

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 136/2000

New Delhi, this the 17<sup>th</sup> day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (J)

- 1. Shri Kartar Singh, S/o Shri Surat Singh,  
Q.No. 220/D, Railway Colony,  
Bhoor Bharat Nagar,  
Ghaziabad
- 2. Shri Virender Singh, S/o Sh. Kartar Singh,  
Qr. No. 220/D, Railway Colony,  
Bhoor Bharat Nagar,  
Ghazaiabad

.... Applicants

(By Advocate : Shri P.S. Mahendru)

Versus

- 1. Union of India  
Through The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi
- 2. The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi

.... Respondents

(By Advocate : Shri Rajender Khatter)

O R D E R

Heard the learned counsel on either side at length.

2. The applicant was medically decategorised in April 1977 when he was working as Pointsman in the Office of the respondents. An alternative post of a Peon was accordingly given to him and he was posted at Ghaziabad. He remained under treatment and was examined by a medical board in January 1999 which made the following recommendations:-

"In view of the above findings the Members of the Medical Board are of the opinion that Shri Kartar Singh is fit to resume his present duty under

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restrictions of para 573 and to continue regular treatment at N.R.CH."

3. The aforesaid recommendation was conveyed to the respondent-authority on 17.2.1999. Thereupon the applicant by his application dated 26.3.1999 made a request for his own retirement under the provisions of PS No. 11109/1995. His request was accepted in terms of the provisions of the aforesaid PS No. 11109/1995 by respondents' Notice dated 26.4.1999 (A-3). Following this, without affording to the applicant an opportunity to show cause, the respondents proceeded to modify the aforesaid Notice dated 26.4.1999 by issuing another Notice on 14.7.1999 (A-1). By the aforesaid (latter) notice the applicant was treated as having retired from service at his own request and not in terms of the provisions of PS No.11109/95. A letter dated 16.7.1999 was thereafter issued to the applicant, referring to the aforesaid notice dated 14.7.1999, giving him an opportunity to represent in the matter. Aggrieved by the action taken by the respondents as above without giving him an opportunity to show cause, the present OA has been filed.

4. On receipt of the aforesaid letter dated 16.7.1999, the applicant submitted a representation on 4.8.1999. After considering the same, the respondents issued notice dated 8/18th October, 1999 (A-6) by which both the aforesaid notices dated 26.4.1999 and 14.7.1999 were cancelled and the applicant was advised to resume his duties as Peon. The learned counsel appearing on behalf of the applicant has submitted that since the

notice dated 26.4.1999 by which he was allowed to retire in terms of the provisions of PS No. 11109/95 gave him the advantage of seeking appointment for his son (applicant No.2 in the present OA) on compassionate, some interested persons proceeded to scuttle the said proposal for compassionate appointment and that is the reason why the aforesaid notice dated 26.4.1999 has been revised/modified. Thus, the applicant stands deprived of the opportunity he had acquired of seeking compassionate appointment for his son in terms of the provisions of PS No.11109/95 dated 22.9.1995. The relevant provisions made therein and on which reliance has been placed by the applicant is reproduced below for the sake of conveyance:

"After careful consideration of the matter Board have decided that in partial modification of Board's letter No.: E(NG)III/78/RC-1/1 dated 03.9.83, in the case of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and makes a request for such appointment."

5. The learned counsel appearing on behalf of the respondents has seriously disputed the aforesaid claim of the applicant by submitting that the medical board which had examined the applicant in January 1999 had found that the applicant No.1 was fit to resume his duties under restrictions of para 573 and to continue regular treatment at N.R.C.H. Thus, according to him, the applicant's case is not one in which it could be said that he had been medically decategorised thereby giving him the advantage available under the aforesaid

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provision contained in PS No. 11109/95. Since the applicant was found fit to resume his duties even though under restrictions of para 573, there could be no question of the applicant not waiting for the administration to identify an alternative job for him in the manner set out in the aforesaid provision of PS No.11109/95. Consequently the applicant did not have the option to seek retirement on condition that his son would necessarily be considered for compassionate appointment. The learned counsel has also submitted that under the aforesaid provision the applicant is at best entitled to make a request for compassionate appointment. The same, according to him, does not confer any right on the applicant to secure such an appointment in any case. Like-wise, the applicant No.2 also cannot claim any right thereunder to be appointed on compassionate basis.

6. The learned counsel appearing on behalf of the respondents has next proceeded to rely on the Railway Board's letter dated 18.1.2000 issued on the subject of appointment on compassionate ground in cases of medically invalidated decategories. A copy of the same has been placed on record at Annexure R-6. The same refers to the aforesaid PS No.11109/95 dated 22.9.1995, as also to another PS No. 11816 dated 29.4.1999 and provides as under:

"In the cases of medical decategorisation i.e. those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an

eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward."

7. I have considered the matter carefully in the light of the submissions made by the learned counsel and find that besides the other grounds taken by the learned counsel for the respondents, the ground taken by him on the basis of the aforesaid provision made in the Railway Board's letter dated 18.1.2000 clearly rules out the possibility of compassionate appointment of applicant's son. I hold accordingly. There is thus no force in the various pleas raised on behalf of the applicants. The OA fails and is dismissed. The applicant No.1 will, it is clarified, continue in service as a Peon in terms of the notice issued by the respondents on 8/18th October, 1999.

d 8. There shall be no order as to costs.

(S.A.T. RIZVI)

MEMBER (A)

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