

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 14 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Gouri Devi, aged about 55 years, W/o Late Jugal Kishore Khuntia, a resident of Vill-Bhesari, PO-Antarakiary, Via- Banpur, Dist-Khurda, Pin - 752031.

.....Applicant

VERSUS

1. Managing Director, Steel Authority of India Limited, Rourkela Steel Plant, Administrative Building, At/PO-Rourkela, Dist-Sundergarh.
2. General Manager (Personnel), Administrative Building, Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundergarh.
3. General Manager (Mines), Administrative Building, Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundergarh.
4. Personnel Manager (Recruitment), Administrative Building, Rourkela Steel Plant, At/PO-Rourkela, Dist-Sundergarh.
5. Chief superintendent, Barsua Iron Mines, (BIM), At/PO-Tensa, Dist.-Sundergarh – 770042.

.....Respondents.

For the applicant : Mr.S.Palit, counsel

For the respondents: Mr.N.K.Sahoo, counsel

Heard & reserved on : 11.11.2019 Order on : 28.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Transfer Application (in short TA) was originally filed as a writ petition before the Hon'ble High Court in OJC No. 783/1996, which was transferred to this Tribunal vide order dated 7.7.2014 and was numbered as TA. The TA has been filed praying for the following reliefs :

“It is, therefore, humbly and most respectfully prayed that this Hon’ble Court may graciously be pleased to issue a Rule Nisi calling upon the opposite parties to show cause as to why

(i) The son of the petitioner namely Sri Ramesh Chandra Khuntia shall not be given an appointment on compassionate ground as a measure of rehabilitation assistance;

AND if the opposite parties fail to show cause or sufficient cause, the Rule may be made absolute.

And further be pleased to issue/pass any other or further writ/writs or order/orders and/or direction/directions as would

deem fit and proper under the facts and in the circumstances of the instant case.

And for this act of kindness, the petitioner shall as in duty bound every pray."

2. The facts as stated in the application in brief are that the applicant's husband expired on 25.7.1977 while working in Barsua Iron Mines, Tensa under the respondents Rourkela Steel Plant (in short RSP). He was originally appointed as a Security Guard under RSP on 21.2.1959 till 1972 when the security department of RSP was abolished and CISF took over the charge of security of the RSP. The security guards including the applicant's husband were asked to join CISF. But the applicant's husband refused to join CISF, for which he was retrenched from service on 31.3.1972. On 9.7.1974 he was appointed by the RSP under Barsua Iron Mines, Tensa which subsequently became Raw Materials Division of the RSP. While working as such, he expired on 25.7.1977 leaving behind the applicant (widow wife), two sons and one daughter. It is stated in the TA that the daughter of the applicant died after the death of the deceased employee due to inadequate medical care as the family was in financially difficult situation. Immediately after the death of the applicant's husband, the elder son of the applicant approached the authorities for compassionate appointment. But it was not considered and he was advised to get his name sponsored by the Employment Exchange. It is further stated in the TA that although his name was sponsored thereafter, but his case was not considered and he was denied appointment under the RSP for which he left his house without any further contact with the bereaved family.

3. It is stated in the TA that thereafter the applicant approached the authorities for appointment of her second son namely Sri Ramesh Chandra Khuntia on compassionate ground. But no action was taken by the authorities although many other similar cases were considered for compassionate appointment under the RSP as stated in paragraphs 7 & 8 of the TA.

4. Counter affidavit of the respondents No. 3 & 5 was filed opposing the application on the ground that it is contrary to the law pronounced by the Hon'ble Supreme Court in AIR 1987 SC 1015 and 1995 (1) LLJ 798 as violative of Articles 14 & 16(2) of the Constitution of India. Regarding facts, it is averred that the applicant's husband was retrenched in the year 1972 since he did not agree to work under CISF. On his appeal for service and after following due procedure like interview after his name having been sponsored by the Employment Exchange for the post of Khalasi, the deceased employee was selected under the Raw Materials Division in the year 1974 and he continued till his death on 25.7.1977. It is averred that the appointment of the applicant's husband in 1974 as a Khalasi was a fresh appointment with no connection with his earlier service under the security department and his service in the

