

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No.O.A.1179 OF 2012

Date of order : 19. 01. 2016.

O.A.1180 OF 2012

Present :

Hon'ble Mr. Ashok Kumar Patnaik, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

O.A. No.1179 of 2012

1. Swapan Kumar Kesh, son of Sri Anil Kumar Kesh, Ex-senior Technician, last posted at COCC (Coke Oven & Coal Chemicals) Plant, Durgapur Steel Plant, SAIL, residing at 8/14, North Avenue A-Zone, Durgapur- 713204, District- Burdwan.
2. Chinmoy Kesh son of Sri Swapan Kumar Kesh, residing at 8/14, North Avenue, A-Zone, Durgapur- 713204, District- Burdwan.

.....Applicants.

-versus-

1. The Steel Authority of India Limited, service through The Chairman, having his office at "Ispat Bhawan", 5, Lodi Road, New Delhi- 110 003.
2. Chairman, Steel Authority of India Ltd., having his Office at "Ispat Bhawan", 5, Lodi Road, New Delhi- 110 003.
3. Durgapur Steel Plant, a subsidiary unit of Steel Authority of India Ltd., having its registered office at Main Administrative Building (Ispat Bhawan) Durgapur- 713203, District- Burdwan.
4. Chief Executive Officer, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
5. Executive Director (Personnel & Administration) & Revisional Authority, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
6. Executive Director (Works) Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
7. Deputy General Manager (Pers), Town Service, T. A. Building, Durgapur- 713 205, District- Burdwan.

2016

8. Assistant General Manager, (Pers-Works), Durgapur Steel Plant, Durgapur- 713 203, Dist- Burdwan.
9. Medical Disability Board, DSP, Service through the Convenor, Medical Disability Board, DSP, Durgapur Steel Plant Main Hospital, P.O. Durgapur- 713 205, District- Burdwan.
10. Convenor, Medical Disability Board, DSP, Durgapur Steel Plant Main Hospital, P.O. Durgapur- 713 205, District- Burdwan.
11. Deputy General Manager (COCC), Coal Chemicals Durgapur Steel Plant; Post: Durgapur- 713203, Dist- Burdwan.

.....Respondents.

O.A.No.1180 of 2012

Phatik Chandra Kundu, son of Satya Ranjan Kundu, residing at 4/19, Akbar Road, A-Zone, P.O. : Durgapur – 713204 District : Burdwan

.....Applicant

-VERSUS-

1. The Steel Authority of India Limited, service through The Chairman, having his office at "Ispat Bhawan", 5, Lodi Road, New Delhi- 110 003.
2. Chairman, Steel Authority of India Ltd., having his Office at "Ispat Bhawan", 5, Lodi Road, New Delhi- 110 003.
3. Durgapur Steel Plant, a subsidiary unit of Steel Authority of India Ltd., having its registered office at Main Administrative Building (Ispat Bhawan) Durgapur- 713203, District- Burdwan.
4. Chief Executive Officer, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
5. Executive Director (Personnel & Administration) & Revisional Authority, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
6. Executive Director (Works) Durgapur Steel Plant, having his office at Main Administrative Building (Ispat Bhawan), Durgapur- 713203, District- Burdwan.
7. Deputy General Manager (Pers), Town Service, T. A. Building, Durgapur- 713 205, District- Burdwan.



8. Deputy General Manager, (TS-TEM), T.A Building, Durgapur- 713 205, Dist- Burdwan.
9. Medical Disability Board, DSP, Service through the Convenor, Medical Disability Board, DSP, Durgapur Steel Plant Main Hospital, P.O. Durgapur- 713 205, District- Burdwan.
10. Convenor, Medical Disability Board, DSP, Durgapur Steel Plant Main Hospital, P.O. Durgapur- 713 205, District- Burdwan.

..... Respondents

For the applicant : Mr. IN Mitra, counsel

For the respondents : Mr. T. Banerjee, counsel
Mr. A. Roy, Counsel

O R D E R

MS. JAYA DAS GUPTA, ADMINISTRATIVE Member

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

2. It appears from O.A. 1180/2012 that a judicial order was passed on 13.06.2014 from which it appears that Mr. I.N. Mitra, Id. Counsel appearing for the applicant mentioned that connected and similar matter in O.A.1179/2012 had appeared in the list of Division Bench matters. Id. Counsel submitted that the O.A.1180/2012 be tagged with O.A.1179/2012. Hence, it was ordered that both the O.As be tagged together and listed on 01.08.2014.

Hence, the following orders passed in the O.A.1179/2012 shall apply
mutatis mutandis to O.A.No.1180/2012.

3. O.A.1179/2012

The applicant Sri Swapan Kumar Kesh was a Senior Technician being initially appointed in Durgapur Steel Plant on 01.04.1992 as a unskilled worker. He was posted last at Coke Oven & Coal Chemicals(COCC) Plant, Durgapur Steel Plant, SAIL. He has applied under Section 19 of Administrative Tribunals Act, 1985 for compassionate appointment., seeking the following reliefs:-

"a) An order do issue setting aside and/or quashing the rider part of the order of termination dated 28.1.2012, forthwith;

318

b) An order do issue directing the respondent to provide employment to the applicant no.2 on compassionate ground under permanent disablement category, forthwith;

c) An order do issue directing the respondent authorities not to withhold the appointment of the applicant no.2 on compassionate ground under permanent disablement category, in any manner whatsoever."

