

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice V. M. Velumani
&
The Hon'ble Justice Rai Chattopadhyay**

WP.CT 119 of 2022

**Steel Authority of India & Ors.
Vs.
Tanushree Dey & Anr.**

For the Petitioners

: Mr. L.K. Gupta,
: Mr. Arjun Roy Mukherjee,
: Ms. Supriya Dubey.

For the Respondents

: Mr. Shyamal Kr. Das,
: Mr. Somnath Banerjee.

Hearing concluded on: 27/06/2023

Judgment on: 01/08/2023

Rai Chattopadhyay, J.

1. The petitioners have challenged the judgment and order of the Central Administrative Tribunal, Kolkata Bench, dated December 14, 2021, delivered in Original Application No. 350/01742/2016.
2. Before dwelling on the grounds of challenge put forth by the petitioners, the factual background of the case may be discussed in a nut-shell. One Nirmal Chandra Dey, now deceased, was an employee (Senior

Technician) of Town Services Department of the IISCO Steel Plant – SAIL (Burnpur). On January 25, 2016, he died during the course of his employment. Police started an unnatural death case and post-mortem was held on January 26, 2016. The post-mortem report, as enclosed with this writ petition would show that the autopsy surgeon has found the ‘*immediate cause*’ of death to be the ‘*head injury*’. Subsequently, at the instance of the present petitioner an enquiry committee was formed, consisting of three ‘Executives’ of the Company, to enquire as to the cause of death of said deceased employee Nirmal Chandra Dey. After enquiry, the committee has come to the decision that the said person died a natural death, though in the course of his employment. The committee opined that under such circumstances and pursuant to the applicable rules, the present respondent nos. 1 and 2 would not be entitled for appointment on compassionate ground. Respondent no.1/wife of the said deceased person has subsequently made an application for compassionate appointment for respondent no.2/son of the said deceased employee, before the authorities. The said prayer of the respondents was rejected by the authorities by dint of an order dated July 18, 2016. The above mentioned Original Application was preferred thereafter, by the respondents before the Tribunal, to challenge the said order of rejection dated July 18, 2016.

3. It would be now pertinent to have a cursory look to the impugned order of the Tribunal as mentioned above. The Tribunal has directed the authority, that is, the petitioner herein, to decide on the point of applicability of “*Clause 9.2*” of the circular dated January 31, 2012 of SAIL – Durgapur Steel Plant, to the deceased employee, strictly in terms of the report of the post-mortem examination dated January 16, 2016. Before coming to the find as above, the Tribunal noted its observation that :-

“8. It is not disputed that the medical history of the deceased employee discloses that he was a patient of acute coronary syndrome, and that his state of health was not too good, being afflicted with low blood pressure and high blood sugar, the trigger to the ex-employee’s demise was undoubtedly the fall in his place of duty. As the enquiry report does not disclose that the doctor who had conducted the post-mortem examination was cross-examined, we find there is nothing in the report that objectively rejects the findings of the post-mortem examination.

9. Enquiry Report of 06.04.2016 (Annexure A-9 to the O.A.) cannot be relied upon as it arrives at no objective contradictions to the findings of the post-mortem examination and the enquiry under Section 174 CrPC. Further, neither the doctor conducting the post-mortem examination at Asansol Dist. Hospital (Annexure A-5 to the O.A.) nor the doctor who had attended the deceased employee on 25.01.2016 (Annexure A-3 to the O.A) had been heard during such enquiry.

Accordingly, we would set aside the orders dated 16.07.2016 (at Annexure A-7 to the O.A) whereby the authorities had concluded that the death of the deceased employee was a natural death”

The Tribunal had set aside petitioner’s order dated July 16, 2016, whereby the petitioners had concluded the death of the deceased employee as a natural death. The Tribunal has also opined that inquest report as well as the post-mortem report would indicate that the case of the deceased employee was covered under “Clause 9.2” of the circular dated January 31, 2012. These findings have prompted the Tribunal to dispose of the case, with the directions as mentioned above.