first phase till retrenchment in 1972 has nothing to do with subsequent employment in 1974 which has to be treated as fresh appointment. It is further averred that the experience of the applicant's husband prior to 1972 cannot be considered along with the subsequent posting as Khalasi for the purpose of compassionate appointment. In 1977 the rule regarding compassionate appointment under the RSP was formulated where first priority was to be given for death arising out of and in course of employment, second priority was for medial unfitness provided the deceased employee had put in minimum service of 5 years under the RSP. Third priority was to be given for cases of death due to natural causes for the employees having minimum 5 years of service, which was subsequently modified to 10 years of service of the deceased employee in case of natural death as per the scheme, copy of which has been enclosed as Annexure-B to the affidavit dated 24.4.2000 filed by the respondents No. 3 & 5 after filing of the counter.

5. It is further stated by the respondents that since the applicant's husband did not complete the required number of years of service at the time of his death, the benefit of the scheme of compassionate appointment of applicant's son could not be allowed. The writ was filed before the Hon'ble High Court in 1996 after a long gap of about 18 years from the date of changes in the scheme for compassionate appointment, for which it cannot be entertained and it is liable to be dismissed. It is stated that the first son of the applicant was intimated on 17.10.1977 (Annexure-1 to the TA) and he did not press for employment. The applicant has filed the writ petition after a lapse of 18 years which is not tenable in law. It is denied that the RSP management has assured employment to her any point of time as claimed. It is also stated that after the name of the first son was sponsored by employment exchange against a requisition by management, he was given opportunity to appear in the typing test with other candidates, but he could not qualify in the test. Regarding other cases cited in para 7 of the application, it is stated that the case of the applicant cannot be compared with the circumstances and situation of those cited cases. All of them have completed more than the required years of service under the RSP. A copy of the fresh appointment order issued to the applicant's husband in 1974 has been enclosed at Annexure-A of the counter.

6. Respondents No. 1, 2 & 4 have also filed counter supporting the counter filed by respondents No. 3 & 5.

7. Rejoinder has been filed by the applicant. Regarding the issue of delay it is stated that as per the established principles of law technicality should not be a bar to provide justice and the applicant had represented to the respondents from time to time for addressing her grievances, but no action was taken by the

respondents. Regarding the minimum service requirement for compassionate appointment, it is stated that the applicant's husband has completed more than 16 years of regular service under the respondents as security guard in the Security Department before he was retrenched and thereafter re-appointed after a gap of 2 years in the year 1974. It was also reiterated that in many cases of death of employees similarly placed as the applicant's husband, compassionate appointment was allowed. It is stated that the representation dated 31.1.1995 (Annexure-2 of the TA) to consider the case of her second son for compassionate appointment was received by the respondents from the applicant, but no action was taken.

8. The respondents have filed a reply to the rejoinder filed by the applicant reiterating the fact that the applicant's husband was given a fresh appointment from 1.7.1974 and continued as such till his death in the natural course on 25.7.,1977 and that service cannot be counted as a continuous service from his first phase of service as security personnel. The fresh appointment letter was addressed to the applicant in the quarter of RSP and it does not give any right to claim that there was no discontinuity in service. It is also averred that the RSP is a Public Sector Undertaking and has to work under the rules and implement these rules fairly. In a subsequent affidavit filed on 24.4.2000 after filing Counter, the respondents No. 3 & 5 have stated that the compassionate appointment scheme was modified and for the cases of natural death 10 years of service was stipulated. It is averred that the applicant's husband did not have 10 years service for which his case could not be considered. In the reply filed by the applicant to the additional affidavit, it is stated that the applicant's husband has earlier worked as security personnel which was not considered by the respondents. This was contradicted by filing of another additional counter reiterating the contention that past service cannot be counted for the purpose of compassionate appointment.

9. The applicant has filed an additional affidavit on 27.3.2001 with the contention that her husband's appointment as a Khalasi in 1974 was not a fresh appointment, but it was re-appointment under RSP. Quarter being occupied by him earlier was allotted to him after re-appointment. It is further stated that the case of another employee Sri Benudhar Parida was considered favourably although his case was similar to the applicant's husband, as Sri Parida was retrenched in 1972 like and was re-appointed in 1974 under RSP. After Sri Parida's death on 24.10.1977, his wife has been given appointment on compassionate ground.

