

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA/310/01058/2016
Dated 7, the ^{Tuesday} day of July, 2020
PRESENT
Hon'ble Mr.T.Jacob , Member(A)

1. S. Sridhar (Ex. Clerk.Com/ RO/MAS)
 S/o. Shanmugam, No. 61, 3rd Cross Street,
 Vasugi Nagar, Kodungayur,
 Chennai – 118.

2. Vinay, S/o Sridhar,
 No. 61, 3rd Cross Street,
 Vasugi Nagar, Kodungayur,
 Chennai – 118.

....Applicants
 (By Advocate M/S D.S.Ramesh)

Vs

1. Ministry of Railways,
 Rep by its Secretary,
 Railway Board,
 Rail Bhavan, New Delhi.

2. The General Manager,
 Integral Coach Factory (ICF),
 Chennai – 600 038.

3. The Chief Personnel Officer,
 Integral Coach Factory (ICF),
 Chennai – 600 038.

4. The Assistant Personnel Officer,
 Integral Coach Factory (ICF),
 Chennai – 600 038.

5. The General Manager,
 Southern Railway, Head Quarter Office,
 Chennai-3.(As per order dated 19.7.2018
 amended in M.P.No.366 of 2018)Respondents
 (By Advocate Ms. R.Sathyabama)



OR D E R
(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 set aside the order of the 3rd respondent dated 19.01.2016 in No. PB/RR/39/Rep and quash the same and to direct the respondents 1, 2, 4 and 5th respondent herein to consider and dispose the 1st applicant's representation dated 30.12.2015 seeking for compassionate appointment and appoint the 2nd applicant on compassionate ground and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

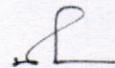
2. The brief facts of the case as submitted by the applicants are as follows:

The 1st applicant was selected in Sports Quota and he was appointed in the year 1990 as a Class IV Employee in Southern Railway at Moor Market Complex. He was promoted as Class III employee as a Clerk at Operating Branch, GM Building, Chennai. In the year 2004, he got severe Head-ache, Neck pain, tonic posturing of the body and became unconscious. He was admitted at Vijaya Hospital and then was sent to Railway Hospital for further treatment. In the year 2005, he joined service, but was taking treatment continuously for 5 years in Railway Hospital. The respondents informed him that he was medically unfit to continue his job and he was advised to seek voluntary retirement and if he opts for the same, his son could be employed on compassionate grounds. Accordingly, the applicant felt forced to seek voluntary retirement and he was relieved from service from 01.09.2011. The 2nd applicant had completed Higher Secondary Education in the year 2012 and has completed his



Degree course also. The 1st applicant sent a representation on 30.08.2013 for appointment of 2nd applicant on compassionate ground explaining the penury and the stressful condition of the applicants' family. The first applicant sent another representation on 30.12.2015. Respondent No.3 rejected the representation stating that the rules did not permit his prayer although in other cases, the sons and daughters of medically unfit employees were appointed in the same respondent office on compassionate grounds. The applicants submit that the Railway Board circular permits such appointments and, hence, the action of the respondents no. 3 in rejecting the case of the applicants is in violation of the rules and circulars of the Railway Board. Aggrieved by the above, the applicants have filed this OA seeking the above relief, inter-alia, on the following grounds:-

- i. The respondents have acted in gross violation of principles of natural justice as they have not disposed the representation made to them.
- ii. The respondents have erred in not considering that the Railway Board has issued necessary circulars to make appointment on compassionate grounds and also for the medically unfit cases.
- iii. The respondents have erred in not considering the fact that the first applicant, an employee of Southern Railway has gone by VRS, since he is medically unfit and, hence, he sought for appointment on compassionate grounds.
- iv. The respondents have erred in not considering that the 2nd applicant is eligible to be appointed in compassionate grounds.
- v. When the father of the applicant was declared medically unfit and has retired from service with effect from 1-9-2011, the respondent



should have given appointment on compassionate ground.

vi. The respondents have erred in not considering the fact that the 1st applicant was the only bread winner of the family and after his retirement (as he became unfit in all classes), the family of the applicant has put to irreparable loss and hardship financially.

vii. When the respondents have not considered the representations for compassionate appointment, the respondents erred in not considering the fact that the 2nd applicant is eligible to be appointed on compassionate grounds as per the Board Circulars.

viii. The Petitioner submits that the act of the respondent clearly shows the malafide intention and colourable exercise of Power of the respondents.

ix. The Petitioner submits that, the act of the respondents is neither covered by any law nor by any Act.

