

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

**BEFORE:**

**The Hon'ble Justice Soumen Sen**  
**and**  
**The Hon'ble Justice Uday Kumar**

**MAT 137 of 2023**  
**CAN 2 of 2023**

**Union of India & Ors.**  
**Vs.**  
**Sanjay Kundu**

|                    |                                                                                        |
|--------------------|----------------------------------------------------------------------------------------|
| For the appellants | : Mr. Bhudeb Chatterjee, Adv.,<br>Mrs. Priti Jain, Adv.                                |
| For the respondent | : Mr. Bidyut Kumar Halder, Adv.,<br>Mr. Indranil Halder, Adv.,<br>Ms. Neha Singh, Adv. |
| Order dated        | : 12 <sup>th</sup> March, 2024                                                         |

***The Court:-***

1. The appeal and the applications are taken up together for consideration and disposed of by this common order.

2. The appellants are aggrieved by the order passed by the learned Single Judge directing the appellants to consider the application of the writ petitioner for compassionate appointment.

3. The issue raised in this appeal is with regard to the jurisdiction of the writ court to pass such direction in view of Section 14 of the Administrative Tribunal Act, 1985.

4. Briefly stated, the father of the writ petitioner was an employee of the Gun and Shell Factory, Cossipore. He died on 22<sup>nd</sup> June, 2018. Thereafter an application for compassionate appointment was made

by the writ petitioner/respondent on 28<sup>th</sup> July, 2022. In view of the fact that the said application was not processed and kept pending the writ petition was filed with an innocuous prayer for consideration of the said application in terms of the scheme as applicable to the dependents of such employees.

5. Admittedly, the father of the writ petitioner was an employee of the Gun and Shell Factory, Cossipore, the Government of India Enterprise, Ministry of Defence. Whether the writ petitioner would be entitled to compassionate appointment under a scheme prevalent at the time of death of the father of the writ petitioner is the issue pending with the appellant. The appellants have kept the application pending. The appellants neither say that the writ petitioner is eligible or disqualified. The writ petitioner has, however, positively asserted that at the time of death of the writ petitioner the Gun and Shell Factory, Cossipore had a scheme for compassionate appointment and the case of the writ petitioner is required to be considered on the basis of the scheme in existence at the time of death of his father.

6. The appellants have only remonstrated the assumption of jurisdiction of the writ court in directing the authorities concerned to consider the said application for compassionate appointment on the sole ground that the Central Administrative Tribunal (in short, CAT) would have been the proper authority to decide the issue including any direction for consideration of the application for compassionate appointment.

7. Mr. Bhudeb Chatterjee, the learned Counsel appearing on behalf of the appellants has submitted that the status of the employer, the

father of the writ petitioner has changed since the death of his father and presently Advanced Weapons and Equipments India Limited (in short, 'AWEIL') a company with limited liability by shares incorporated under the Company's Act, 2013 would have been the employer of the father of the petitioner had he been alive today. The learned Counsel in all fairness has referred to Office Memorandum dated 29<sup>th</sup> November, 2021 of AWEIL wherefrom it appears that the Directors/HR of the said company informed the General Manager/s of all Unit/s of AWEIL that in terms of the Memorandum dated 24<sup>th</sup> September, 2021 upon dissolution of all Ordinance Factory Boards (in short, OFB) seven Government Companies wholly owned by the Government of India has come into existence with effect from 1<sup>st</sup> October, 2021 and all the new DPSUs are required to frame rules and regulations related to service condition of the employees. Till policy on compassionate appointment is approved all units would continue the screening process of all the eligible cases as per prevailing instruction of compassionate appointment however, no cases would be finalized and no appointment letter would be issued until further instructions. It thus, gives an impression that the writ petitioner would be entitled to participate in the screening process provided he is eligible as per the prevailing instruction of compassionate appointment.

8. The Office Memorandum dated 24<sup>th</sup> September, 2021 issued by the Government of India, Ministry of Defence has clearly *inter alia*, spelt out that the Government of India has decided to transfer with effect from the appointed date, the management, control, operation and maintenance of certain identified non-production units of OFB and

identified surplus land at 16 production units of OFB to the Directorate of Ordinance (Co-ordination of Services) under the DDP. The Government of India has decided to transfer with effect from 1<sup>st</sup> October, 2021 the management, control, operations and maintenance of 41 production units and identified non-production units to 7 government companies wholly owned by the Government of India which, *inter alia*, included AWEIL.

9. Mr. Chatterjee has also drawn our attention to the communication made by the Government of India to the Executive Directorate, Gun and Shell Factory, Cossipore on 10<sup>th</sup> November, 2023 and 5<sup>th</sup> December, 2023 in order to emphasis that the Gazette Notification applicable in this matter would be the Gazette Notification under Section 14(2) of the Administrative Tribunal Act, 1985 through which the Ministry of Defence was included in the Appendix VI. However, in the said communication it has been specifically stated that in accordance with the notifications dated 1<sup>st</sup> October, 2021 and 24<sup>th</sup> September, 2021 all the assets and liabilities for erstwhile OFB stand transferred to the new DPSUs and all the employees of erstwhile employer are placed on deemed deputation to new DPSUs and continue to be subject to all the extant rules, regulations and order as are applicable to the Central Government Servants. We are however, unable to accept the submission of Mr. Chatterjee that by reason of such communication the jurisdiction of CAT is retained with regard to the matter involved in this writ petition. In view of the fact that AWEIL has been constituted with limited liability by shares under the Companies Act, 2013 with registered office as set out in Annexure-A of the Office Memorandum dated 24<sup>th</sup> September, 2021 and

the fact that the company has not been notified by the Ministry of Defence in terms of sub-Section 2 of Section 11 the writ petition is maintainable.

10. Merely because AWEIL would be required to follow the extant rules, regulations and orders as are applicable to the Central Government Servants till AWEIL formulised its own rules and regulations is not sufficient to denude the writ court of its jurisdiction to pass appropriate direction for consideration of the application of the writ petitioner under the die-in-harness category. In fact, the communication of AWEIL dated 29<sup>th</sup> November, 2021 has also clearly stated that until the policy on compassionate appointment is approved all Units may continue the screening process of the eligible cases as per prevailing instruction of compassionate appointment.

11. The learned Single Judge has merely directed for consideration of the said application and left the matter at the discretion of the authorities concerned. In fact, the communication of AWEIL dated 29<sup>th</sup> November, 2021 to all the General Managers regarding compassionate appointment is in tune with the decision of the Hon'ble Supreme Court which has observed that for appointment on compassionate ground policy prevalent at the time of death of the deceased employee only is required to be considered and not subsequent policy (see. ***State of Madhya Pradesh & Ors. v. Ashish Awasthi*** reported in **2022 (2) SCC 157** and ***State of Madhya Pradesh & Ors. v. Amit Shrivastava*** reported in **2020 (10) SCC 496**).

12. However, since the point was not urged and argued before us we are not entering into the issue, however, we expect that the authorities

concerned shall take into consideration the said decisions for the purpose of deciding the applicability of the scheme if any, regarding compassionate appointment.

13. The appeal and the applications are stand disposed of.

14. However, there shall be no order as to costs.

**(Soumen Sen, J.)**

**(Uday Kumar, J.)**