4. Mr. L. K. Gupta, learned Senior Counsel appearing for the petitioners would submit at the outset with the Tribunal has been prompted erroneously to rely upon the circular to come to the finding regarding the case of the deceased employee to be covered under the same, that is, circular dated January 31, 2012 of SAIL - Durgapur Steel Plant, as the said employee (now deceased) has never been engaged in Durgapur Steel Plant. It has been pointed out by the Ld. Senior Counsel, that the SAIL has issued separate circulars governing employees of each of its plants

situated within the country. The circular as mentioned above would only be applicable in case of employees of SAIL - Durgapur Steel Plant.

5. According to Mr. Gupta, ld. Senior Counsel, the case of the present respondent nos. 1 and 2 would be governed by dint of circular no. PL/OD/32/1632 dated December 14, 2010, which is applicable to IISCO Steel Plant at Burnpur, as the said deceased employee was engaged with Burnpur Steel Plant. During his argument Mr. Gupta has relied on “Clause 9” of the said circular dated December 14, 2010, of IISCO Steel Plant, Burnpur, to submit that in case of death of any employee, on duty, as it is in the present case, shall be governed under the said “Clause 9” of the circular. Let the same be quoted as herein below :-

*“9. **Death on duty** – Cases of natural death even while on duty shall not be considered for compassionate employment. The dependant family members may avail benefits under Employee Family Benefit Scheme.”*

6. Mr. Gupta, ld. Advocate for the petitioners has strongly relied on the finding of the enquiry committee as mentioned above, to submit that the concerned person had died a natural death, while on duty. He says that in terms of “Clause 9” of the circular dated December 14, 2010, his case would not be covered and eligible for consideration of prayer of his successor/legal heir for compassionate appointment. It is submitted that according to the governing rule under the said circular dated December 14, 2010, successor of such an employee, who have been the victim of accidental death during the course of employment, would only be eligible for employment on compassionate ground, other formalities and requirements being fulfilled duly. He says that, in the present case respondent nos. 1 and 2 being the legal heirs and successors of the said

deceased employee, shall only be entitled to the benefits under the 'Employee Family Benefits Scheme'.

7. Respondent nos. 1 and 2 are represented by Mr. Shyamal Kr. Das, who has put forth vehement objection to the contentions and prayer made on behalf of the petitioners. They say that the cause of death of the person as above, has been well enumerated by the autopsy surgeon in the post-mortem report. Mr. Das has indicated that the cause of any previous ailment has not been found, in the said report to have resulted the death of the person. He says that when the post-mortem report is available, which is a public document in nature, there is no scope for the present petitioners, to ignore the same and rely on report of any enquiry committee, to find reason of death to be something else than it has been mentioned in the post-mortem report. It is stated that, in view of such fact, the order of the petitioners which was challenged in the Tribunal in the said Original Application, i.e, dated July 18, 2016 would be erroneous and non-maintainable. It is further submitted that in view of the finding of the autopsy surgeon in the post-mortem report, the case of the respondent nos. 1 and 2 would be duly covered under "Clause 9" of the said circular dated December 14, 2010. Mr. Das has submitted that the present writ petition may be dismissed.
8. The further development during the course of hearing of this writ petition in this Court may be noted, that, by dint of an order dated December 20, 2022, the petitioners were directed as follows:-

"Be that as it may, in absence of the aforesaid respondents, the applicant of the Tribunal Application we do not want to make any comment thereupon. However, considering the plight of the aforesaid respondents who suffered financial crunch because of the untimely death of the bread earner, the authority cannot seat ideal but have to activate the process and take a decision. Without making any comment nor creating any right in favour of the either of the parties, the writ petitioners are directed to take a decision on the basis of the applicable circulars/schemes, which according

to them are applicable in this regard and submit the said decision along with a report in a sealed cover to this Court on the next date.”

