



भारतीय प्रतिरक्षा मजदूर संघ

Bharatiya Pratiraksha Mazdoor Sangh

(AN ALL INDIA FEDERATION OF DEFENCE WORKERS)

(AN INDUSTRIAL UNIT OF B.M.S.)

(RECOGNISED BY MINISTRY OF DEFENCE, GOVT. OF INDIA)

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REF: BPMS/ DoP&T/ CGA/ 219(8/3/L)

Dated: 24.03.2024

To,

The Secretary (P)

Department of Personnel & Training

Ministry of Personnel, P G and Pensions

Government of India

North Block, New Delhi - 110 001

Subject: Simplification of Rules regarding Compassionate Ground appointments in case of Missing Employees if the matter of Individual is declared as Civil Death by a Competent Court.

Reference: 1. This federation letter No. BPMS/DoP&T/Meeting/173(8/1/M) dated 26.02.2020.
2. Your letter No. F. No.14014/2/2019-Estt.(D) dated 29.09.2020.

Respected Sir,

With due regards, it is submitted that vide DoP&T F.No. 14014/02/2012-Estt (D) dated 16th Jan 2013, the department issued consolidated instructions on Compassionate Appointment wherein under Rule 12 (b) (e) for Missing Govt Servants it is mentioned that

“12 (b) (e) A decision on any such request for compassionate appointment should be taken only at the level of the Secretary of the Ministry/Department concerned.”

The above rule is applicable for all cases wherein Govt Servants are missing for at least 2 years. After the lapse of two years, Govt Jobs may be offered to one of dependent family members of Missing Employees on their request and fulfilling other criteria/ instructions as issued by the department time to time.

Further, the status quo was maintained by the department while issuing Master Circular on Scheme of Compassionate Appointment vide letter F.No. 14014/1/2022-Estt.(D) dated 02 Aug 2022. The Master Circular remained mum in case of employees declared Civil Death by a competent Judicial Court. These cases are still being considered under the category of Missing Employees/ Rule 12 of above mentioned Master Circular.

The federation in its letter cited under reference (1) had submitted to your department that-

"During complex proceedings of taking nod of the Secretary of the concerned Ministry/ Department, a lot of time is consumed, sometimes more than 7 years. It is found on many occasions that the families, during this period as a parallel proceeding, approach the Civil Courts for declaration of the matters of their missing family members as Civil Death due to many legal requirements of the families.

In some of cases, the matter of Govt employees is declared as Civil Death by the competent court, yet, the families have to wait of nod of the Secretary as mentioned above.

The basic purpose of grant of Compassionate Appointment to one of family members of Govt Servants is to mitigate the hardships of deceased (herein missing) employee's family

'sufferings from scarcity of very trivial things of daily life due to the death (herein missing) of sole bread winner of the family and sudden misery faced by the members of the family of such employee. However, the above mentioned complex process defeats the very purpose of this scheme.'

In response to this federation letter cited above, the department vide its letter cited under reference (2) had communicated its decision as under-

"The extant instructions issued by this Department for making appointment on compassionate ground have declared Secretary in the Ministry/Department concerned as the authority competent to make appointment on compassionate grounds in special types of cases such as missing Government servants, by relaxation of upper age limit/ minimum educational standard, consideration of belated requests for compassionate appointment, in deserving cases even where there is an earning member etc.

The power has been vested in the Secretary in order to check misuse of compassionate appointment scheme. Therefore, declaration of a missing Government servant as 'Civil death' by a competent court, would enable the Secretary of the Administrative Ministry/Department to efficaciously decide requests from the family members of the deceased Government servant for consideration of appointment on compassionate grounds. As such, there is no requirement to relax in provisions contained in this Department's instructions/ scheme of compassionate appointment."