10. Respondents have filed additional counter on 31.7.2001 in reply to the additional affidavit of the applicant, stating that the applicant's husband was

appointed in 1974 as a fresh candidate and there was no continuity of his service with earlier service which was terminated in 1972. Regarding the appointment of the wife of late Benudhar Parida, it was stated that the case was not relevant for deciding the applicant's case.

11. Heard learned counsel for the applicant. Besides reiterating the grounds in the pleadings of the applicant, he stressed on the point that the case for compassionate appointment was not considered as the respondents did not take into account the service of the applicant's husband under RSP as security guard prior to his retrenchment in the year 1972, since he was re-appointed in 1974. If service as security guard is taken into account, the deceased employee will have more than 10 years of service and the applicant would be entitled for the benefit of compassionate appointment. Regarding delay, learned counsel for applicant submitted that their case was wrongly rejected/not considered whereas cases under similar circumstances were considered. It is further submitted that the financial condition of the family of deceased employee continues to be and indigent and distressed. Learned counsel for the applicant also relied on the following judgments in support of his arguments:-

- (i) Sushma Gossain & Ors. –vs- Union of India & Ors. [AIR 1989 SC 1976]
- (ii) Phoolwati –vs- Union of India & Ors. [AIR 1991 SC 469]
- (ii) Union of India represented through its Secretary to Govt. of India, Ministry of Defence & Ors. –vs- Laxmirani Behera @ Laxmimani @ Hemalata Dei & Anr. [High Court of Orissa]

12. Heard learned counsel for the respondents who reiterated the averments in the pleadings of the respondents. It was submitted that the applicant's case was not found eligible as her husband did not complete 10 years of service after his fresh appointment in 1974 and his past service under security department prior to his termination in the year 1972, cannot be counted along with the fresh appointment for the purpose of determining eligibility for compassionate appointment as per the notification at Annexure-B. Learned counsel for the respondents also cited the ground of delay as the applicant submitted application for compassionate appointment of her second son in the year 1995 and filed the writ petition in 1996 after about 18 years from the dated of rejection of the case as per the letter at Annexure-1 of the TA as also explained in the Counter.

13. We have considered the submission made by learned counsels for both the sides as well as the pleadings of the parties available on record. Following questions are required to be decided in this TA:-

- (i) Whether the applicant's claim that her husband's service prior to 1972 is to be taken into account for eligibility for compassionate appointment is correct.

(ii) Whether the TA can be considered to be not maintainable due to delay as averred by the respondents.

14. Regarding the question No. (i) above, it is noticed that the case of the applicant for compassionate appointment of her elder son and subsequently for her second son was not considered by the respondents on the ground that the deceased employee had not completed 10 years of service, which is required as an eligible service for the purpose of compassionate appointment in the case of death of the employee in natural course as specified in the notification at Annexure 'B' of the affidavit filed by the respondents. The case of the applicant is that the service of the applicant's husband in the security department under the respondents prior to his retrenchment in 1972 should be counted for the purpose of eligibility under the scheme since he was continuing to stay in the same quarter and he was re-appointed in the year 1974 under the Barsua Iron Mines, Tensa under the respondents, which the applicant considers to be re-appointment and not fresh appointment. The respondents, on the other hand, consider the appointment of the applicant's husband in 1974 as fresh appointment with no connection to his previous service prior to 1972. The notification at Annexure-B regarding the guidelines of the scheme produced by the respondents in support of their claim specifies the requirement of 10 years service for the deceased employee in order to enable his/her case to be considered under the scheme of compassionate appointment. **There is no provision of the rules or notification produced by the respondents in their pleadings which requires 10 years of continuous service without any break which is the contention of the respondents in this case.** The only requirement specified in the notification is 10 years of service, which cannot be construed to be 10 years of continuous service without break unless it is specified to be so. In this case the applicant admittedly had served for more than 10 years under the respondents as security personnel prior to his retrenchment in 1972, when he refused to join CISF. Subsequently he was appointed under the Raw Materials Division of the RSP in 1974 and he expired in 1977 when he was in employment under the respondents for his second phase. Hence the contention of the respondents that to be eligible for the scheme of compassionate appointment, more than 10 years of continuous service is required, is not backed by any rules or notification under the scheme which are produced before us through the pleadings of the respondents. No circular or rules have been furnished before us to show that for compassionate appointment in cases of natural death 10 years of continuous service without any break is required. Hence, we are unable to accept that contention of the respondents and hold that the applicant's case was eligible for for

