RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Original Application No.20/737/2019

Hyderabad, this the 2nd day of March, 2020

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

1. Mohd. Ali, S/o. K. Peran Sahib, aged 60 years,
Ex. Loco Pilot (Passenger)
O/o. The Chief Crew Controller,
South Central Railway, Guntakal,
R/o. H. No. 5/120, Porter Line,
Guntakal, Anantpur Dt., AP – 515 801.

2. Rahmat Anjum, D/o. Mohd. Ali,
Aged 29 years, R/o. H. No. 5/120, Porter Line,
Guntakal, Anantpur Dt., AP – 515 801.

… Applicants

(By Advocate: Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Rep. by the Secretary,
Ministry of Railways, Railway Board,
Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Principal Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

4. The Divisional Railway Manager,
South Central Railway,
Guntakal Division, Guntakal.

5. The Senior Divisional Personnel Officer,
South Central Railway,
Guntakal Division, Guntakal.

… Respondents

(By Advocate: Mrs. A.P. Lakshmi, SC for Railways)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed in regard to compassionate appointment on ground of medical invalidation.

3. Brief facts which are to be adumbrated are that the applicant while working as Loco Pilot was found medically unfit to be a Loco Pilot but found fit to perform a job not involving train movements/passing and requiring A-1 or lower medical credentials. Thereon, instead of seeking alternate appointment, applicant sought voluntary retirement to enable his married daughter the 2nd applicant, who has the requisite educational qualifications and dependent on him to be considered for compassionate appointment. Respondents accepted the voluntary retirement requested vide memo 30.04.2016 and the applicant periodically followed up the request for compassionate appointment. However, to his dismay, it was informed that the 2nd applicant is ineligible for compassionate appointment vide clarification issued by 3rd respondent wherein it was made clear that the applicant was medically invalidated for Loco Pilot and for running duties but his class of medical categorisation namely A-1 was not downgraded and hence, he remains eligible to perform other duties requiring A-1 medical categorisation. Therefore, it cannot be construed as medical invalidation in the strict sense of the word. Resultantly, compassionate appointment sought cannot be considered. Aggrieved, OA has been filed.

4. Applicant contends that the 3rd respondent is not the competent authority to decide and that as per Rule 124 of Indian Railway Establishment Code (for short "IREC") the General Manager is empowered

to make rules for Group 'C' cadre to which the applicant belongs to. Any interpretation or clarification should emerge from him. Further, the 3rd respondent's clarification is incongruent to the Railway Board order circulated on 14.06.2006 in respect of compassionate appointment on medical grounds and furthermore, it is a blatant aberration since many similarly situated employees were granted the relief by the respondents as is being sought by the applicant. More so, on initiation of the required process in regard to compassionate appointment of the 2nd applicant. After accepting applicant's voluntary retirement to facilitate compassionate appointment of his daughter, respondents' turning their back on the same is an infringement of law. Railway Board orders RBE No 78/2006 and RBE No.70/2014 provided for the relief being sought by the applicant and therefore, he has applied, otherwise he would not have ventured the risk of voluntary retirement but continued in service with full salary for another 5 years, which was the service left to hang the boots. Section 47 (1) of PWD Act is in favour of the applicant. Applicant cited Hon'ble Apex Court verdicts in support of his contentions.

5. Respondents in the reply statement confirm that the applicant was medically found unfit for running duties as Loco Pilot, but his medical category of A-1 remained the same and therefore he can be given other assignments, which go with A-1 medical classification. His voluntary retirement was indeed accepted on 10.02.2018 and the processing of the application for compassionate appointment was initiated. However, in the strict sense applicant, as per Railway Board letter dtd. 02.11.2006, is not

medically de-categorised, since he was found fit in the same medical category of A-1 calling for change of duties and even to perform running and passing duties in A-1 category & below with NV & DV glasses, thereby making him ineligible to seek compassionate appointment for his ward. 3rd respondents letter dtd. 15.03.2019 makes this explicit and the same is only a reiteration of the Railway Board order dated 02-10/11-2006 but not an interpretation as was attempted to be projected by the applicant. Only in cases where an employee is totally incapacitated or de-categorised to a lower category the request for compassionate appointment can be considered.

