

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: November 01, 2017

+ **W.P.(C) 5861/2017**

SHOBHIT SRIVASTAVA & ORS. Petitioners
Through: Mr. Alakh Alok Srivastava,
Advocate

versus

NATIONAL THERMAL POWER CORPORATION (NDPC)
LIMITED & ORS. Respondents
Through: Mr. Puneet Taneja and Ms.
Shaheen, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In this petition, compassionate appointment is sought by first petitioner in view of untimely death of his father, who was working as Senior Manager in *National Thermal Power Corporation (hereinafter referred to as NTPC)*.
2. Learned counsel for petitioners submits that as per Clause 5.8 of the *Memorandum of Agreement (Annexure P-3)* between the employees and the employer/respondent-NTPC, an employee is entitled to compassionate appointment. However, the stand of respondent-NTPC in its counter affidavit is that the *Memorandum of Agreement (Annexure P-3)* is applicable to workmen and not to Officer Class which includes Executive as well as Non-Executive, but not Trainees/Apprentices.

Learned counsel for petitioners further submits that compassionate employment has been granted in cases of *Shakuntala Bai Pandey (Smt.) v. National Thermal Power Corporation Limited*, 1995 Supp (3) SCC 680; *Smt.Mala Singh v. National Thermal Power Corporation* in W.P.(C) 5641/1998 rendered on 11th July, 2011 by Allahabad High Court and *Pitambar Das Manikpuri v. National Thermal Power Corporation Ltd. & Ors.*, 2012 SCC OnLine Chh 95 and so, on parity, first petitioner is also entitled to compassionate appointment.

3. Learned counsel for respondents draws the attention of this Court to *NTPC Employees' Family Economic Rehabilitation Scheme* of 17th April, 2001 (*Annexure R-1*) to submit that petitioner's mother has already availed of the benefits under this Scheme and that the purpose of compassionate appointment is to rehabilitate and since the rehabilitation has been already provided to wife of deceased in terms of Policy (*Annexure R-1*), therefore, first petitioner is not eligible for compassionate appointment.

4. Upon hearing and on perusal of extract of Clause 5.8 of *Memorandum of Agreement (Annexure P-3)*, the material on record and the decisions cited, I find that *NTPC Employees' Family Economic Rehabilitation Scheme* of 17th April, 2001 (*Annexure R-1*) gives the definition of an employee as under: -

“DEFINITIONS

- i) XXXX
- ii) XXXX
- iii) “Employee” shall mean any person in the regular scale of pay in whole time employment of the Company and is admitted in this Scheme”

5. Relevantly, the Scheme (*Annexure R-1*) is voluntary and Clause 10.2 thereof clinches the issue. It reads as under: -

“OTHER TERMS AND CONDITIONS

10.1 XXXX

10.2 The benefits would be admissible only in case no employment has been provided by the Company to any of the dependants on compassionate grounds or otherwise in NTPC or in any of its subsidiary, joint venture, or sister concerns.”

6. The scope and coverage of Rehabilitation Scheme (*Annexure R-1*) as spelt out in Clause 3.1 is as under: -

“3.0 SCOPE & COVERAGE

The scheme will cover all regular employees (both executives and non-executives excluding trainees/apprentices). The scheme will also cover full time Functional Directors of the Company in regular scale of pay.”

7. A bare perusal of afore-noted extracts of Rehabilitation Scheme (*Annexure R-1*) and Clause 5.8 of *Memorandum of Agreement (Annexure P-3)* and definition of employee in the said Scheme (*Annexure R-1*), it becomes amply clear that this Scheme governs Executives and Non-Executives, but not a workman. Clause 10.2 of the Rehabilitation Scheme (*Annexure R-1*) does give the impression that compassionate appointment can be provided to executives and non-executives of NTPC and if it is not provided, then only the benefits under the Scheme can be availed of.

Clause 5.8 of the Memorandum of Agreement (Annexure P-3) reads as under: -

“It is agreed that Management will provide employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty on compassionate and humanitarian considerations. Dependent for this purpose will mean spouse of the employee, his/her son or daughter or legally adopted son or daughter only.”

8. A plain reading of the aforesaid Clause 5.8 of the Agreement (Annexure P-3) makes it clear that mere use of word 'employee' in it, does not mean that the executives of NTPC are covered under this Agreement (Annexure P-3). Pertinently, this Agreement (Annexure P-3) relates to class of workmen of NTPC, whereas the Rehabilitation Scheme (Annexure R-1) pertains to the executive class of NTPC. Undisputedly, mother of first petitioner, who seeks compassionate appointment, has already drawn benefit under the Scheme (Annexure R-1).

9. During the course of hearing, it was put to petitioners' counsel as to whether mother of first petitioner is ready to forego the benefits drawn under the Rehabilitation Scheme (Annexure R-1) and the reply was in the negative. Otherwise also, petitioners being legal heir of a deceased executive of NTPC are not entitled to compassionate appointment as petitioners have already availed of the benefits under the Rehabilitation Scheme (Annexure R-1). Reliance placed upon decision of Chhattisgarh High Court in *Pitambar Das (supra)* and decision of High Court of Allahabad in *Mala Singh (supra)* are of no assistance to the case of petitioners as in the said cases, the deceased-employees did not belong to

the executive class and the Rehabilitation Scheme (*Annexure R-1*) herein was not the subject matter therein. Also, Supreme Court's decision in *Shakuntala Bai (supra)* is of no avail as in the said decision, the deceased was a workman whereas in the instant case, the deceased was an Executive who is not covered by *Memorandum of Agreement (Annexure P-3)* but is covered by the Rehabilitation Scheme (*Annexure R-1*).

10. Purpose of providing appointment on compassionate ground is to mitigate the hardships due to the death of the bread-earner of the family. In the instant case, this purpose already stands achieved as the benefit under the Rehabilitation Scheme (*Annexure R-1*) already stands extended to wife of the deceased. Therefore, relief of compassionate appointment cannot be granted to legal heirs of deceased executive of NTPC on account of his untimely death.

11. In view of the aforesaid, finding no substance in this petition, it is dismissed.

(SUNIL GAUR)
JUDGE

NOVEMBER 01, 2017

s