

**CENTRAL ADMINISTRATIVE TRIBUNAL****MADRAS BENCH****OA/310/00159/2017****Dated the 6<sup>th</sup> day of January, Two Thousand Twenty****CORAM : HON'BLE MR. T. JACOB, Member (A)**

R. Vijayalakshmi,  
W/o. Late V. Ranganathan,  
Goods Guard,  
No.39, Solai Nagar,  
Old Katpadi 632007. ....Applicant

By Advocate M/s. Ratio Legis

Vs

1. Union of India, rep by  
the General Manager,  
Southern Railway,  
Park Town,  
Chennai 600003.

2. The Senior Divisional Personnel Officer,  
Southern Railway/NGO Annex,  
Chennai Division, Park Town,  
Chennai 600003.

....Respondents

By Advocate Mr. K. Vijayaragavan

**ORDER**

**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To call for the records related to treatment administered to the applicant's husband by the Railway doctors and the records related to his unfit certificates, representations regarding voluntary retirement and this Hon'ble Tribunal may be pleased to quash the impugned order No.PB/CS/30/Court Case/Vol.VII dated 21.09.2016 and further to direct the respondents to declare that the applicant's husband as died in harness and further to appoint applicant's son on compassionate grounds and to make further order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

2. The facts of the case as stated by the applicant are as follows:-

The applicant is the widow of the deceased Government employee who went on voluntary retirement while working as a 'Goods Guard' and was suffering from cancer and treated in the Railway Hospital for low vision. He gave an application for voluntary retirement from service but without explaining the "the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" was forcibly terminated on VRS sans beneficial provisions therein and the Railway Board Orders issued by the respondents, who had later expired. Thereafter, the request made by the applicant was rejected by the respondents and hence original application No. 310/00877/2016 was preferred in which this Tribunal directed the respondents to consider the claim for appointment to her son in accordance with law by an

order dated 29.04.2016. In response to the Impugned order dated 21.09.2016 rejecting the claim for appointment, the applicant has filed this original application seeking the aforesaid relief inter-alia on the following grounds:-

- i. The act of the respondents in not considering the applicant's son for compassionate appointment on medical de-categorization quota despite the fact that the employee was eligible under the scheme without counselling, is arbitrary, and an act coupled with colourable exercise of authority which is non-est in law.
- ii. The respondents have intimidated the employee, who was beyond his right mind to continue in service instead of making aware of the provisos enumerated in the Railway Board Circular No.E (NG) II/90/RC-1/117 dated 12.12.1990 regarding appointment on compassionate grounds. As such accepting the request for voluntary retirement without offering his ward compassionate appointment is untenable in law.
- iii. In as much as the applicant's husband's illness is declared to be beyond convalescence and hence accepting the employee's request for voluntary retirement and finally scuttled the chances and denying his son the benefit of compassionate appointment on medical de-categorisation sans counselling or explaining the proviso of the Railway Boards Order No.78/2006 and its protection is non est in law.
- iv. Accepting her husband's voluntary retirement who was disabled due to loss of vision and failure to offer compassionate appointment to the applicant's son by the respondents without any counselling or explaining the proviso is against the law laid down by the Hon'ble Supreme Court in Bhagawan Das case [2008 (1) SCC 579] and hence the impugned order is unlawful.

v. The applicant's husband while in service has submitted a representation to the authorities to treat him as disabled person because of loss of vision and sought for compassionate appointment for his son and the same was rejected by an **incompetent authority**.

vi. In so far as the applicant's husband has died subsequently without serving the entire span of employment as sought to be, the respondents should have declared him as **died in harness** and thus non consideration of his son's request for compassionate appointment is per se illegal.

vii. The applicant's husband was medically decategorised at the first instance on 06.04.2010 and by then the employee had over 5 years of left over service. As such his request for VRS and consequent compassionate appointment should have been considered under the scheme and thus the rejection is impermissible in law.

viii. Assuming but not conceding that applicant's husband had a residual service of less than 5 years still the competent authority ie the 1<sup>st</sup> respondent ought to have considered the claim for compassionate appointment to her son as per Master Circular 16 issued by the Railway Board.

3. The respondents have filed reply. It is submitted that Shri. V. Ranganathan, Goods Guard was declared medically unfit in Aye Two, Aye Three, Bee One, Bee Two and Cee One medical category and found fit for Cee Two with glasses in terms of the Medical Department certificate dated 16.06.2010. He was placed on a supernumerary post with effect from 16.06.2010 in accordance with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. His last drawn pay was protected accordingly. Subsequently, he submitted request