Further, during a Judicial Proceedings in a likewise case [OA No. 200/00597/2021, Yashoda Sahu Vs Union of India] Hon'ble CAT Jabalpur Bench considered the case of a missing employee after declaration of him as Civil Death by the Competent Court as Death Case and directed to extend the benefit of compassionate appointment to the family of the employee as applicable in normal death case-

"Since the case of the applicant's case for compassionate appointment is against dead person and not a missing person, her case could have been dealt with at par to other four cases as the applicant had requested for compassionate appointment after the declaration of her father's death by the competent court of law not before that."

Therefore, you are requested to review your decision in light of above Judgment and issue necessary instructions that if the matter of missing employee is declared as Civil Death, the matter will be considered as per normal rules as in the case of naturally died employees so that penury conditions of families may be mitigated.

Thanking you.

Sincerely Yours



(MUKESH SINGH)

General Secretary/ BPMS &
Member National Council JCM

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00597/2021**Jabalpur, this Friday, the 10th day of November, 2023**HON'BLE SHRI JUSTICE AKHIL KUMAR SRIVASTAVA, JUDICIAL MEMBER**
HON'BLE SHRI KUMAR RAJESH CHANDRA, ADMINISTRATIVE MEMBER

Yashoda Sahu
D/o Late Ram Bharosh Sahu
Date of Birth 07.03.1983
R/o Quarter No.2295/A/R
Audh Nagar Itarsi
Dist. Hoshangabad (MP) 461122

-Applicant(By Advocate –**Shri J.B. Singh**)**V e r s u s**

1. Union of India, Through the Secretary
Government of India, Ministry of Defence,
Department of Defence Production Supplies
South Block New Delhi 110001

2. The Chairman & amp Director General
Ordnance Factory Board, 10-A S.K. Bose Road
Kolkata WB 700001

3. The General Manager, Ordnance Factory
Itarsi District Hoshangabad (MP) 461122 **- Respondents**

(By Advocate –**Shri N.K. Mishra**)*(Date of reserving the order:06.11.2023)*

ORDER**By Justice Akhil Kumar Srivastava, JM:**

The applicant in this Original Application has prayed for the following reliefs:-



“8.1 Quash and set aside the impugned order dated 17.12.2020 (Annexure A/6) and direct the respondents to issue appointment order to the applicant as per recommendation dated 15.03.2017 (Annexure A/2) with all consequential benefits.

8.2 Any other suitable order/direction which this Hon’ble Tribunal deems fit and proper may also be granted to the applicant.”

2. The facts of the case are that the father of applicant Shri Ram Bharos Sahu was working in Ordnance Factory Itarsi and he was missing from 10.09.2006. First Information Report was lodged on 30.03.2008 to the concerned police station. He was declared a missing employee and his name was struck off from the strength of factory. Thereafter a Civil suit No.04-A/2016 was filed before the First Civil Judge Class I Itarsi for declaration of Civil death whereby civil death was declared vide judgment and decree dated 22.12.2016 (Annexure A/1). The wife of deceased employee submitted her request to the respondents to provide compassionate appointment to her daughter i.e. the applicant. Applicant’s case for compassionate appointment was

considered along with other candidates by the Compassionate Appointment Committee in its meeting dated 15.03.2017 for the vacancy period from 01.04.2016 to 31.03.2017 and recommended her for compassionate appointment. Score sheet conveyed as per letter dated 27.05.2021 is at Annexure A/2.



2.1 Total 5 candidates including applicant were recommended and other four candidates have been given appointment but applicant could not be appointed as her case was forwarded to the Ordnance Factory Board for approval being a missing employee case. Thereafter a declaration was also sought from the applicant for taking proper care of the family even after her marriage and the same was submitted through the respondent no.2 as per letter dated 14.05.2018 (Annexure A/4). Vide letter dated 17.12.2020 respondents intimated the applicant her case for compassionate appointment has been returned by MoD/DDP with the remarks that “in view of ongoing process of OFB Corporation new appointment at this stage will result in adding to existing liabilities of OFB which will have long term impact. Hence, when the case is not meeting all eligibility criteria as per scheme of compassionate appointment such cases need not be considered in the given circumstance.” Applicant’s case has

again been forwarded to the respondent No.2 for approval for offering compassionate appointment vide letter dated 25.02.2021 (Annexure A/10).

