CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00664/2019

HYDERABAD, this the 31st day of December, 2020

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

1.G.S. Krishna S/o S. Ramesh,
Aged 56 years, Ex. Loco Pilot (Goods), Gr.'C',
O/o The Chief Crew Controller,
South Central Railway, Gooty,
R/o D.No.7/550, S.S. Palle Road,
Gooty-515 402, Anantpur Dt., A.P.

2.S.Ramesh S/o G.S.Krishna,
Aged 24 years ,
R/o D. No. 7/550, S.S.Palle Road,
Gooty-515 402, Anantpur Dt., A.P. ...Applicants

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

Vs.

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

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

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

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

5. The Divisional Personnel Officer / Co-ordination,
South Central Railway,
Guntakal Division, Guntakal. ....Respondents

(By Advocate : Mr. V. Vinod Kumar, Sr.CGSC)

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

Through Video Conferencing:

2. The OA is filed in regard to grant of compassionate appointment to the 2nd applicant.

3. Brief facts are that the 1st applicant while working as Loco Pilot (Goods) was found medically unfit for running trains and was found fit in A-1 and below categories vide proceedings dt. 31.7.2014 of Sr. Divisional Medical Officer vis-à-vis certificate dated 8.7.2014. Thereafter, 1st applicant sought voluntary retirement on 15.2.2016 and when there was no response, he re-represented on 1.11.2016 on the grounds of health and sought compassionate appointment to his son i.e. the 2nd applicant. Respondents conceded to the request of voluntary retirement w.e.f. 10.2.2018 and rejected the plea for Compassionate appointment for his son vide letter dated 25.3.2019. Therefore, the OA.

4. The contentions of the applicants are that rejection of compassionate appointment contravenes Section 47 of PWD Act and Railway Board circulars dated 14.6.2006 & 8.7.2014. Applicant was found fit for A-1 and below categories. The 3rd respondent, who is incompetent to decide the issue, rejected the request. Applicant had more than 5 years of service to retire and by retiring early, it has led to immense monetary loss coupled with losing promotions, which he would have gained had he continued in service. Similarly placed employees have been granted the relief. 2nd applicant has a right to be considered for compassionate appointment and more so, after the respondents collected all the requisite documents to

process the claim. Even the acceptance of voluntary retirement was delayed unduly. Applicants cited judgments of the superior judicial fora to support their contentions.

5. Respondents state in the reply statement that the applicant was found unfit to work as Loco Pilot but fit in A-1 category & below with NV glasses on 31.7.2014. 1st Applicant's request for voluntary retirement was accepted on 10.2.2018 with some delay due to administrative reasons. Compassionate appointment cannot be granted to the 2nd respondents as per Railway Board letters dated 29.4.1999 & 14.6.2006 since the applicant was medically de-categorised in the same category with change of duties. 1st Applicant was offered alternative appointment on 11.3.2015 as Sr. Technician but he did not join and therefore, a letter was issued on 8.6.2017 to join by 20.6.2017 and if not, salary would not be drawn against the supernumerary post against which he was working. However, by another letter dated 20.6.2017, the relief of the applicant was asked to be kept in abeyance as his request for VR was under process. Documents were collected to process the request for compassionate appointment of the 2nd applicant. 1st Applicant was allowed to continue in the supernumerary post till his voluntary retirement. The 3rd respondent has only communicated the decisions of the Railway Board and did not take any decision on his own. As observed by Hon'ble Supreme Court, compassionate appointment cannot be claimed as a matter of right.

