

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 4968 OF 2015

Ajay Kumar Dwivedi, son of Late Shri Kedarnath Dwivedi, age about 36 years, resident of Road No. 18, Nehru Chowk, Near Pooja Kirana Stores, Camp-1, Bhilai, P.S.- Bhilai, District- Durg (C.G.)

... Petitioner

Versus

1. Bhilai Steel Plant, Bhilai, through the Managing Director, Unit of Steel Authority of India Limited, Bhilai, District- Durg (C.G.)
2. General Manager (Personnel), Quarter No. 204, Second Floor, Ispat Bhawan, Bhilai, District- Durg (C.G.)

... Respondents

For Petitioner	:	Ms. Sharmila Singhai, Advocate.
For Respondents	:	Mr. Sandeep Dubey, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

21/01/2016

1. The Petitioner assails order dated 26.10.2015 passed by the Central Administrative Tribunal, Jabalpur, Circuit sitting at Bilaspur, in Original Application No. 957 of 2013 rejecting his claim for compassionate appointment.
2. Learned Counsel for the Petitioner submits that his father was removed from service on 18.12.1990 upon charges of indiscipline. The Labour Court on 25.3.1994 set aside the same. The Industrial Court declined to interfere in appeal, as also this Court in Writ Petition No. 306 of 1995, dated 12.1.2006. The Respondents did not reinstate the father of the Petitioner, who died on 3.6.2003. The Petitioner requested for compassionate appointment immediately. When nothing was done he moved under the Right to Information Act in 2012. On 13.3.2012, he was informed that his claim had been rejected on the ground that his

father had been removed from service. This ground was factually incorrect as his father had been directed to be reinstated as far back as 25.3.1994 which was not complied with. He is therefore deemed to have died in harness. On 20.12.2006, the Respondents had themselves issued an order recognising the rights of the legal heirs to monetary benefits which the deceased was entitled to pursuant to the order dated 25.3.1994. Any discontinuance of scheme for compassionate appointment from 1.1.1989 due to introduction of the Employees' Family Benefit Scheme was inconsequential in the facts and circumstances of the case.

3. Learned Counsel for the Respondents has opposed the application contending that the order of the Tribunal is well considered and merits no interference.

4. We have heard the submissions on behalf of the parties.

5. Compassionate appointment is an exception to the normal mode of appointment in government or semi-government organisations in compliance with Article 14 of the Constitution requiring open advertisement, opportunity to all eligible for being considered followed by merit consideration. Any appointment in government or semi-government organisations constitutes a national wealth in which all citizens have the right to participate and to be considered. However, a limited exception has been carved out to provide succor to the family of the deceased due to sudden and untimely death of the bread winner. Therefore, it is necessary that any claim for compassionate appointment must be strictly in terms to the policy regulating the same and no compassionate appointment can be granted *de hors* the policy. There is no vested right in the legal heirs of the deceased to demand

compassionate appointment and it does not constitute an estate of the deceased to devolve upon the legal heirs.

6. The father of the Petitioner was dismissed for misbehaviour on 18.12.1990. The order of the Labour Court dated 25.3.1994 confirms the findings in the Departmental Enquiry for misbehaviour but interfered with the quantum of punishment only. The father of the Petitioner died on 3.6.2003. The Petitioner claims to have requested for compassionate appointment. Annexure P-6, relied upon in support of the same, is undated and there is no proof that it was actually submitted before the authorities and on what date. The Petitioner then did nothing to enforce his right to be considered till he moved an application in the year 2012 under the Right to Information Act and seeks to make it a cause of action. The order of the Tribunal reflects that the Respondents did away with the scheme of compassionate appointment on 1.1.1989 before the death of the father of the Petitioner on 3.6.2003 and introduced the Employees' Family Benefit Scheme under which the last basic pay + DA drawn is paid to the dependant in cases of permanent medical unfitness or natural death. The Petitioners' father died of cancer and therefore apparently he is entitled to the benefits of the scheme. If the scheme for compassionate appointment has been done away with much earlier to the death of the Petitioner's father, obviously there can be no claim for compassionate appointment any more and the Petitioner is only entitled to the benefits of the scheme.

7. We put a question to the Counsel for the Petitioner if he was unmarried and had children. The answer given to us was that he is 36 year old, married and has a child. We fail to understand that if the Petitioner did not have the ability to look after himself after his father's death and that too for nine long years from 2003 to 2012, how he took

on the responsibility of another's life and sired a child. All these lead us to the conclusion that the Petitioner was never a destitute and compassionate appointment was never a compelling necessity for him. We find no infirmity in the Respondents denying him compassionate appointment if his father has been dismissed from service for misbehaviour affirmed by the Tribunal but relief was granted on the question of quantum of punishment only.

8. Denial of compassionate appointment to the heirs of a deceased employee punished in service was considered in (2008) 8 SCC 475 (SBI v. Anju Jain) observing as follows:-

“32. In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges levelled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to a dependant of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment.

33. Compassionate appointment is really a *concession* in favour of dependants of a deceased employee. If during his career, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependants cannot claim *right* to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of the principles of natural justice.”

9. The writ petition is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge