



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No. 350/00288/2014

Date of Order: .02.2016

Present:

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

.....

Jhumka Goswami, daughter of Late Sakti Kumar Goswami,  
aged about 43 years, residing at 1A/26, Ramkrishna Avenue, Po.  
Durgapur, Dist. Burdwan, Pin-713 204.

.....Applicant

For the Applicant: Mr. S.S.Mondal, Counsel.

-Versus-

1. STEEL AUTHORITY OF INDIA LTD, Alloy Steel Plant,  
Durgapur, Dist. Burdwan, Pin-713 208.
2. The Managing Director, Steel Authority of India Ltd., Alloy  
Steel Plant, Durgapur, District Burdwan, Pin-713 208.
3. The Executive Director, Steel Authority of India Ltd., Alloy  
Steel Plant, Durgapur, Dist. Burdwan, Pin-713 208.
4. The Manager (PR)/ASP, Steel Authority of India Ltd., Alloy  
Steel Plant, Durgapur, Dist. Burdwan, Pin-713 208.
5. Junior Executive Personnel (NI), Steel Authority of India Ltd.,  
Alloy Steel Plant, Durgapur, Dist. Burdwan, Pin-713 208.
6. A.G.M. (PL-OD & R), Steel Authority of India Ltd., Alloy Steel  
Plant, Durgapur, District: Burdwan, Pin-713 208.

7. A.G.M. (PL OD, NW & CS), Steel Authority of India Ltd., Alloy Steels Plant, Durgapur, Dist. Burdwan, Pin-713 208.

.....Respondents

For the Respondents : Mr. A.Roy, Counsel

## ORDER

7/3/16

JUSTICE V.C.GUPTA, JM:

Heard the learned counsel for the parties and perused the records.

2. This OA has been filed seeking the following reliefs:

"(i) To direct the Respondents to cancel, withdraw and/or rescind the purported memo dated 28.11.2013 as contained in Annexure "A-4" herein;

(ii) to direct the respondents to give appointment on compassionate ground to the applicant in place and stead of her deceased father, namely Shakti Kumar Goswami, Ex. Sr. Caretaker GM (W) Building of ASP/SAIL forthwith considering her representations dated 04.04.2007 & 12.10.2012 as contained in Annexure "A-1" herein and in terms of the order dated 04.09.2013 passed in OA No. 1033 of 2013 by this Hon'ble Tribunal as contained in Annexure "A-2" herein forthwith;

(iii) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the issues involved herein;

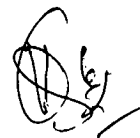
(iv) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

(Extracted as such)

2. The Respondent-Department filed their reply opposing the prayer of the applicant details of which would be discussed at the appropriate place infra and the applicant has also filed rejoinder.



3. The learned counsel for the applicant, placing reliance on the averments made in the OA as also rejoinder and the enclosures appended thereto, contended that the father of the applicant was an employee, working as Sr. Caretaker (GM (W)), of the Alloy Steel Plant which is under the Steel Authority of India Ltd and while working as such, he died in harness on 22.08.1990. On 17.04.1997, the applicant got married but subsequently the marriage of the applicant was dissolved vide order dated 01.10.2005 of the Learned Additional District Judge, Durgapur and as a result of which, the applicant came back to her father's house and became dependent on her mother. The mother of the applicant requested for providing employment assistance on compassionate ground in favour of the applicant but the respondent kept silent over the same. However, in letter dated 06.04.2006, the Respondent No.6 intimated the mother of the applicant to meet him, along with all the relevant documents along of the applicant on 13.04.2006. In the meantime on 10.03.2006, the mother of the applicant also expired. However, the applicant met the Respondent No.6 on 13.04.2006 and produced all the relevant documents along with no objection certificate from all other daughters of the deceased. As the department did not give any reply, she made several representations viz; on 04.04.2007, 24.07.2008, 24.10.2009 and on 12.10.2012. There being no response, she approached the Hon'ble High Court of Calcutta in WP No. 13277(W)

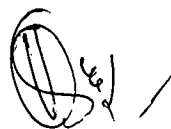


of 2013 which was dismissed on 03.06.2013 not on merit but on the ground that the High Court has no jurisdiction. Thereafter, the applicant approached this Tribunal in OA No. 1033 of 2013 which was disposed of on 04.09.2013 with direction to consider the representation of the applicant. In compliance of the order of this Tribunal, the Respondent No.7 considered the case of the applicant for compassionate appointment but rejected the prayer of the applicant vide letter dated 28.11.2013 (Annexure-A/4).

According to the learned counsel for the applicant that she has no other means of livelihood whereas, the authorities concerned rejected the claim of the applicant without assigning any valid or cogent reason and thereby frustrated the very aim and object of the scheme formulated for providing appointment on compassionate ground. In order to justify and fortify the claim for providing appointment, the learned counsel for the applicant pressed into service the decisions of the Hon'ble Apex Court in the case of *Balbir Kaur & Another v Steel Authority of India Ltd*, (2000) 6 SCC 493. According, the learned counsel for the applicant would pray for allowing this OA.

Per contra, the learned counsel for the Respondents, similarly placing reliance on the averments made in the reply and enclosures appended thereto, vehemently contested the case of the applicant by stating that in or about 2006 ASP had decided to

impart training to dependents of employees who had normal death or became permanently disabled during their service period upto 31.12.2005 as Trade Apprentice Trainees (TATs) under the provisions of the Apprentices Act, 1961 as a onetime welfare measure. On the letter of the respondents, on 29.4.2006 the applicant appeared before the then AGM (PL OD & R) along with her two sisters for verification of documents. During verification it was made known that the widow of the deceased already expired on 10.3.2006. Three daughters of the deceased were married and the applicant was a divorcee. However, no document in support of her divorce was produced on the date of verification. However, as the applicant married to an existing employee of Alloy Steels Plant namely Shri Kanchan Kumar Roy her case was not considered. As per the provisions appointment on compassionate ground can only be claimed in those cases where death of the employee occurred on account of accident arising out of and in course of employment. In the instant case, the death of the father of the applicant occurred on account of sudden attack of Cerebral Thrombosis on 22.8.1990 in course of treatment at DSP Hospital, Durgapur. It was a case of natural death due to illness and therefore, is not covered under the provisions for providing employment on compassionate ground that too after 24 years of the death of the father of the applicant. The applicant and her daughter have been shown as dependent of Shri

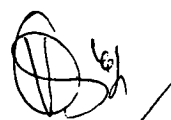


Kanchan Kumar Roy and medical card has also been issued by ASP in their name. The divorce was on mutual basis under section 13 (B) of the Hindu Marriage Act. In sum and substance it is the case of the respondents since the death of the father of the applicant does not come within the purview of the rules and in the meantime 24 years expired appointment on compassionate ground is not justified. According, the learned counsel for the Respondents would pray for the dismissal of this OA.

4. The trite is the proposition of law that every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution of India. However, an exception has been carved out, as a benevolent measure, for providing employment, to one of the family members of the deceased, to meet the sudden financial jerk/hardship caused after the death of the bread earner of the family. Equally, it is well settled law that compassionate appointment is not an alternate source of employment.

5. In the instant case, the date of death of the employee was on 22.08.1990. Much after the death, the applicant got married i.e. on 17.04.1997. The divorce decree is dated 01.10.2005 and on 10.03.2006, the mother of the applicant expired.

6. In Balbir Kaur's case (supra), the scheme for compassionate appointment prevailing prior to 1990 in the Steel



Authority of India for compassionate appointment has been taken into consideration by the Hon'ble Apex Court. Paragraphs 7, 11, 12, 13 and 17 are relevant for the purpose of this case and, as such, they are reproduced hereunder for ready reference:

7. Before however, embarking on an inquiry in regard thereto it would be convenient to note however the necessary provisions of the NJSC Tripartite Agreement of 1983 as also of 1989. The same are set out herein below:-

Cl.7.16 NJCS Agreement, 1983

Cl.7.16: Employment. Employment would be provided to one dependant of workers disabled permanently and those who meet with death. One dependant of the retiring employee would be provided employment, but in case of TISCO, the same would be subject to their Certified Standing Orders.

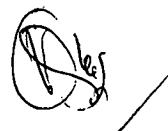
1989 Tripartite Agreement: Cl.8.10.4: In case of death due to accident arising out of and in course of employment, employment to one of his/her direct dependant will be provided.

Cl.8.10.5: A Scheme would be introduced by NJCS for employees who die while in service or who suffer from permanent total disablement to receive monthly payments after the death/permanent total disablement of the employees, in case the widow/employees deposit P.F. amount and Gratuity dues with the Companys separate trust constituted for this purpose. When finalised, the Scheme would be effective from 1.1.1989.

Cl.8.14.1: Benefits provided under the previous NJCS Agreement will continue, unless otherwise specified in this Agreement.

Cl.8.14.2: Merely as a consequence of the implementation of this Agreement, any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practice or usage, shall not be withdrawn, reduced or curtailed except to the extent and manner as provided for in this Agreement.

11. Turning on to the factual aspects once again, it is not that compassionate appointments have never been effected. Steel Authority of India was in fact providing compassionate employment to one



dependant of an employee dying in harness or permanently disabled. As a matter of fact on 22nd September, 1982 the respondent-Steel Authority, further issued the Circular pertaining to appointments on compassionate grounds. The Circular however for the first time introduced categorisation of compassionate employment as First Priority Cases; Second Priority Cases and Third Priority Cases. The Circular reads as below:

The system of compassionate appointments was reviewed in a meeting of the Advisory Committee recently. On the lines of the discussions, the system may be operated in future as given below:

1. First Priority Cases

(a) Employment of a dependent of an employee who dies owing to an accident arising out of and in the course of employment;

(b) Employment of a dependent of an employee who dies in a road accident while on duty or while coming to or going back from duty.

The existing practice will continue.

2. Second Priority Cases

i.e. employment of a dependent of an employee whose services are terminated in accordance with order 23 of the Standing Orders, i.e. on his being found permanently medically unfit for his job by the Director M&HS.

(a) Dependents of only those employees would be considered for employment on compassionate grounds whose services are terminated on the ground of being declared permanently unfit for their job before they enter 56th year of age, that is, they have a balance of at least three years of service.

(b) The minimum period of service of the employer, whose dependent is to be considered for employment, will be 10 years, as against 5 years under the existing rules.

3. Third Priority Cases

i.e., Cases of death for reasons not covered under (1) above. The existing rules will continue.

The above will be subject to the following general conditions: (i) The eligible dependents for consideration for such employment would continue to be wife/husband/son/daughter.



(ii) No employment would be provided to a second dependent, i.e., if the husband/wife or a son/daughter of the deceased or of the employee whose services are terminated on his being found medically unfit is already in employment of RSP, no employment will be provided to another dependent.

(iii) The employee covered under the 2nd and 3rd priorities-

(a) should not have been awarded a major punishment during the last 5 years of their service and

(b) should have at least good grading in the CCR for the last 3 years

This has the approval of the Managing Director.

12. The requirement of such an insertion in the body of the judgment was felt expedient by reason of the introduction of the priorities and in any event special reference may be made to clause 7.16 of the Circular which expressly records cases of death for reasons not covered under (I) above and in that event the existing rules will continue. The existing rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments.

13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually

working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

17. In any event as appears in the contextual facts, the NJCS Agreement being a Tripartite Agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and on the wake of the same we do not see any reason to deny the petitioner the relief sought for in the writ petition."

7. On the strength of the above, it has been contended by the learned counsel for the applicant that the word daughter used in the scheme for compassionate appointment does not mean that the daughter must be an unmarried one. It is a question of dependency upon the deceased irrespective of the fact as to whether she is married, unmarried or divorced one. The father of the applicant died on 22.08.1990 and her mother moved an application for

compassionate appointment only on 23.10.1990 in favour of the applicant. It has been contended that the said application was not considered for about sixteen years and the authorities taken note of that application only on 6<sup>th</sup> April, 2006 whereby, the competent authority directed the mother of the applicant to appear on 13.04.2006 along with documents and dependent member of the family. Thereafter, no decision was taken despite appearance and production of all the documents and only in pursuance of the order of this Tribunal, the authorities issued the impugned order. It clearly establishes that there is enormous delay in disposing of the application for compassionate appointment on the part of the authorities of the SAIL.

8. The learned counsel for the applicant also relied upon another decision of the Hon'ble Apex Court in the case of Canara Bank & Anr v M. Mahesh Kumar, Civil Appeal No. 260/2008 disposed of on 15.05.2015 and stated, on the strength of this judgment payment of terminal benefits including family pension cannot be treated as a substitute of providing employment assistance on compassionate ground. It has been contended that while passing the impugned order, the authorities concerned on the basis of conjecture and surmises held that the applicant is not dependent upon the deceased employee and it was also submitted that the finding recorded that the divorce decree was based on mutual



consent and no alimony was demanded by the applicant shows that the applicant is not in need of any financial help is neither in pleadings nor anywhere mentioned. The finding is against the record and is based on surmises.

9. The learned counsel for the applicant, in order to strengthen his argument, has also placed another decision of the Hon'ble Apex Court rendered in the case of *Steel Authority of India Limited v Madhusudan Das and Others*, (2008) 15 SCC 560, on which strength reliance was also placed by the learned counsel for the respondents too. Paragraph<sup>21 and 22</sup> 22 is relevant for disposal of this list is reproduced hereunder for ready reference:

21. Yet again, recently in *Oriental Insurance Company Limited v. Sorumai Gogoi and Others* [(2008) 4 SCC 572], this Court observed:

"21. In *Jyothi Ademma v. Plant Engineer* also this Court held: (SCC pp. 514-15, paras 6-7)

"6. Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

7. The expression 'accident' means an untoward mishap which is not expected



or designed. 'Injury' means physiological injury. In *Fenton v. Thorley & Co. Ltd.*<sup>3</sup> it was observed that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. in *Trim Joint District School Board of Management v. Kelly* as follows:

'I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer.'

**22. Furthermore, the rights of the parties were required to be determined as on the date of the incident, namely, 9-10-1996. It is, therefore, difficult to hold that a subsequent event and that too by raising a presumption in terms of Section 108 of the Evidence Act can give rise to fructification of claim, save and except in very exceptional cases."**

10. The learned counsel for the respondents heavily relied upon the decision of the Hon'ble Apex Court in the case of *SAIL* (supra) and would submit that the Hon'ble Apex Court ruled that appointment on compassionate ground should have been made strictly in accordance with rules framed in this regard.

It was contended by the learned counsel for the respondents that it is not a case where death was occurred on account of accident but it was a normal death. Therefore, the applicant cannot claim compassionate appointment. The dependent of the deceased employee may opt for other benevolent part of the scheme introduced for employees who die while in service where

legal heir and the widow deposits the provident fund amount and gratuity with the company. This has been provided in the memorandum of agreement dated 5<sup>th</sup> July, 1989. As such, the application for compassionate appointment is not maintainable.

11. The learned counsel also relied upon the decision of the Hon'ble Apex Court in the case of Mohan Mahto V Central Coal Field Ltd. And others reported in (2007) 8 Supreme Court Cases 549 to state that the Hon'ble Apex Court ruled that compassionate appointment should be given in terms of settlement arrived at between the employer and employees. There was also <sup>a</sup> reason <sup>for</sup> not granting compassionate appointment due to inordinate delay as held in the case of Umesh Kumar Nagpal v State of Haryana, (1994) 4 SCC 138.

12. We have considered the submissions of both sides and perused the records. The deceased employee passed away in the year 1990. At that time there were four legal heirs of the deceased employee including the wife and three daughters. The present applicant was unmarried at that relevant point of time. The application was moved with promptitude for compassionate appointment within few months from the date of death. The same was not considered for about 16 years by the employer and only in 2006 a notice was sent for making certain enquiries for verification of records. Things and circumstances were changed in the meantime



as the wife of deceased passed away just few days before the date of appearance fixed by the authorities in the year 2006. The applicant who was unmarried at the time of the death got married in 1997 and it was alleged that she was divorced in 2005 and as such she became dependent upon the deceased employee and as such is entitled to appointment on compassionate ground. She after 2006 sent several reminders to decide the fate of her application. But no sincere effort was made by the employer. In such a scenario, the applicant took the help of the legal process by filing petition before this Tribunal and only after the direction was issued by this Tribunal the SAIL authorities considered the application and declined to grant compassionate appointment as stated in the impugned order which is being reproduced herein below:

"This has reference to the aforesaid order dated 04.09.2013 passed by the Honourable Central Administrative Tribunal, Calcutta Bench in O.A. No. 1033 of 2013 filed by you for a direction upon the authorities of SAIL, ASP to provide a suitable job to you on a compassionate ground upon death of your father namely Shakti Kumar Goswami, an employee of ASP who died on 22.08.1990. By virtue of aforesaid order dated 04.09.2013, the Honourable Tribunal has directed the ASP Authorities to consider and decide your representation dated 04.04.2007 and its subsequent reminders as per rules within a period of 3 months from the date of production of certified copy of the order dated 04.09.2013.

Now, we have received a copy of the certified copy of the order dated 04.09.2013 along with copies of your representation dated 04.04.2007 and 12.10.2012.

In compliance of the aforesaid order dated 04.09.2013 passed by Honourable Central Administrative Tribunal, Calcutta Bench, your representation dated 04.04.2007 and 12.10.2012 was considered and our reasoned order is as follows:

#### Facts of the case

Sri Shakti Kumar Goswami (father of applicant) was an employee of ASP bearing Emp. No.47111 and was posted as Sr. Care Taker, GM (W) building at the relevant point of time. He died while in service on 22.08.1990 at DSP Hospital due to illness (Central thrombosis). After his death, his widow Smt. Kalyani Goswami (now deceased) submitted an application dated 23.10.1990 for appointment of her daughter Smt Jhumka Goswami (The applicant) on compassionate ground in place of her deceased husband. It may be mentioned here besides the widow and the applicant, there are 2 other daughters namely Smt Susmita Acharjee and Smt Subra Mukherjee, of the deceased employee Lt. S.K. Goswami. Subsequently vide letter No. ASP/PL/Rectt-2(23)/87 dated 06.04.2006 the widow of the deceased employee Smt Kalyani Goswami was called along with the dependents (The applicant) on 13.04.2006 at 3 P.M at for verification of all relevant testimonials with respect to her application for compassionate appointment. It was clearly mentioned in the said letter that letter does not confer any right of being appointed on Compassionate ground.

However, subsequently on 29.04.2006, Smt Jhumka Goswami (the applicant appeared before the then AGM (PL-OD&R) along with her 2 sisters. It transpired during discussion that Smt. Kalyani Goswami (wife of the deceased) had already expired on 10.03.2006. It was also informed that all the 3 daughters were married and Smt. Jhumka Goswami was a divorcee. However, no document in support of her divorce was produced on the said date. Thereafter the applicant subsequently submitted the representation dated 04.04.2007 and 12.10.2012 before the respective authorities for consideration of the case for appointment on compassionate ground.

#### Relevant Provision

As per provisions of National Joint Committee for the Steel Industry (NJCS) agreement which came in



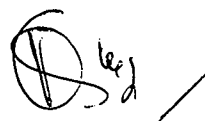
vague from 01.01.1989, in case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of the direct dependants of the employee will be provided. The NJCS agreement further provides that instead of employment, the dependants may go for benefits under Employees Family Benefit Scheme (EFBS). For natural death or permanent total disablement cases, the dependant of the deceased employee was free to opt for benefits under EFBS.

Consideration of the case

From the above provisions of NJCS agreement which came into force with effect from 01.01.1989, appointment on compassionate ground can only be claimed as a matter of right in those cases where death of the employee has occurred on account of accident arising out of and in course of employment.

In the present case, Sri S.K Goswami (the father of the applicant), died on account of sudden attack with cerebral thrombosis on 22.08.1990 in course of treatment at DSP Hospital, Durgapur. Thus, it is a case of natural death due to illness and therefore, is not covered under the provisions of NJCS agreement as referred to above. As such the applicants cannot claim appointment on compassionate ground in place of her deceased father as a matter of right. Moreover, her father, Sri S.K Goswami, died in the year 1990, i.e. 23 years ago and thus providing appointment on compassionate ground to the applicant will violate the principles laid down by the supreme Court of India to the effect that compassionate appointment can be provided to the dependant of the government servant who died in harness and who need immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread earner to relieve the economic distress of the members of the family.

From the records, it is seen that the mother of the applicant namely Smt Kalyani Goswami also died on 10.03.2006 i.e even before the date of verification of records as communicated to Smt Kalyani Goswami (mother of the applicant) vide ASP letter bearing No. ASP/PL/Rectt-2(23)/87 dated 06.04.2006. However, 3 daughters of Smt Kalyani Goswami, including the



applicant appeared before the AGM (PL-OD&CS) on 29.04.2006. All the daughters were married when they appeared before the AGM. Although the applicant informed that she is a divorcee but did not produce any document in support of her claim.

As the mother of the applicant already did on 10.03.2006 and other 2 sisters of the applicant were married and not dependent upon the applicant, there was no justification in providing employment to the applicant on compassionate ground.

So far dependency of Smt. Jhumka Goswami (The applicant) and her daughter upon the deceased father Lt. S.K Goswami is concerned, it may be taken note of that the ex-husband of Smt Jhumka Goswami namely Sri Kanchan Kumar Roy is a permanent employee of ASP having Emp. No. 83103. He is working in the post of Master Technician with a salary of Rs. 35200. From the decree of divorce dated 01.10.2005 as annexed by Smt Jhumka Goswami in the writ petition No. 13277(W) of 2012 filed by her before Calcutta high court, it would appear that the divorce was sought and granted based upon mutual consent of both the husband and wife v/s 13B of the Hindu Marriage Act. There is neither any prayer made for alimony nor for custody of the child before the court on behalf of the Smt Jhumka Goswami nor any order was passed in that regard by the court. It does not stand to reason as to why Smt Jhumka Goswami did not make any demand for alimony from her husband when her husband was already in service in ASP and getting a handsome salary. From the records it is further seen that the daughter of Sri Kanch Kumar Roy.

From the aforesaid facts, it may be seen that Smt. Goswami is a self dependant lady and she does not need any need or assistance from her ex husband. Moreover, her only daughter is not dependant on her. In any case, Smt. Jhumka Goswami and her daughter Ms. Kankana Roy are not the dependant of the deceased employee namely Shri S.K.Goswami.

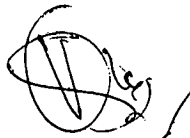
For the aforesaid reasons, the claim of Smt. Jhumka Goswami for providing appointment on compassionate ground in place of her deceased father cannot be acceded to and both her representations



dated 04.04.2007 and 12.10.2012 are hereby disposed accordingly."

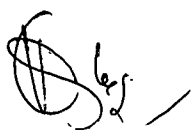
13. It is no doubt but true that the deceased employee passed away in 1990 and now we are considering the lis in 2016 i.e. after a lapse of about 26 years. Had the deceased survived, he must have reached the age of superannuation. It is no doubt but true that there was a considerable delay in considering the claim of the applicant by the employer. But at the same time the wife did not claim compassionate appointment for herself after the marriage of her third daughter which occurred during 1997. Once the marriage was solemnized the daughter ceased to be the dependent upon her father and she became dependent on her husband. In this case, document has been brought on record whereby a mutual consent divorce decree was obtained by the applicant but it is also true that no alimony was ever claimed by the applicant from her husband nor she claimed any sort of maintenance from her husband which she was entitled to claim.

14. We asked the learned counsel for the applicant as to why she did not claim any maintenance or alimony from her husband; the reply was that on account of prestige she did not claim any amount of maintenance or alimony. But for this simple reason it cannot be said that the applicant is not entitled to compassionate appointment.



15. It is true that the matter should have been considered for compassionate appointment at the time when such cause of action arose. If there is inordinate delay on the part of employer the delay cannot be fatal for providing appointment on compassionate ground. In this case the mother of the applicant applied appointment on compassionate ground in favour of the applicant. However in 1997 the applicant's mother was the only dependent of the deceased employee. But she did not claim any appointment for herself if there was really any need for such appointment. However, she died in March, 2006 and only thereafter, the present applicant stating to have been divorced in 2005 claimed appointment on compassionate ground on the ground that she became dependent upon the deceased employee. It is also important to note that her husband was also working as existing employee of the Alloy Steel Plant and the applicant and her daughter was shown to be dependent of her husband Shri Kanchan Kumar Roy and medical card was also issued in their name. The maintenance for herself and her daughter was never demanded from her husband by the applicant.

16. Having considered all the facts and circumstances of the case, we are of the considered view that though cause of action arose when the deceased employee died in the year 1990 and right of the party should have been decided keeping in view of the status of the dependent at that moment. But if the circumstances changed in such



a way as narrated herein above, the claim of compassionate appointment after a lapse of 26 years would not be sustainable in the eyes of law. No interference is warranted in the impugned order.

17. Hence, for the discussions made above, this OA stands dismissed by leaving the parties to bear their own costs.

(Ms. Jaya Das Gupta)  
Administrative Member

(Justice V.C. Gupta)  
Judicial Member