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

7. I. Applicant was medically found unfit to work as Loco Pilot, but found in A-1 category on 31.7.2014 with NV glasses as admitted by the

respondents. In other words, the 1st applicant was having the adequate vision with the aid of glasses, but did not possess the physical parameters to work as Loco Pilot. Therefore, it has to be construed that he has been partially de-categorised. It is an undeniable fact that the 1st applicant because of the disability he suffered could not do his original job of Loco Pilot. Consequently, respondents accommodated the applicant against a supernumerary post till he went on VR on 10.2.2018. In respect of partially de-categorised employees, para 4 of the Railway Board letter dated 14.6.2006 states as under:

> *"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/ dependents of partially medically de-categorised staff who seeks voluntary retirement may be given subject to the following provisions:*
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> *(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 decategorised a time when they have at least 5 years or more service left.*
>
> *(c) CMD of the Railways should keep a watch over the trend of de-categorisation so that the present figure do not get inflated. CMD should also get 10% partially de-categorised cases re-examined by another Medical Board not belonging to Divisional Hospital which initially declared them unfit."*

1st Applicant had more than 5 years of service left to retire as is required to seek compassionate appointment to his ward. Therefore, based on the above order of the Railway Board, the 2nd applicant is entitled for compassionate appointment. The 3rd respondent has relied only on para 2 of the cited letter and ignored the para 4 relevant to the applicant.

II. The same issue and in particular para 4 cited supra, fell for consideration by the Hon'ble Ernakulam Bench in OA 16/12 which was allowed on 21.3.2013 and the same was upheld by the Hon'ble High court of Kerala in OP (CAT) No. 2424 of 2013 (Z). The observation of the Hon'ble High Court are reproduced here under:

> *"2. The employee was de-categorised to B1 level by visual standards and therefore, found unfit to work as Trackman by physical standard. He was noted to be fit only to do sedentary jobs. Accordingly, he was parked as against a supernumerary post for the last about eight years. On the strength of Railway Board's letter dated 14/6/2006, the applicability of which is not in dispute, the applicant sought intervention of the Tribunal to permit him to go on voluntary retirement and get his ward into service on compassionate grounds.*
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> *3. Having bestowed our anxious consideration to the clear terms of the letter of the Railway Board, which is Annexure – A4 to Ext. P1 original application filed before the Tribunal, we see that there is no illegality or jurisdictional infirmity in the Tribunal having concluded that the employee who was partially medically de-categorised is eligible to voluntary retirement and for compassionate appointment of his dependent ward in terms of the directions in the said letter of the Railway Board. The clear terms of paragraph 4 of that letter are to the aid of the employee before us and the Tribunal was fully justified in passing the impugned order. We, therefore, do not find any ground to interfere under Article 227 of the Constitution of India at the instance of the establishment.*
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> *In the result, this original petition is dismissed."*

Thus, the case on hand being an identical one, the issue has attained finality as the respondents have not produced any challenge to the said decision of the Hon'ble High Court and the outcome thereof.

III. On rejecting the request for compassionate appointment, applicant represented on 25.5.2019, stating that he was suffering from coronary artery disease with stunts implanted in his heart and hence, was unable to attend to work. Therefore, he sought voluntary retirement with a request to consider his son, the 2nd applicant, for compassionate appointment. The 1st applicant sought voluntary retirement way back on 15.2.2016 and reiterated the request on 1.11.2016 with a view to get his

ward appointed on compassionate grounds. However, after 2 years, the request for VR was considered on 10.2.2018 and not the compassionate appointment. Respondents collected the requisite documents for processing the compassionate appointment too. Thereafter, the 3rd respondent relying on para 2 of letter dated 14.6.2006 rejected the request, without considering para 4 of the same letter. The Tribunal does not agree with the contention of the applicants that the 3rd respondent is not competent to decide the issue. He did not decide the issue, but only relied on the Railway Board circular to reject the request. However, it is not explained as to why the respondents did not intimate the 1st applicant before his retirement that his ward would not be eligible for compassionate appointment if he were to be medically de-categorised in the same category. If the same was intimated earlier to the retirement of the 1st applicant, perhaps, he would not have gone on VR. The Tribunal is of the view that the respondents have made the mistake in not informing the 1st applicant when he represented on several occasions and for their mistake, the 1st applicant should not suffer as observed by the Hon'ble Supreme Court as under:

