under:-

(i) It is contended that the father of applicant, i.e. Late Birendra Kumar Dubey a permanent employee under the respondents while working at SAIL, RMD/Bhawanathpur died in harness due to serious cardiac arrest on 01.10.2010 while he was en route to his duty.

(ii) The mother of the applicant, i.e. widow of Late Birendra Kumar Dubey namely Smt. Amravati Devi had submitted an application before the Sr. Manager RMD and requested for

compassionate appointment of the applicant. The mother, married sister and two younger brothers of the applicant had submitted their affidavit dated 25.11.2010 in favour of the applicant for grant of employment on compassionate ground (Annexure-3 series refers).

(iii) Vide letter dated 01.04.2011 the AD (Med.) to Dy. Manager, RMD (Personnel), Kolkata had forwarded the case of the applicant for consideration before the higher authority with the following observation:-

“ Regarding claim of compassionate appointment submitted by Shri Om Prakash Dubey dependent of Shri Birendra Kumar Dubey who expired on 01.10.2000 it is fact that patient got admission in our hospital in 01.11.2010 at about 11.04 PM while he was going to attend ‘C’ shift duty as per statement of patient party who brought him at Mines Hospital, BNP with inferior wall Miocardial Infraction with Hypertension and Diabetic Mellitus. The cause of death is due to heart stroke. We have no relevant document in his medical card about this disease. But as per the statement of patient party he was taking treatment from outside Doctor of the above mentioned disease under the above circumstance if our company rules permit, Shri O.P. Dubey may be considered for employment on compassionate grounds.” (Annexure A/6 refers).

(iv) It is further contended that the respondents had circulated one policy/scheme dated 18.12.2009 (Annexure A/7 refers).

(v) The applicant further submitted that vide impugned decision dated 23/24.09.2011 the respondents had informed the applicant’s mother that the claim for compassionate appointment cannot be considered under the prevalent policy. The said order is under challenge before this Tribunal (Annexure A/8 refers).

(vi) The learned counsel for the applicant further submitted that the mother of the applicant had again submitted her representation

before the Dy. GM. The General Secretary of Bokaro Steel Workers' Union had also taken upon the matter with the Management. Subsequently, vide letter dated 30.10.2015 the case of the applicant was again re-considered by the respondents and informed the applicant that the claim does not come under provision of NJCS agreement for providing employment (Annexure M-1). The said order dated 30.10.2015 is also impugned in the present OA.

(vii) The learned counsel for the applicant mainly submitted that vide circular dated 20.02.2010 the respondents have circulated the guidelines and procedure for dealing with the compassionate cases to bring in uniformity in dealing with such cases. The object of the said guideline is to provide reliefs/benefits to the dependent family member employees, in cases of death, permanent total disablement and medical invalidation. As per the clause 3.1.a, in case of death or permanent total disablement due to accident arising out of and in course of employment as per NJCS agreement the case is required to be considered for Compassionate Ground Appointment (CGA in short). It is submitted that the death of father of the applicant was sudden due to cardiac arrest and as per the clause 3.1.a of the scheme, the case of death in course of employment is required to be considered for CGA. However, the respondents have misinterpreted their own policy and not considered the death of the father of the applicant as sudden death due to cardiac arrest on the ground that he had not taken any medical treatment from the respondents' hospital nor any medical record indicate about such

treatment and therefore the death of the father of the applicant was considered as natural death.

(viii) It is further contended that not only the respondents have regretted the case of the applicant on the ground that the clause 3.1.a is not applicable in the case of the applicant the said reason for rejection of claim of applicant is arbitrary and against the spirit of the policy laid down for the welfare of the dependent family of the deceased employee. The learned counsel for the applicant submitted that as per the memorandum for agreement with National Joint Committee for steel industry dated 09.04.2010 which was produced by the respondents in their reply. The clause of the said policy also indicates that in the case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of direct dependent will be provided. Therefore, the applicant is entitled to be considered for appointment on compassionate ground.