3. Respondents on the other hand in their reply have submitted that as per OFB Kolkata (non-Directorate of Ordnance (C&S) Kolkata, instructions for compassionate appointment vide OFB letter dated 17.08.2016 (Annexure R/1) applicant's case was forwarded to OFB Kolkata for prior approval of Ministry of Defence being a missing employee case. The applicant's case was returned from Ministry of Defence stating that "in view of ongoing process of OFB Corporation new appointment at this stage will result in adding to existing liabilities of OFB which will have long term impact. Hence, when the case is not meeting all eligibility criteria as per scheme of compassionate appointment such cases need not be considered in the given circumstances." Further the Directorate of Ordnance (Coordination & services) Kolkata vide letter dated 15.12.2021 (Annexure R/2) intimated that they have already approached MOD regarding applicability or revised procedure of Govt. orders on compassionate appointment after corporatization of Ordnance Factories w.e.f.01.10.2021. However, the same is yet to be received at this end. Hence it



has been directed to DoO (C&S) Kolkata to keep the process on hold till receipt of the clarification from MOD. It is further submitted by the respondents that one recommended case along with applicant is pending with MOD. Only those cases which do not fall in the category stated in the letter dated 17.08.2016 (Annexure R/1) is finalized at factory level and all the other cases are forwarded to OFB Kolkata for prior approval of MoD.



4. Applicant has filed rejoinder wherein it has been submitted that it was not required to send her case to OFB as the matter for compassionate appointment pertains to a 'Dead person and not a missing person. Hence the same could have been dealt with at par to other four cases in as much as Civil Death was declared by the Competent Court of law. The instructions contained in Para 4 of the letter dated 17.08.2016 (Annexure R/1) are relating to the Missing employee in whose cases the applicant for compassionate appointment is to be processed after two years of the date of missing and police verification and FIR etc. are required but in the instant case no such requirement is needed after declaration of Civil Death by the Competent Court of law. Applicant's case was already

recommended by the Committee in the year 2017 itself while Corporatization took place in the year 2021.

5. We have heard the learned counsel for the parties and perused the pleadings and documents annexed therewith.

6. It is an admitted fact that the applicant's father was missing from 10.09.2006. FIR was lodged on 30.03.2008 and vide decree dated 22.12.2016 passed by First Civil Judge Class I he was declared dead. Thereafter applicant's mother applied for compassionate appointment for her daughter i.e. the applicant and her case was recommended by the Compassionate Appointment Committee in its meeting dated 15.03.2017 along with four other candidates. Since the case of the applicant's case for compassionate appointment is against dead person and not a missing person, her case could have been dealt with at par to other four cases as the applicant had requested for compassionate appointment after the declaration of her father's death by the competent court of law not before that. Further her case was recommended in the year 2017 whereas Corporatization took place in the year 2021 i.e. before three years. Earlier to the year 2021, cases for compassionate appointment have been considered and appointments have been provided to the recommended candidates in the years



2017, 2019, 2020 as is evident from the documents produced by the applicant obtained under Right to Information Act. When other cases have been considered by the respondent then applicant's case could have also been considered as it pertains to the year 2017 along with four other candidates. In view of it, we find that applicant is entitled for grant of compassionate appointment as the request has been submitted by her after the declaration of death of her father.



7. Accordingly, this Original Application is allowed. Impugned order dated 17.12.2020 (Annexure A/6) is quashed and set aside. Respondents are directed to issue appointment order to the applicant as per recommendation of Committee dated 15.03.2017 (Annexure A/2) with all consequential benefits. No order as to costs.

(Kumar Rajesh Chandra)
Administrative Member

(Akhil Kumar Srivastava)
Judicial Member

kg/-