(i) *In **Union of India vs. Sadhana Khanna,** C.A. No. 8208/01, decided on 14.12.2007, it was held that the mistake of the department cannot recoiled on employees.*

(ii) *In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

(iii) *In **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

IV. Therefore, it was not fair on the part of the respondents to reject the request after his retirement. If we look from the economical angle, the additional 5 years of service left to retire, would have fetched the 1st applicant substantial money in the form of pay and allowances and the scope to grow in the career ladder was open to him. By denying the compassionate appointment, the 1st applicant has got an unfair deal, in all respects. Once the 1st applicant retires, his pension would be half of his pay and in case the 2nd applicant were to be considered for compassionate appointment, the take home pay of the family would be the same or less than what the 1st applicant would have got had he continued in service. Looking from the respondents angle, there is no additional financial burden.

V. Further, 1st applicant contended that for similarly placed employees, the benefit of compassionate appointment was extended. He gave specific instances of around 9 cases in his representation dated 25.5.2019 which was not denied by the respondents in the reply statement. Silence is acquiescence. Law is well settled that similarly placed employees have to be extended similar benefits as expounded by the Hon'ble Supreme Court as under:

Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of ***C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991),*** *wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."*

In a latter case of ***Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346,*** *the Apex Court has referred to the decision in the case of* ***State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747****, as under:*

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

Based, on the above judgments, 1st applicant cannot be discriminated by denying compassionate to his ward,

VI. Applicants cited the judgments of the Hon'ble Supreme Court, wherein, the observations made and reproduced hereunder are in favour of the applicant:

i) Bhawani Prasad Sonkar v. Union of India, (2011) 4 SCC 209

"14. Per contra, Mr. Ashok Bhan, learned counsel appearing on behalf of the respondents, contended that appellant's father, having opted for voluntary retirement in terms of the Railway Board's letter dated 18th January, 2000, could not seek appointment of his son on compassionate ground. Learned counsel urged that the appellant has not brought any material on record to substantiate his plea that his father was forced to retire.

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. "

ii) Kumal Singh v. Union of India, (2003) 4 SCC 524

"Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service. "

iii) Bhagwan Dass v. Punjab SEB, (2008) 1 SCC 579

"18. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job,

the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecable.

19. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country."

iv) ***Food Corporation of India v. Ram Kesh Yadav, (2007) 9 SCC 531***

"17. The question in this case is not whether the request of the respondents was contrary to the scheme. Nor is it the question, whether the scheme would be violated if the first respondent is appointed on compassionate grounds. The limited question is whether FCI, having accepted the offer and accepted performance of the offer by the second Respondent, can refuse to perform or comply with the condition subject to which such offer was made. The answer is obviously in the negative. Having accepted the offer, FCI cannot avoid performance of the condition subject to which the offer was made. As noticed earlier, nothing prevented FCI from rejecting the application of the employee outright, or inform the employee before accepting the offer of voluntary retirement that it could not accept the condition, so that the employee would have had the option to withdraw the offer itself.

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19. 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. Be that as it may."

In the context of the above observations, respondents need to reconsider the case of the 2nd applicant for compassionate appointment. Respondents did assert that the employee cannot seek compassionate appointment for his ward as a matter of right. The Tribunal, while agreeing with the respondents on this count, in the same vein, it must be stated that the right

of the 2nd applicant to be considered for compassionate appointment cannot be denied. The Railway Board letter dated 8.7.2014 provides the basis for considering compassionate appointment and it is in the spirit of this letter that the case on hand has to be processed. Respondents relied on circulars of the 1990s, which have mostly been superseded.

VII. In view of the above, the OA fully succeeds both from the perspective of rules and law. Consequently, the respondents are directed to consider the case of the 2nd applicant for compassionate appointment to the grade he is eligible as per rules and law, within a period of 3 months from the date receipt of this order.

VIII. With the above direction the OA is allowed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

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