3. In contra, the learned counsel for the respondents submitted that as per the scheme in vogue for appointment on compassionate ground i.e. of dated 20.02.2010, the applicant's case was considered and since death of the father of applicant was not due to any accident in course of employment, but he died due to cardiac arrest. Even he was not availing any treatment on that account in the company's hospital and declared medically invalidated employee. Under the circumstances, the respondents have correctly considered the case of the applicant as per the policy in vogue. The learned counsel for the respondents have placed reliance on the order passed by Hon'ble High Court in the case of **Kundan Herenj Vs. Ranchi Municipal Corporation** in WP(S) No. 3328 of 2007 decided on

09.06.2008 and submitted that the claim of the applicant was rejected long back in the year 2011 and the applicant has filed the present OA in the year 2016. This belated claim cannot be considered. He has further placed reliance on the judgment passed by Hon'ble High Court of Jharkhand in the case of **Vinay Kumar Chauhan Vs. SAIL & Ors** and submitted that the father of the applicant died on 01.11.2010 and this belated claim cannot be re-considered as it is against the law laid down by the Hon'ble Apex Court. He has also further placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana** reported in 1994 (4) SCC 138 and submitted that appointment on compassionate ground is one of exception to general rule and the said employment cannot be considered as a matter of course and such cases are strictly required to be considered in accordance with the scheme for CGA. The case of the applicant was considered in accordance with the policy in vogue and as contended in the reply the applicant's mother was intimated time and again about non eligibility of the applicant for the claim of such CGA. Hence, he is not entitled for any relief.

4. Heard the parties and perused the records.

5. 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.

6. 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 father of the applicant. It is not in dispute that the father of the applicant while he was en route to duty on 01.11.2010 died due to cardiac arrest.

7. It is noticed that the application for appointment on compassionate ground submitted by the mother of the applicant was forwarded by the Assistant Director (Medical), Mines Hospital with an observation that the said Late Birendra Kumar Dubey Ex-employee was brought him at Mines Hospital BNP with inferior wall Miocardial Infraction with hypertension and diabetic mellitus. The cause of death is due to heart stroke and there were no relevant documents in his medical card about this disease but as per the statement of patient party he was taking treatment from outside doctor from the above mentioned disease. The learned counsel for the respondents submitted that the death of the Late Birendra Kumar Dubey took place due to his illness and he had received cardiac arrest. The death was not due to any accident but it was natural death. The condition stipulated in clause (f) of NJC agreement is "in case of death or permanent total disablement due to accident arising out and in course of employment, employment to one of his/her direct dependent will be provided. However, instead of employment the dependent may opt for the benefits under Employees Family Benefit scheme (EFBS). Therefore, the word "or" stated in clause – f cannot be read separately and the same is required to be interpreted in the context of the said condition. The death of father of the applicant was

natural and as per the provision of clause-9.1 of the Scheme the case 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

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

9. Considering the above stated undisputed fact that the father of the applicant was not under treatment before any of the Hospitals of the respondents and he died due to sudden cardiac arrest, as per the policy in vogue the said death of the deceased employee was not considered as per the provisions of para 5.2.1 of the Guidelines/Policy dated 20.02.2010 which stipulates that the compassionate appointment will be provided to one of the dependent family members of an employee in case of death of permanent total disablement due to accident arising out of and in the course of employment as per NJCS agreement. 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 23/24.09.2011 and 30.10.2015. The judgments relied upon by the learned counsel for the respondents are squarely applicable in the facts and circumstances of the present case.

10. 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. However, we take note of the submission of the learned counsel for the applicant that the respondent authority have formulated the policy for consideration of compassionate appointment cases in violation of its objective and the same are required to be re-formulated in the interest of dependent of the deceased employee. It is expected that the respondents will consider the grievance of such dependent family with regard to consideration of claim for appointment on compassionate ground by re-formulating the eligibility criteria in its true spirit.

11. However, considering the penury condition of the dependent family, it is appropriate to direct the respondents that if the applicant/dependent family of deceased employee submits an application/claim for grant of benefit under Employee Family benefit Scheme, the same be considered 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.

12. 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.