9. Pursuant to the same a ‘*reasoned order*’ in the sealed cover has been submitted in Court. The same has been perused by the Court and taken on record.
10. It appears that by dint of the said ‘*reasoned order*’ dated January 20, 2023, the Chief General Manager (P & A) of SAIL – ISSCO Steel Plant has reviewed the application for compassionate employment of the respondents. However, the authority in the said ‘*reasoned order*’ dated January 20, 2023 has noted that the doctors in the company’s hospital could not conclusively ascertain the cause of his death and the enquiry committee constituted subsequently has found the reason of the death to be the cardiac failure and found it to be a natural death. In the said order, it has further been found that the circular of SAIL – ISSCO Steel Plant dated December 14, 2010 and “*Clause 9*” thereof would govern the case of the present respondents and according to the same they would be entitled to the ‘Employees Family Benefits Scheme’ and not any employment on compassionate ground in view of the fact that the employee had died naturally and not due to any accident, during the course of his employment.
11. Two questions have emerged for decision of this Court in this writ petition:-

Firstly, as to which circular of SAIL would be the governing circular in case of the present respondent nos. 1 and 2.

Secondly whether the petitioners were justified in regretting respondents’ prayer for compassionate appointment vide their order dated July 18, 2016.

12. So far as the first point is concerned, that is, regarding the applicable circular in case of the present respondents, considering the rival submissions, this Court is of the opinion that the SAIL issues separate circulars to govern employees in its various plants. The governing circular of one plant would not be applicable in case of employees of the other plant. Two circulars are in issue here, that is, one dated January 31, 2012 and the other dated December 14, 2010. The 2010 circular is for IISCO Steel Plant at Burnpur and the 2012 circular is for Durgapur Steel Plant. So far as this point and the point that the person/employee (now deceased) was employed in IISCO is concerned, the said fact is not denied or disputed in this case. Accordingly there is no impediment to find that in case of the present respondents, who had been the legal heirs/successors of the said deceased employee, who had been working at IISCO, the circular dated December 14, 2010 would be applicable. The 'reasoned order' dated January 20, 2023, submitted by the petitioners pursuant to this Court's order, also clarifies the point in the manner as above. Therefore, it can well be found that the Tribunal in its judgment and order as impugned in this case, has dwelled upon the wrong perspective, that the respondent's case would be covered by the circular of SAIL dated January 31, 2012, which as a matter of fact would only be applicable in case of employees at Durgapur Steel Plant. Hence, there would be no question of applicability of "*Clause 9.2*" of the said circular dated January 31, 2012 in case of the present respondents. The findings of the Tribunal in the impugned judgment to the above extent, having been found to be erroneous, are set aside. It is held by this Court, that the applicable circular in case of the present respondents, would be that of IISCO/Burnpur no. PL/OD/32/1632 dated December 14, 2010.

- 13.** So far as the second point is concerned, this Court finds that the said employee was indisposed on floor, while on duty. He was immediately removed to the company's hospital. The incident happened at 12:15 p.m. and the person ultimately died at about 2:00 p.m. on the same date in the Company's hospital. On the subsequent date, that is, January 26, 2016, post-mortem was held the report reveals, as stated earlier, that the immediate cause of death was "head injury described ante-mortem in nature". The post-mortem report as above is a public document of unimpeachable nature. The reason of death as enumerated therein would not be naturally shaken by subsequent finding of any enquiry committee. It is pertinent to note that neither of the members of the enquiry committee, so formed by the petitioner, to ascertain the reason for death of the said employee was a qualified medical practitioner. Therefore the report by the committee of members who are the "executives" of the petitioners would not be sufficient to ascertain the medical grounds for his death, excepting ascertaining the attending facts and circumstances regarding the death of the person. Therefore in our considered opinion, before the petitioners there is no other cogent material excepting the post-mortem report, to be relied on, to consider prayer of the respondents, for employment on compassionate ground.
- 14.** With the observations as above, this writ petition is partly allowed. Let, for the ends of justice, the petitioner consider again the prayer of the respondents, which was earlier regretted by them – in the light of the observations made herein above. The petitioners shall complete such an exercise within the period of six weeks from the date of this judgment.
- 15.** With the directions as above, this writ petition being W.P.C.T 119 of 2022 is disposed of, along with all pending applications, if any.

- 16.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

I agree,

(Rai Chattopadhyay, J.)

(V.M. Velumani, J.)