
(2003) 01 JH CK 0132
In the Jharkhand High Court
Case No : C.W.J.C. No. 4208 of 2000

Lawjee

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 03-01-2003

Acts Referred:

Citation : (2003) 1 JCR 441 : (2003) 96 FLR 919

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : N.P. Singh and Arvind Kumar, for the Appellant; M.M. Banerjea, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. M.P. Singh, learned counsel for the petitioner and Mr. M.M. Banerjea, learned counsel for the respondents.

2. The grievance of the writ petitioner is that notwithstanding the death of his father on 14.9.1998 and also notwithstanding the fact that he filed a number of applications for appointment on compassionate grounds the first of which was filed on 2nd March, 1999, the respondents are sitting tight over the matter and have not taken a decision in relation thereto. Mr. M.M. Banerjea, learned counsel for the respondents states that for the purposes of appointment on compassionate consideration there was a memorandum of agreement on 5.7.1989 which inter alia provides at clause 8.10.4 that the question of compassionate appointment shall be considered only in case of death due to accident arising out of and in course of employment. According to the learned counsel for the petitioner, his father had died to Cardiac Respiratory Failure. Mr. M.M. Banerjea, learned counsel for the respondents states that Cardiac Respiratory Failure is not covered in the aforesaid agreement and it is not a case of death by accident. Mr. M.M. Banerjea, learned counsel for the petitioner further drawg attention of this Court to an order of the Apex Court which he has marked as Annexure "A" to the counter affidavit and states that the same memorandum of agreement was taken note of by the Hon''ble Supreme Court

and it was held that it is not statutory agreement and therefore, it cannot be enforced in an application under Article 226 of the Constitution of India.

3. This Court is not enforcing the aforementioned memorandum of agreement, but what is apparent from the records of the case is that the respondents had come out with a circular dated 2.5.2001 wherein they had stated that compassionate appointment can be given to persons whose father died to Kidney Failure, Heart Failure or Cancer and it will not apply to the case of death occurred for any other reasons. We are therefore concerned now with the circular dated 2.5.2001 and not with the memorandum of agreement dated 5.7.1989 as has been argued by Mr. M.M. Banerjea.

4. In a similar matter the aforementioned scheme was taken note of by a Division Bench of this Court in L.P.A. No. 140 of 2001 and it was held that the fixation of a criteria that compassionate appointment would be given only to such persons whose fathers may have died due to Kidney Failure, Heart Attack or Cancer was irrational inasmuch as death is not optional as no body can opt and say that he is entitled to a particular kind of death and therefore, such an eligibility was held to be irrational and unreasonable. This Court was a party to the aforementioned judgment and therefore, in view of the said Division Bench judgment and also taking into consideration the facts pleaded in this case, this Court considers it desirable that the matter be remanded to the respondents to consider the case of the petitioner in the light of the observations made by the Division Bench in the judgment referred to above. For the convenience of parties, the petitioner shall file a representation enclosing a copy of the aforementioned judgment of the Division Bench within a period of four weeks from today. The respondents, in their turn, shall dispose off the said representation in accordance with law after taking into consideration the observations made hereinabove as also the observations of the Division Bench indicated above within a period of four months from the date of receipt of a copy of the representation.

5. With the aforementioned observations and directions, this writ application is disposed off. However, there shall be no order as to costs.