compassionate appointment. The question at (i) of the paragraph 13 is answered accordingly.

15. Regarding the question of delay at (ii) of paragraph 13, the respondents have averred that the case was rejected vide latter dated 17.10.1977 (Annexure-1 to the TA), which was not contested by the applicant for 18 years till filing of the writ petition. The letter dated 17.10.1977 stated as under:-

“Dear Sir,

Please refer to your application requesting for appointment on compassionate grounds. Your request has been considered carefully and we very much regret our inability to appoint you on compassionate grounds.

Your candidature will be considered only when your name is sponsored by the Employment Exchange along with others against our specific requisition in future. We thank you for your interest in our Organisation.”

From above, we take note of the fact that the case of the applicant's first son for compassionate appointment was rejected vide letter dated 17.10.1977 mentioning no reason for such rejection. In reply, it is stated in the Rejoinder that the applicant has made several representations to the respondents for her grievances, which has not been contradicted in rely to the Rejoinder filed by the respondents. Further, the applicant claims to have represented on 31.1.1995 for compassionate appointment of her second son, but such contention has been denied by the respondents in the Counter. It is also stated in the counter that repeated representations cannot give rise to new cause and that the applicant was not eligible for the scheme of compassionate appointment since her husband did not complete 10 years of service which is not a correct view as discussed in paragraph 14 of this order. Hence, taking into consideration the fact that the case of the applicant has not been considered as per the approved scheme and the decision was communicated vide letter dated 17.10.1977 (Annexure-1) without mentioning any reason for which it is an order violating the principles of natural justice. Since the case has not been considered on merit and the family continues to be eligible for the scheme due to indigent conditions of the family due to death of the applicant's husband, we are of the view that the TA is not barred by limitation or delay and the objections of the respondents on the ground of delay are not tenable. The question no. (ii) of paragraph 14 is answered accordingly.

16. Learned counsel for the respondents has submitted a copy of the judgment of Hon'ble Orissa High Court in the case of Mahanadi Coalfields Ltd. and others vs. Dhira Kumar Parida, 2016 (II) OLR-624 in support of the case of the respondents at the time of hearing. In that cited case, it was held that compassionate appointment cannot be granted after a lapse of 24 years from

the date of death. Regarding eligibility of the deceased employee for compassionate appointment, it is mentioned in the cited judgment as under:-

“13.....The documents furnished by the present appellants in their counter affidavit to the Writ Petition under Annexure-C series, it was reflected that the deceased Dama Parida was a Badli Loader and has not completed the required days of work per year, was also not taken note of in the decision rendered. Thus the deceased cannot be treated as a workman and entitled to get benefit under N.C.W.A. (VI).”

It is clear from above that the deceased employee was not eligible for the benefit under the scheme of compassionate appointment in the cited case. The present TA is factually distinguishable in view of the discussions in paragraph 14 of this order.

17. Learned counsel has submitted three judgments in support of the applicant's case for compassionate appointment. We have gone through these and hold that the cited cases are also factually distinguishable.

18. In view of the above discussions, we allow the TA by directing the respondents to consider the case of the applicant's second son in accordance with the scheme of compassionate appointment as per the notification at Annexure-B, treating the service of the applicant's husband to be more than 10 years and pass an appropriate speaking order to dispose of the case within a period of three months from the date of receipt of the copy of this order. It is made clear that the respondents are at liberty to inquire into the matter to assess the eligibility for compassionate appointment and to ask for information and documents from the applicant/her second son in accordance with the scheme. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath