

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1158/89

DATE OF DECISION: 7.2.1992

QAMARUDDIN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI P.L. MIMROTH, COUNSEL

FOR THE RESPONDENTS

SHRI B.K. AGGARWAL, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)

(6)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
R. I.K. RASGOTRA, MEMBER (A))

Shri Qamaruddin, the applicant in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, is agitating his grievance for non-receipt of his reply to his representation dated 16.8.1988 regarding non-recommendation of sick leave on the basis of G-92 despite his substantial loss of vision. The applicant was working as Head Clerk in the grade of Rs.1400-2300 in the Statistical Branch and finally retired from Railway Service on 31.10.1988 on attaining the age of superannuation. His right eye was operated upon in December 1983 and left eye on 25.11.1984 at Agra. Thereafter, he has been gradually losing his vision. On account of his poor vision he is said to have met with serious accident on 15.4.1988. His main argument is that he should have been declared unfit by the Railway Authority and his son should have been appointed on compassionate grounds in accordance with the Rules. He represented to the Chief Medical Officer, Northern Railway on 16.8.1988 but he was not considered for medical unfitness till he retired.

2. Shri P.L. Mimroth, learned counsel for the applicant referred us to Annexure A-4 to Annexure A-7 to highlight the failing vision of the applicant. Annexures A-4, A-5 and A-6

are the memos addressed to the Divisional Medical Officer on 30.5.1988, 8.7.1988 and 12.8.1988 for treatment. On the other hand, Annexure A-7 is the medical out-patient record.

3. Shri B.K. Aggarwal, learned counsel for the respondents stated that when the applicant visited Divisional Medical Officer, Lajpat Nagar on 12.2.1985 he was found to have Cataract operated in both eyes and had adequate vision with glasses without symptoms. The learned counsel further submitted that the operation of the applicant resulted in APHAKIA which is not a disease and means absence of lens and glasses are provided to such a person to compensate the power of vision. Referring to the out-patient record of the applicant reproduced below:

"Case is fit for retirement in Oct.1988. Case of Aphakia. Both eyes. Rt. Eye was operated in Dec.83 at Agra and Lt. Eye in Nov 84 at Agra. Both Eyes operated privately. He was sent to CH (Sr.DMO Opth) in June 87 for defective vision. Vision on the glasses was 6/24, 6/24 case was again referred to Sr. DMO Opth CH in April this year and has been examined by Consultant Eye who has opined that there is nothing to account for the incessive loss of vision. He was again examined by Sr. DMO/Opth last month who has opined that the pt. refuses to see anything. Case referred to MS/DLI for needful pl on the advice of Sr. DMO/Opth.

Pt. come straight on 31/8 complaint that he has to be declared unfit. He read photostat copy where opinion of consutant was written. He refused to read anything later on saying he cannot see anything. Pt. does not cooperate....."

21

the learned counsel submitted that the sole objective of the applicant was to get himself medically declared unfit. Further there is no mention of the accident which the applicant is said to have met with on 15.4.1988 in the medical record.

4. We have heard the learned counsel for both the parties and considered the record including the written arguments submitted by the learned counsel for the applicant carefully. The applicant was admittedly not declared unfit from service by the competent Medical Authority. According to the medical report he also refused to cooperate with the medical authorities. He apparently could read, when and what he chose to read. He seems to have been obsessed by the idea of having himself declared unfit so that he could get his son employed on compassionate basis. According to the extant rules the appointment on compassionate grounds in respect of the medically decategorised/declared unfit staff is made in accordance with the following provisions:-

"Where, on being medically decategorised, a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment, provided that if he has less than three years of service at the time of decategorisation, personal approval of the General Manager is to be obtained before the compassionate appointment is made." (Railway Board's letter No.E(NG)II/82/RC-1/48 dated 19.10.82).

The case of the applicant does not fall under the purview of the above provision, as even according to the documentary evidence submitted by him, his office recommended him for medical treatment only in 1988 whereas he retired from service on 31.10.1988. His son could have

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claimed compassionate appointment only if he (father) had been declared unfit 3 years prior to retirement on superannuation.

In **Mahabir Mandal v. UOI & Ors. SLJ 1992 (1) CAT 94** where the applicant had been retired from service on 5.12.1986 on the ground of medical unfitness and where appointment on compassionate grounds was sought for the son the Tribunal held:-

"4. It has been repeatedly laid down by this Tribunal that a railway servant, who retires on medical unfitness, has no unqualified right as such to claim appointment of one of his wards. The object of compassionate appointment is to alleviate the hardship that may be caused to the railway employee and his family on account of his premature retirement from service. As such, while considering the request it is open to the Railway Administration to examine the circumstances of each particular case and to arrive at a conclusion with respect to the sustainability of the claim. Indeed, it behoves the Administration to do so, for such an appointment is de hors the normal mode of recruitment to the Service, and is allowed denying the opportunity of thousands of aspirants for entry in the service."


6. According to the relevant instructions, in the case of retirement on account of medical unfitness within three days prior to the normal retirement, the receipt of retirement benefits has to be taken into account in deciding the claim for compassionate appointment of the ward. Besides, the past record of sickness of the employee has to be taken into account. The respondents have stated that it was having regard to both these criteria that the request was turned down."

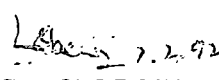
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Admittedly in the matter before us the applicant retired without being unfitted from service on superannuation with full retirement benefits as due to him. As is observed in **Mahabir Mandal** (supra), even where the applicant was unfitted, the Tribunal did not interfere in the matter. In the matter before us, there is much less, nay, little justification to consider the plea of the applicant.

In the above conspectus of the case the O.A. is dismissed with no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(T.S. OBEROI)
MEMBER(J)

SKK
070292

7.2.1992