for voluntary retirement and the same was accepted, duly waiving the notice period of three months and he retired voluntarily with effect from 15.10.2010. Thereafter on 03.12.2010, he submitted a request for permitting him to continue in service and to withdraw the voluntary retirement. The same could not be accepted as there was **no provision for recalling the voluntary retirement** and reinstating him in service. All the procedural formalities were completed by the time the employee sought to recall his request. He cannot blow hot and cold and is e-stopped from withdrawing the request for voluntary retirement and subsequently, he died on 06.02.2011. In the representation dated 03.12.2010, Shri V. Ranganathan requested to reconsider his appeal and allow him to continue in service. The same was rejected, vide letter No. M/P439/I/Optg./Goods/Vol.I dated 06.01.2011 on the ground that the deceased employee voluntarily retired from service with effect from 15.10.2010. The applicant herein submitted a request for compassionate appointment to her elder son, vide representation dated 07.12.2015. The representation was considered and rejected vide letter No. M/P579/I/Optg./Gd dated 24.02.2016 on the ground that the request for compassionate appointment was not permissible under the existing rules. The applicant herein filed OA.No. 877 of 2016 before this Tribunal to direct the respondents to quash the impugned order No. M/P579/I/Optg./Gd dated 24.02.2016 and further to direct the respondents to declare that the applicant's husband had died in harness and to consider the 2<sup>nd</sup>

applicant for appointment on compassionate grounds. This Tribunal by order dated 29.04.2016 disposed of the Original Application giving liberty to the applicant to petition the General Manager and whereupon the General Manager should give personal hearing to the applicant and dispose of the representation and pass a speaking order and communicate the same to the applicant. The General Manager gave a personal hearing to the applicant herein and vide the speaking order No. PB/CS/30/Court Case/Vol.VII dated 21.09.2016 considered the claim and rejected mainly on the ground that in terms of the Railway Board's instructions vide RBE No.78/2006, the employee had less than five years of service and therefore, not covered under the Board's letter and further that the employee retired voluntarily from service with effect from 15.10.2010 and on 06.02.2011, when he died, he was not in service and, therefore, the claim was not tenable. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents in record.

5. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.877/2016 before this Tribunal and this Tribunal directed the respondents to consider the case of the respondents in accordance with law. In pursuance of the directions of this Tribunal, the impugned order dated 21.09.2016 was passed by the respondents rejecting the claim for appointment on the plea that the applicant's husband did not have five years left

over service. Hence, this Original application is preferred before this Tribunal.

6. Shri V.Ranganathan, Ex-Goods Guard, Chennai Division, was declared medically unfit in Aye-Two, Aye-Three, Bee-One, Bee-Two and Cee-One medical categories and found fit in Cee-Two with glasses as per Medical department Memo dated 16.06.2010. He was placed on supernumerary post w.e.f. 16.06.2010. Based on his request, an office order was issued accepting his voluntary retirement w.e.f. 15.10.2010, subsequently, he died on 06.02.2011 due to heart attack. During the personal hearing, Smt. R. Vijayalakshmi submitted that her elder son is a Diploma holder and working on contract basis in a private firm. Her 2<sup>nd</sup> son is partially blind and is having psychological problem and he cannot do any work and her 3<sup>rd</sup> son is studying Diploma course. She further represented that they are managing on meagre pension and the earnings of first son and, therefore, prayed for sympathetic consideration for a job. Since her husband died on 06.02.2011 without serving the entire span of employment, she requested to consider her husband's death as a case of employee's death in harness and appointment for her elder son, Shri. R. Narasimha Ganesh be offered on compassionate grounds. In her representation dated 18.07.2016 also she has requested to offer appointment to her son, Shri. R. Narasimha Ganesh on compassionate ground since he has the additional liability of taking care of his two younger brothers. In terms of extant instructions of the Railway Board vide RBE No. 78/2006, appointment to the wife/ward/dependant of family of

medically de-categorised staff who seek voluntary retirement can be given only in Group 'D' category provided the employee who was declared partially medically de-categorised should have left over service of at least 5 years or more at the time of medical de-categorisation. The deceased Railway employee was medically de-categorised on 16.06.2010 and his date of birth is 06.05.1955 i.e, he had less than 5 years of service left at the time of medical de-categorisation. Further, as per the request letter dated 22.09.2010 submitted by Shri. V. Ranganathan, Ex Goods Guard, he was voluntarily retired from Railway service with effect from 15.10.2010 duly waiving the balance notice period from 15.10.2010 to 21.12.2010. His subsequent request dated 03.12.2010 for allowing him to continue in the service and to withdraw his voluntary retirement, could not be considered since as per extant rules, once the voluntary retirement is accepted and the employee has retired voluntarily from service, there is no provision for reconsidering his request for reinstatement into service. In view of the above, the request of the applicant for considering her elder son, Shri R. Narasimha Ganesh for appointment on compassionate ground cannot be considered.