6. Heard both the counsel and perused the pleadings on record.

7. I) It is not disputed that the applicant was voluntarily retired and is unfit to perform Loco Pilot duties and that a request for compassionate appointment of his daughter was taken up for due processing. While processing 3rd respondent stated in his letter dated 15.03.2019, which is claimed to be reiteration of the Railway Board letter 02-10/11-2006, that the applicant remained in A-1 medical category even after medical examination and therefore ipso fact would not mean Medical de-categorisation since it *per se* involves being downgraded to a lower medical category, which evidently is not the case of the applicant. Besides, applicant can even perform running and passing duties in A-1 category with appropriate glasses and if not other duties as can performed with A-1

classification. Therefore, the claim is infructuous. The clarification given by the 3rd respondents which is the hub of the dispute is as under:

> *"The matter has been examined and it is advised that where an employee has been made fit the same medical category with recommendations of change of duties could not be treated as medically de-categorized and appointment on CG to wife /ward is not permitted in such cases. "*

Such a disposition is not found in the Railway Board order dated 14.06.2006 which was the subject matter attempted to be clarified by the 3rd respondent. The same will be dwelt in the succeeding paragraphs as Tribunal proceeds with the case.

II) For the moment, a cursory glance of the letter dated 04.08.2014 issued by the respondents, which is reproduced hereunder, amply demonstrates that the applicant is not fit even for train running and passing duties in A-1 category. Therefore, the contentions of the respondents that the applicant is fit for train running and passing duties is belied by their own letter referred to.

> *"Sri Mohammed Ali, Loco Pilot/Pass/GTL (PF No. 03814403) in Pay Band Rs 9300-34800 + 4200 GP has been declared medically unfit for the post of Loco Pilot and fit for the job not involving train running, train passing duties in Aye One (A-1) and below with NV Glasses vide CMS/RH/GTL Medical Certificate No. 34/14 dated 1.07.2014."*

The word " not " in the letter has been glossed over, may be by over sight, while framing the reply statement. Therefore, to this extent the assertion of the respondents is factually erroneous.

III) Now coming to the issue as such, the respondents claim that medical categorisation in essence has to be a lower medical category to be eligible for compassionate appointment whereas applicant affirms that his

case was of partial de-categorisation as propounded in Railway Board RBE No. 78/2006 dtd. 14.06.2006. A reading of the para 4, reproduced hereunder, eloquently expresses the view point that partially de-categorised employees are eligible for compassionate appointment to their wards. No where it was said in the Railway Board order that partial Medical de-categorisation tantamount to being downgraded to a lower medical category. Therefore, the reiteration of the Railway Board order No.78/2006 by the 3rd respondent as claimed, is not what was purported to be conveyed by the said order. The applicant comes under partial medical de-categorisation since he was displaced from functioning as a loco pilot and also running/ passing duties which was the core activity he was performing before medically found unfit to do the same. The other condition stipulated for the ward to be considered for compassionate appointment of having 5 years of service to retire has been complied with and the same has not been controverted by the respondents.

> *"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 appointment 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 e given only n 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 at least 5 years or more service left."*

Therefore, it is naive to accept the version of the respondents that the 3rd respondent has merely reiterated the Railway Board order dated 14.06.2006

from a plain reading of the above. It was in fact a frightful version of the spirit of the Railway Board order referred to.

IV) Besides, Railway Board order numbered 70/2014 and dtd. 08/07/2014 in unequivocal terms declares that the married daughter is eligible for compassionate appointment provided she is dependent on the medically invalidated employee and that the General Manager is satisfied that she would be the sole bread winner of the family of the employee. The 2nd applicant fits into this description lock, stock and barrel. To the said extent respondents have not professed anything contrary in their reply statement.

V) Going a step further as was brought out by the Ld. Counsel for the applicant, the Railway Board/GM are the competent authorities to lay down rules for Group C & D employee as per Rules 123/ 124 respectively of the Indian Railway Establishment Code. Applicant is a Group C employee and hence the authority competent to clarify any service issue in regard to Group C employee is the Railway Board/GM. Neither of them has clarified the issue contested. However, the 3rd respondent did take the initiative in the form of a clarification but definably not as a reiteration of the instructions in RBE No.78/2006, for which he is jurisdictionally incompetent nor for that matter the clarification given was in tune with the essence and spirit of the order RBE No.78/2006 as explained supra. Hence the clarification issued by the 3rd respondent on which the respondents relied profoundly has to be declared void *ab initio* and accordingly, declared with no iota of doubt.

VI) Further, a similar issue fell for consideration before the Hon'ble Ernakulam Bench of this Tribunal wherein it was held as under:

> *"Though the respondents contended that the applicant has not been de-categorised , once the applicant has been removed from the post he was holding earlier (Gangman) and posted to supernumerary post on the basis of medical de-categorisation, provision of para 4 of Annexure A-4 springs into play. Thus the applicant is entitled to be considered for voluntary retirement and in his place in accordance with Annexure A-4 the applicant's son should be considered for compassionate appointment."*

Applying the principle laid, to the case of the applicant, he too was removed from the post of Loco Pilot dictating his replacement by his daughter, the 2nd applicant, and hence is fully covered by the observation referred to above. The judgment cited was up held by the Hon'ble High Court of Kerala at Ernakulam in OP (CAT) No. 2424 of 2013 (Z) on 21.03.2013.

