

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00566/2020

HYDERABAD, this the 20th day of October, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

1. B. Rambabu S/o B. Ram Murthy,
Aged about 67 years, Occ : Ex. Sr. Assistant Loco Pilot,
O/o The Chief Crew Controller,
South Central Railway, Rajahmundry.

2. B. Murali Mohan S/o B. Rambabu,
Aged 37 years, R/o D.No.2-48-2,
Ambikanagar, 2nd Street, Near ILTD Railway Gate,
Rajahmundry-533 101.

...Applicants

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

Vs.

1. Union of India represented by
The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

2. The Senior Divisional Personnel Officer,
Vijayawada Division, South Central Railway,
Vijayawada.

3. The Principal Financial Advisor,
2nd Floor, Rail Nilayam, South Central Railway,
Secunderabad.

4. The Assistant General Manager, State Bank of India,
Amaravati Circle, LHO, Gunfoundry,
Hyderabad-500 001.

....Respondents

(By Advocate: Mr. S.M.Patnaik, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed in regard to the grievance of the applicants in not implementing the orders of the Tribunal in OA No. 1402/2013 in respect of the conversion of penalty from compulsory retirement imposed on the 1st applicant to normal retirement and grant of compassionate appointment to the 2nd applicant.

3. Brief facts of the case are that the applicant, while working as Assistant Loco Pilot in the respondents organization was issued with a penalty order of compulsory retirement on 03.01.2011 by the disciplinary authority, which was confirmed by the appellate authority on 28.09.2012. When the applicant challenged the penalty order of compulsory retirement in OA 1402/2013, Tribunal directed the respondents to treat the retirement of the applicant as normal retirement and grant compassionate appointment as prayed for by the applicant. Accordingly, by applying the instructions in Serial Circular No.92/2006, respondents ought to have considered the case of the 1st applicant to declare him as medically unfit to continue in service and provide compassionate appointment to his son i.e. 2nd applicant. However, respondents took a stand that the 1st applicant was compulsorily retired and therefore, there is no provision for providing compassionate appointment in favour of his son i.e. 2nd applicant. Contempt Petition No.113/2019 was filed, wherein, the respondents filed a reply stating that the pay of the applicant from the date of compulsory retirement to the date

of superannuation was re-drawn as if the 1st applicant was in service and a revised Pension Payment Order was issued on 22/25.10.2019. An amount of Rs.20,165/- was paid towards arrears of DCRG and Rs.30,605/- towards arrears of commutation of pension. On treating the retirement of the 1st applicant as normal, respondents have ordered huge recovery. Aggrieved over the same, OA has been filed.



4. The contentions of the applicants are that the respondents while implementing the order of the Tribunal in OA No. 1402/2013, in the name of converting the penalty of compulsory retirement to normal retirement have ordered recovery from the pension of the 1st applicant, which is much more grave than the penalty of compulsory retirement itself. Besides, when the compulsory retirement of the 1st applicant has been treated as normal retirement, rejecting the request for compassionate appointment to the 2nd applicant is irregular and violative of the orders of the Tribunal.

5. Respondents in their reply statement state that in compliance with the orders of the Tribunal in OA 1402/2013, the non qualifying service period of 399 days was considered as sick period and treated it as qualifying service. As a result, qualifying service of the 1st applicant increased from 27.5 years to 29 years. Arrears of DCRG to the extent of 20,165/- was paid and re-drawal of pension was effected by treating the retirement of the 1st applicant as normal in 2013. Difference of commutation of pension amount of Rs.30,605/- was paid to 1st the applicant and revised PPO revising 1st applicant's pension as Rs.10,300/- w.e.f. 01.08.2013 from Rs.9,417/-, was issued on 22.10.2019. Further, in terms of VII CPC, the pension of the 1st applicant was revised as Rs.26,750/- w.e.f. 01.01.2016.



The pension disbursing authority was directed to recover the pension already paid from the date of compulsory retirement to the date of superannuation i.e. from 15.01.2011 to 31.07.2013 vide pension payment order dt. 22.10.2019 as the applicant is not eligible for pension during the period for which he is treated to be in service. Tribunal has directed the respondents not to draw any pay and allowances during the period for which he was not in service. Memo dt. 11.02.2019 was issued for refixation of pay on notional basis up to 31.07.2013. The direction of the Tribunal in OA No. 1402/2013 has been complied with and the same has been intimated to the Tribunal as a reply in CP 113/2019 filed in OA 1402/2013. CP is pending disposal before the Tribunal. The 1st applicant has accepted the arrears of Gratuity/ commutation of pension and after doing so, challenging the action of the respondents in recovering the pension already paid for the period during which he was treated to be in service, is incorrect.