7. The Railway Board Circular No.E(NG)II/95/RC-1/94 issued 14.08.2006 issued in RBE No.78/2006 stipulates that the employee who seeks compassionate appointment to the ward/wife/dependants on medical de-categorisation, should have 5 years of service left for retirement. The applicant

having applied for voluntary retirement / compassionate appointment on 02.08.2008, his case will not come within the scope of the Railway Board Circular dated 14.06.2006. The relevant portion of the said order reads as follows:-

“Pursuant to the notification of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995 instructions were issued by Ministry of Railways (Railway Board) laying down that in case where an employee has been medically invalidated/decategorised where the administration cannot find alternative posts for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation of service of a medically Invalidated/decategorised employee, there would be no occasion to the employee to be retired from service on medical grounds. Therefore, according to the instructions, in such cases the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise (Board's letter dated 29.04.1999 refers).

2. Even if the employee chooses to retire voluntarily on his being declared medically decategorised, if he so desires he may be permitted but without extending the benefit of appointment on Compassionate ground to a ward (para 4 Of Board's letter of even number dated 18.01.2000 refers).

3. Board had earlier decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases, request for appointment on compassionate ground to an eligible ward may be considered if the said employee choose to retire voluntarily (para 3 of Board's letter of even number dated 18.01.2000).

4. Pursuant to the demand raised by staff side the issue has been deliberated upon at length in the full Board

Meeting and it has been decided that compassionate ground to the wife/wards/ dependants of partially medically de-categorised staff who seeks voluntary retirement may be given subject to the following provisions:-

(a) The appointment will be given only in the eligible Group 'D' categories. 'Eligible' would mean that in case Group 'D' recruitment is banned for any particular category, the same would also apply for the compassionate ground appointments.

(b) Such an appointment should only be given in case of employees who are declared partially de-categorised at a time when they have atleast 5 years or more service left.

(c) CMD of the Railways should keep a watch over the trend of de-categorisation so that the present figure do not get inflated. CMD should also get 10% partially de-categorised cases re-examined by another medical Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically de-categorised after issuance of Board's letter NO.E(NG)II/95/RC-1/94 dated 18.1.2000 will also be covered under these instructions. However, such cases which have already been finalised in terms of Board's letters No. E(NG)II/95/RC-1/94 Dated 18.1.2000; 10.11.2000 and No. E(NG)II/2000/RC-1/Genl.17 dated 6.3.2002 & 26.5.2004 need not be re-opened.

6. While considering such requests for compassionate ground appointment, the General Manager should satisfy himself on the basis of a balanced and objective assessment of the financial & other conditions of the family, that the grounds for compassionate ground appointment in each such case, is justified (Board's letter No.E(NG)II/98/RC-1/64 dated 28.7.2000 refers)."

8. It appears that the applicant's husband had preferred to go on voluntary retirement not due to his low vision but to seek appointment to his son in the Railways on compassionate ground even though he is entitled for alternative

employment in the Railways. He was declared medically unfit in AYE TWO, AYE THREE, BEE ONE, BEE TWO and CEE ONE medical category and found fit in CEE TWO with glasses in terms of the Medical Department certificate dated 16.6.2010. However, he chose to submit his application for voluntary retirement dated 22.9.2010 due to eye sight problem and heavy financial crisis. As such, he was not coerced or forced by the respondents to take voluntary retirement. He could have continued in service having been declared fit in CEE TWO with glasses, as such, the applicant's husband's voluntary retirement is on his own volition. The claim of the applicant for appointment of her son on compassionate ground was rejected mainly on the ground that he did not meet the conditions contained in the Railway Board's order in RBE No.78/2006 to the effect that the deceased Railway employee should have at least five years or more left over service at the time of medical de-categorisation and that the applicant's husband ceased to be in employment after tendering VRS and after his death. Further the respondents contend that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not cast an obligation to explain to its employees that they should not tender voluntary retirement whenever they find it difficult to continue in employment. The fact remains that the deceased employee had tendered VRS only to seek employment to his son on compassionate ground but unfortunately died later on. Even assuming for a moment that the applicant is alive, his

request for appointment of his son on compassionate ground would not have been considered since he did not satisfy the condition that there should be five years left over service before his retirement.

9. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 had held that:

“Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

10. Having regard to the above facts and circumstances of the case, the Circular issued by the Railway Board and the Judgement of the Hon'ble Supreme Court (supra), the rejection of the claim of the applicant for appointment of her son on compassionate grounds by the respondents vide impugned order No.PB/CS/30/Court Case/Vol.VII dated 21.09.2016 does not warrant interference of this Tribunal.

11. This is a case where the applicant is not trying to establish an existing right but trying to create a new right by relaxation of the condition of having left

over service of 5 years for superannuation and this is impermissible. Further, the decision of the Hon'ble Supreme Court in Bhagwan Das case [2008 (1) SCC 579] being distinguishable on facts, does not come to the aid of the applicant in the present case.

12. In the circumstances, the OA is liable to be dismissed and is accordingly dismissed with no order as to costs.

(T. JACOB)  
MEMBER(A)  
06-01-2020

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