VII) It is not out of place to also observe that respondents having accepted the voluntary retirement under medical de-categorisation of the applicant wherein the proviso for providing compassionate appointment to his daughter is an allowable rider, respondents showing their back to the applicant in regard to compassionate appointment is not commensurate to the status of the respondent as a model employer. Once one limb of the request has been accepted, it was inevitably necessary for the respondents to examine the other limb of the request namely compassionate appointment which indeed is a necessarily corollary to the aspect of accepting voluntary retirement on medical de-categorisation.

VIII) Ld. counsel for the applicant relied upon the judgment of the Hon'ble Apex Court in ***Food Corporation Of India & Anr. v. Ram Kesh Yadav & Anr.,*** in Appeal (Civil) No. 3451 of 2006, ***2008 (1) SLJ 7***, to confirm the view point that once voluntary retirement is accepted it is to be followed by examining the scope for compassionate appointment as under:

> *"We have upheld the direction for grant of employment only because of the acceptance of an inter-linked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not inter- linked or conditional, FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter or application."*

It requires no reiteration to assert that the case of the applicant is covered by the above judgment. Not doing so in the instant case is obviously arbitrary and unjust. In fact, by atrophying the applicable instruction contained in the Railway Board orders cited, it is virtual brow beating of the applicant since he has no bargaining power to impress upon the respondents that his request was as per norms and fully justified. Such haplessness of the applicant should not have been exploited as pronounced by the Hon'ble Supreme Court in the following judgments, while unfolding the contours of a model employer as under:

a) *Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors on 30 November, 2012 in CA Nos 8514-8515 of 2012*

> *48. Before parting with the case, we are compelled to reiterate the oft- stated principle that the State is a* ***model employer*** *and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*
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> *49. Almost a quarter century back, this Court in Balram Gupta vs Union of India & Anr. [1987 (Supp) SCC 228] had observed thus:*
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> *"As a* ***model employer*** *the Government must conduct itself with high probity and candour with its employees."*

> *50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "**modelemployer**"*
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> *51. In Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.*
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> *53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.*

The matter dwelled upon by the Hon'ble Apex Court is so plain and candid that it requires no further elaboration except to state that the respondents need to ponder as to whether they enacted the role of a Model Employer as is expected of them in the instant case without ostracising it. As far as the Tribunal is concerned, it is of the view that respondents did not measure up to the role of a model employer assigned to them in respect of the case on hand.

VIII) In fact, the applicant submitted that similarly placed persons who were colleagues of the 1st applicant in Guntakal Division of the respondents organisation were granted relief which was not rebutted in the reply statement for reasons best known to the respondents. This gives some

credence to the claim of the applicant but it could have been full if the documentary proof was appended to make it an open and shut case, if the Ld. Counsel for the applicant focussed on the same for assisting the Bench ably and make things simple, rather than digressing on issues of PWD Act, which have no bearing to the case.

IX) The ld. counsel for the respondents, while drawing curtains on the dispute, submitted that the issue be remanded to the respondents for disposing of the representation made by the applicant on 7.05.2019 (Annexure A-8). Having come this far, it may not sound rational for this Tribunal to abdicate its responsibility to give a judicious direction in the matter. Hence, the submission made is rejected.

X) Not being far behind the Ld Counsel for the applicant, to play his part at the end, in his usual style attempted to fortify the case of the applicant by drawing attention of the Tribunal to the ground that the case of the applicant is covered under PWD Act, which undeniably is too farfetched. Applicant has been medically de-categorised but not categorised as physically disabled by a competent authority as is required under the dictates of the Act. Neither was the relevant certificate issued by the competent authority, which is legally acceptable, was submitted nor was the averment convincing to have a closer look. Hence, trying to take cover under the PWD Act is traversing uncharted terrains with no destination to arrive at. Hence, the averment of the Ld. Counsel for the applicant ushering in PWD Act provisos in support of the cause of the applicant is without hesitation rejected.

XI) However, having gone through the tumultuous terrain of the dispute, it must be concluded that the OA fully succeeds since rules and law support the case of the 1st applicant. Hence the respondents are directed to consider the case of the 2nd applicant, if found otherwise eligible for compassionate appointment as prayed for to the appropriate post as per extent rules and in accordance with law within a period of 3 months from the date of receipt of a copy of this order.

XII) With the above direction the OA is allowed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/