3. The applicants' have relied on the decision of the Hon'ble Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of India and Others (2011) SCC 209 in support of their submissions.

4. The respondents have filed detailed reply statement. It is submitted that, the 1st applicant, an ex-employee of Southern Railway, had voluntarily retired from service on his own volition and was not 'forcefully retired' from service as claimed by the applicants in the Original Application. The 1st applicant cannot be equated with employees who had been declared medically incapacitated after being subjected to medical examination by the medical board constituted for the specific purpose. No Railway Official would force any Railway employee to go on voluntary retirement



and also gives an assurance for appointment on compassionate grounds. Hence the plea is merely an accusation without any valid proof. The respondents have taken the stand that employees, who are declared medically unfit for all categories by the Medical Board constituted for examining the medical fitness of Railway employees, are retired from service and requests for compassionate appointment of their wards are considered by the Railway, subject to their fulfilling certain conditions laid down by the Railway Board. The 1st applicant has taken voluntary retirement from Railway service, and, therefore, the request for providing the 2nd applicant appointment to a post on compassionate ground cannot be considered under the extant rules and instructions issued by the Railway Board. It is submitted that the services of 1st applicant was terminated solely based on his request for voluntary retirement. In terms of extant provisions, all eligible settlement benefits, including pension has already been arranged in favour of the pensioner. It has also been ascertained that subsequent to the demise of the 1st applicant, his widow has been arranged Enhanced Family Pension of Rs. 15,100/- + Dearness Relief. The applicants are not entitled to any additional benefit from the respondents. It is submitted that an undated representation made by the 1st applicant received by the Hon'ble Minister for Railways, and after detailed examination was disposed vide letter no. PB/CS/30/HQ/Misc/2013 dated 04.03.2014. It is submitted that Southern Railway and Integral Coach Factory are two distinct organisations functioning under the Ministry of Railways. The 1st applicant belongs to Southern Railway and his request for appointment of his son on compassionate grounds cannot be decided by the 2nd, 3rd



or 4th respondents, who are officials of Integral Coach Factory. Hence, it is submitted that his prayer for appointment on compassionate ground on par with medically unfit employees may be declared untenable and this Original Application may be dismissed devoid of merit.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Admittedly the 1st applicant had retired voluntarily on his own volition and was arranged all settlement benefits for which the 1st applicant had entitlement. The representations made by the 1st applicant to consider the 2nd applicant for appointment on compassionate grounds had already been examined and disposed by the respondents. According to the respondents there is no provision of compassionate ground appointment in cases where ex-employees have taken voluntary reitrement from Railway Service and hence their request for appointment on compassionate grounds cannot be considered as per extant rules.

7. The Railway Board Circular No.E(NG)II/95/RC-1/94 dated 14.08.2006 issued in RBE No.78/2006 with regard to "appontment on compassionate ground of medically de-categorized staff" is reproduced below:-

"Sub:- Appointment on compassionate grounds of wards/spuse of medically de-categorised staff on the Railways.

1. Pursuant to the notification of the Persons with Disabilities (Equal Opportunities, Protection of Rights and

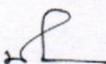


Full Participation) Act,1995 instructions were issued by Ministry of Railways (Railway Board) laying down that in case where an employee has been medically invalidated/decategorised where the administration cannot find alternative posts for such an employee, he may be kept on a supernumerary post in 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

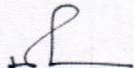


been deliberated upon at length in the full Board 10 OA 159/2017 Meeting and it has been decided that compassionate ground to the wife/wards/ dependants of partially medically declassified staff who seeks voluntary retirement may be given subject to the following provisions:-

- (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 declassified 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-classification so that the present figure do not get inflated. CMD should also get 10% partially declassified cases re-examined by another medical Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically declassified 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/RC1/Genl./17 dated 6.3.2002 & 26.5.2004 need not be reopened.