Compassionate appointment for the ward was examined in terms of the Serial Circular No. 92/2006. The 1st applicant was referred to the L.V. Prasad Eye Hospital and he was directed to report to the Railway medical authorities to examine as to which medical category he would be fit into, to offer alternative post. The 1st applicant failed to do so and accordingly, respondents were forced to take action against him and penalty of compulsory retirement was imposed. However, in compliance with the order of the Tribunal, compulsory retirement has been modified into normal retirement. The 1st applicant has to have a minimum of 5 years of service left before medical de-categorization to consider compassionate

appointment to his ward. Applicant's normal date of retirement is 31.07.2013 and even if he is to be considered as medically de-categorised from the date of compulsory retirement i.e. 3.1.2011, he does not possess minimum left over service of 5 years as stipulated in Serial Circular No.92/2006. The 1st applicant has to report to the medical authorities to treat him as medically de-categorized from back date. As both the aspects contained in the Circular cited have not been satisfied, the question of granting compassionate appointment as sought does not arise.



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

7(I) This is a case where the applicant earlier approached the Tribunal in

OA No.1402/2013 with the following prayer:

“...to call for the records pertaining to order No. B/E.150/TRSO/II/5/DAR/V/11/09, dated 03.01.2011 and Memorandum issued vide letter No. SCR/P-BZA/425/LR.6/2011/06/Appeal, dated 28.09.2012 and the revision petition dated 30.11.2012 along with the medical record pertaining to the 1st applicant and the record pertaining to PPO No. 59948120394 dated 31.08.2012 and declare the action of the respondents in imposing the penalty of ‘compulsory retirement’ on the 1st applicant as ultra vires, illegal, null and void, unjust and is in violation of provisions and the law relating to the ‘The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1955’ and accordingly set aside and quash the penalty orders dated 03.01.2011 and 28.09.2012 with a direction to the respondents to declare that the 1st applicant is medically unfit to continue in the post of Assistant Loco Pilot w.e.f. 14.05.2008 and extend the benefit of instructions conveyed vide Serial Circular No. 92 of 2006 and to provide appointment to the son of the 1st applicant i.e. the 2nd applicant with all other consequential benefits by carrying out necessary revision to the above said PPO dated 31.08.2012 ...”

The Tribunal disposed of the OA directing as under:

“22. Thus, based on the facts stated above and the supreme judgments rendered by the Hon’ble Supreme Court quoted above, we in the Tribunal cannot conclude otherwise, than to accede to the prayer of the 1st applicant. Hence, the impugned order of the disciplinary authority dated 3.1.2011 and the order of the appellate authority dated 28.09.202 are set aside. Consequent to setting aside the impugned orders stated, the respondents are directed to consider as under:



i) To consider treating the period of absence of the 1st applicant for 399 days as if he was on sick list and the financial benefits payable for the said period may be processed;

ii) To consider and dispose the plea of the 1st applicant for compassionate appointment of his ward i.e. the 2nd applicant, if he is otherwise eligible in all respects as per Serial Circular No.92 of 2006, by subjecting the 1st applicant to medical examination as per rules and regulations on the subject;

iii) To consider the pension to be appropriately redrawn as if the 1st applicant were to be in service from the date of compulsory retirement till the date of superannuation. However, pay and allowances shall not be drawn for this period i.e. from the date of compulsory retirement till the date of superannuation.

23. OA is disposed of accordingly. No order as to costs. “

II. The respondents assert that they have implemented the order of the Tribunal and in the process, a sum of Rs.4,87,453/- was ordered to be recovered from the 1st applicant, as is evident from the communication of the State Bank of India (Annexure A-4). The order of the respondents in regard to recovery of pension paid to the 1st applicant for the interregnum period between compulsory retirement and normal retirement is in order. In reality, 1st applicant did not work for the interregnum period and therefore expecting any salary/wages for the said period is not envisioned in the rules. The pension of the 1st applicant has been increased by treating the interregnum period as being on sick leave. Therefore, to resolve the impasse respondents have treated it as sick leave and facilitated his normal retirement. By treating the retirement as normal, arrears of gratuity and commutation of pension have been accordingly worked out and paid. An

employee cannot be paid pension when he is considered to be in service. Therefore, the claim of the applicants that the recovery ordered is irregular is, unfounded. Action of the respondents is in accordance with the orders of the Tribunal. We find no error in this respect.



In respect of compassionate appointment, once the retirement is treated as normal, the hitherto disqualification on the ground that the 1st applicant was retired compulsorily would not apply. It has to be taken a fresh look in the context of the penalty having been modified from compulsory retirement to that of normal retirement. In fact, Tribunal order in OA 1402/2013 makes it clear that the relief should be granted to the applicants in terms of the Serial Circular No. 92/2006, wherein the General Manager of the South Central Railway has to take a decision. The relevant portion of the said Circular reads as under:

“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 [E[NG]II/98/RC-1/64 dated 28.07.2000 refers].”

Counsel for the respondents submitted that he has no instructions as to whether the order of the Tribunal was brought to the notice of the General Manager for taking a decision in the matter.

III. In view of the above, the General Manager, S.C. Railway i.e. the 1st respondent, is directed to consider grant of compassionate appointment in favour of the 2nd applicant, keeping in view the terms and conditions laid down in Serial Circular No. 92/2006 and in accordance with law by issuing

a speaking and reasoned order. Time granted to implement the direction is 3 months from the date of receipt of this order.

With the above direction, the OA is disposed of. No order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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