4. An Office Order was passed on 28.01.2012 which is set out below:-

**"STEEL AUTHORITY OF INDIA LIMITED
DURGAPUR STEEL PLANT**

Central Sl.No. OR-05

No. COCC/SEP/2012/238500

Dated : 28.01.2012

O R D E R

On being declared unfit for any job in Durgapur Steel Plant by the DSP Medical Board communicated by the Director I/C (M&HS) vide his note no. 511(12) dated 23.1.2012 along with Disability Assessment-cum-Compensation Certificate vide No. MED/ESTT/115(3)/ dated 23.01.2012, the services of Shri Swapan Kumar Kesh, T. No. 238500, Sr. Technician, COCC (14000) is hereby terminated with immediate effect.

After his separation, Shri Swapan Kumar Kesh will not be entitled for any claim for employment of his dependent in SAIL, DSP as stipulated at clause 3.5.6.1 (f) of NJCS Agreement, 2007.

This supersedes our earlier order no. PPS-120012/CO & CC/238500 dated 15.12.2011.

DGM (COCC)
Coal Chemicals
CO & CC
Durgapur Steel Plant"

From the above, we see that the service of Sri Swapan Kumar Kesh, the father of the applicant was terminated with immediate effect. **Also none of his dependent will be eligible for any claim for employment as stipulated at Clause 3.5.6.1(f) of NJCS Agreement, 2007.** A perusal of the Memorandum of Agreement shows that Para 3.5.6 deals with Workmen's Compensation Benefit. The relevant para is set out below:-

"3.5.6 WORKMEN'S COMPENSATION BENEFITS

3.5.6.1. The employees covered by this settlement shall continue to be entitled to the benefits admissible under the Workmen's Compensation Act, 1923 as under:

28^

- (a) The benefits under the Workmen's Compensation Act will not be affected adversely on account of the revision of wages by this settlement.
- (b) The compensation during the period of disablement shall be paid on the basis of last wage drawn immediately before the employee met with the accident.
- (c) The erstwhile wages of an employee on rehabilitation will be protected irrespective of the place where he/she has been rehabilitated.
- (d) Workmen's Compensation benefit will continue to be extended to injury cases causing death or permanent/temporary disablement arising during journey from residence to place of work and back within one hour of the start or end of his duty hours provided that the accident takes place on the normal route of journey to the place of work.
- (e) If an employee is disabled due to accident arising out of and during the course of employment, he/she will get full wages and dearness allowance from the date of accident till the employee is declared fit by the Company's medical officer as per the existing practice.
- (f) In case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/her direct dependents will be provided. However, instead of employment, the dependent may opt for benefits under Employees' Family Benefit Scheme (EFBS)."

Annexure A-6 which has been placed above shows that the ex employee is covered by Clause 3.5.6.1(f) of NJCS Agreement, 2007 i.e. the ex employee has been considered as per para 3.5.6.1 of Workmen's Compensation Benefits.

5. It also appears from the **Rejoinder** which is very much a part of pleadings that the applicant No.2 Sri Chinmoy Kesh is the son of the ex employee. In order to further his case he has taken the help of Section 2(g) of the Workmen's Compensation Act, 1923, Section 2(l) of **Workmen's Compensation Act, 1923** and various sections of the **Employees State Insurance Act, 1948**. It is pertinent to mention that all these acts are covered by Industrial and Labour Laws for which there are specific fora for adjudicating the cases. It has also been stated in para 5 of the rejoinder that Applicant No.1 i.e. the ex employee was last posted at Coke Oven & Coal Chemicals(COCC) Plant wherein **every industrial workers apprehends loss of life since the work is very risky.**

We think it is essential to mention Section 28 of the Administrative Tribunals Act, 1985 in order to examine the maintainability of the case:-



"28. Exclusion of jurisdiction of courts except the Supreme Court - On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, [no court except-]

- (a) The Supreme Court; or
- (b) Any Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force.

Shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

The Hon'ble Apex Court in 1996 Vol.1 SCC 69 [Krishan Prasad Gupta vs. Controller, Printing and Stationery] held that:-

"In view of the provisions of Section 14, 28, 19 of the Administrative Tribunals Act, 1985, the jurisdiction of the Industrial Tribunal, Labour Courts and other authorities under the Industrial Disputes Acts or authorities created under any other corresponding law remains unaffected."

"Although Section 2(b) of the Administrative Tribunals Act was deleted by Act 19 of 1986 so as to make the Act applicable to workmen etc., Parliament by the same Amending Act, introduced Clauses (a) and (b) under Section 28 so as to preserve the jurisdiction of the Supreme Court, Labour Courts, Industrial Tribunals and the authorities under the Payment of Wages Act which is a corresponding law, within the meaning of Section 28(b) of Administrative Tribunals Act."

Hon'ble Apex Court in 2002 SCC(L&S) 245 [Council of Scientific and Industrial Research and Another vs. Padma Ravinder Nath & Others] held that:-

"Administrative Tribunals are not substitute for authorities constituted under Industrial Disputes Act. Matters over which authorities under Industrial Disputes Act have jurisdiction do not automatically becomes vested in Administrative Tribunals for adjudication."

Also rulings of statutes cannot be overridden by a subsequent Notification of Government of India. As the applicant seeks to take various provisions of NJCS Agreement, the Workmen's Compensation Act, Employees State

Insurance Act, the case is not maintainable. This is as per the direction of
Hon'ble Apex Court (Supra).

6. Accordingly the O.A. is dismissed. No cost.

(JAYA DAS GUPTA)
Administrative Member

(A.K. PATNAIK)
Judicial Member

s.b.