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/RC1/64 dated 28.7.2000 refers)."

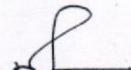
8. The applicants are not covered by any of the provisions made for compassionate ground appointment and their representations made have been disposed by the respondents only after examining their request according to the extant rules and provisions. The question of extending appointment on compassionate grounds for 2nd applicant on humanitarian basis does not arise since the Compassionate Ground appointment is extended only to the widow/wards of the family of employees who either died or was found medically unfit while in Railway service. The 2nd applicant is not eligible to be considered for appointment on compassionate ground as per any of the Railway Board Circulars. Further, the 1st applicant was the only bread winner of the family is of no consequence as the decision to retire was solely taken by the 1st applicant himself and not thrust upon him by the respondents.

9. Further, there are certain enacted provisions in Railway Medical Manual for declaring an employee medically unfit in all medical classifications, for which the powers are vested with the Medical Board constituted by the Competent Authority, more specifically to analyse and assess the health condition of the employee subjected by the Medical Board. In the instant OA, the applicant did not undergo any such procedure in order to get appointment on compassionate grounds, contrarily, the



1st applicant had tendered application dated 24.08.2011 for voluntary retirement with waiver of notice period, which was eventually accepted and necessitated the administration to issue office order dated 26.08.2011. Further, the voluntary retirement tendered by the 1st applicant on own volition cannot be equated with that of the employees who had been subjected to Medical examination by Board specifically set up for this purpose and declared as medically incapacitated.

10. In the instant case, admittedly, the 1st applicant was never examined by the Medical Board constituted under the relevant rules for the purpose of assessing medical fitness of a Railway servant either to continue in the post held by him/her or to continue in any other alternative/suitable post till the normal date of his/her retirement. The report of the prescribed Medical Board declaring a Railway servant as medically unfit/decategorised/incapacitated/invalidated to continue in the post held by him/her or in any other alternative/suitable post with same emoluments, the failure of the Railway to offer any alternative/suitable post with same emoluments to such Railway servant till the normal date of his/her retirement from Railway service, and the consequent retirement of such Railway servant are sine qua non for consideration of a request made by the defendant of such Railway servant for providing appointment to a post on compassionate ground, subject to the fulfillment of the conditions stipulated in various instructions issued by the Railway Board. In the representations dated 05.09.2013 and dated 30.12.2015, the 1st applicant did not mention about his having ever approached the competent authority to get him examined by the prescribed Medical Board. Save and except some medical papers

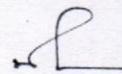


showing his treatment at the Railway Hospital and some other Hospitals, the 1st applicant has not placed before this Tribunal any material showing that he had made repeated requests to the Railway authorities for examination by the prescribed Medical Board to assess his medical fitness and that the Railway authorities had not paid any heed to such requests. This apart, the applicant cannot be allowed to raise the issue of medical unfitness, decategorization, incapacitation, and invalidation and claim compassionate appointment after several years of his voluntary retirement from service.

11. 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."

12. In LIC Vs. Asha Ramachandra Ambekar, (1994) 2 SCC 718, the Hon'ble Supreme Court has stressed the need to examine the terms of the rules/scheme governing compassionate appointment and ensure that the claim satisfied the requirements before directing compassionate appointment. In Food Corporation of



India Vs. Ram Kesh Yadav, 2007(9) SCC 531, it has been observed by the Hon'ble Supreme Court that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointment nor can compassionate appointment be directed de hors the policy. In consideration of all the above, the impugned decision of the Railway authority cannot be said to be perverse, illegal and arbitrary.

13. The decision in Bhawani Prasad Sonkar Vs. Union of India and Others (supra), being distinguishable on facts, does not come to the aid of the applicant in the present case.

14. In fine, the retirement of the applicant being one of his own volition and none of the pre-requisites specified in the Railway Board circular RBE No. 78 of 2006 dated 14.08.2006 being fulfilled by the applicant, coupled with the admitted fact of inordinate delay in moving the Tribunal, the applicant is not entitled to the claim of appointment of his son on compassionate ground.

15. In the light of above discussions, I have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly the O.A. is dismissed. No costs.