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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1592/91

DATE OF DECISION: 29.1.92.

SHRI CHATUR MANI UNIYAL & ANR.

...APPLICANTS

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

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

HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI K.N. BAHUGUNA, COUNSEL

FOR THE RESPONDENTS

SHRI B.S. OBEROI, 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*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

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

January 29, 1992.

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FOR THE RESPONDENTS SHRI B.S. OBEROI, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri Chatur Mani Uniyal, applicant No.1 and Shri Sanjay Uniyal, applicant No.2 have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing the orders of the respondents dated January 1991 and 29.6.1991, whereby the representation of applicant No.1 to medically decategorise him and to employ his son applicant No.2 on compassionate basis has been rejected.

The grievances of the applicant No.1 is that he was not medically decategorised by the respondents inspite of his repeated representations. He applied for a medical board on 12.3.1985 for getting himself declared unfit for Railway service and to get his son appointed on compassionate grounds vide his representation dated 12.3.1985 but the respondents did not pay any heed and he was continued with the treatment for blindness.

2. When the case came up for hearing on 10.1.1992 we observed that the short question involved in the O.A. was whether the medical authority of the Railway had advised the applicant to undergo Cataract operation and the applicant

flouted such advice and kept on asking for medical decategorisation with a view to derive advantage flowing from the medical decategorisation in regard to compassionate appointment of his son. Accordingly, we directed the learned counsel for the respondents to produce the medical record of the applicant No.1 on 28.1.92 when the case was listed for final disposal at the admission stage itself.

3. The learned counsel for the respondents filed a photo copy of the out patient record of the eye specialist Northern Railway, Central Hospital. Dr. P.S. Negi was also present in court to assist us in deciphering the diagnosis written on the out patient record. A perusal of the out patient record shows that the applicant was suffering from Immature senile Cataract, Patches of old choroditic, marked Sclerotic changes in the fundus of left eye, some pigmented spots near the macula, no acceptance of glasses, Prognosis for vision guarded even after Cataract Ext. (DMO dated 24.12.88) The learned counsel for the respondents submitted that the vision of the applicant would have improved if he had got himself operated for cataract. Later the ADMO, Northern Railway, Health Unit, Tilak Bridge, New Delhi advised CSTE, S&T Branch, Baroda House that although the above diagnosis was made on 20.12.1988 it was decided not to operate upon him as he was due to retire on 31.7.89 and he was discharged from the hospital. On his representation for convening a medical board also the view taken by the Chief Hospital Superintendent was that as he was due to retire shortly and has sufficient leave at his credit "he may continue treatment till the last day of his retirement."

4. The learned counsel for the applicant, however, drew our attention to the medical papers filed by the applicants/ ^{from} the private hospitals stating that applicant's request for getting medically decategorised by convening a Medical Board was a genuine one. He further emphasized

that even the diagnosis of the Eye Specialist, Northern Railway, Central Hospital was that prognosis for return of vision is guarded even after surgery and, therefore, this was a fit case for medical decategorisation.

The learned counsel for the respondents, however, stated that there was clear advice to the applicant to undergo surgical operation to improve his vision. No Doctor would guarantee 100% restoration of the vision even after operation.

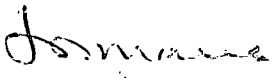
5. We have heard the learned counsel for both the parties and perused the record carefully. Admittedly, the applicant was suffering from immature senile cataract and prognosis for vision was guarded even after extraction of the cataract. Thus the case was not fit for operation but he had to be kept under observation to watch the deterioration of his vision. Immature cataract cases are not such as to impel straightway decategorisation. Cataract ordinarily takes a considerable time to reach the stage when it would be mature enough for extraction. The representation of the applicant, therefore, for immediate decategorisation when the cataract was immature and had not blinded him appears to be pre-mature. Further, the appointment on compassionate grounds are made of dependents of railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/decategorised. The circumstances under which the appointment on compassionate grounds may be made in respect of medically decategorised cases are reproduced hereunder:-

"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

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appointment is made." *

In the above conspectus of the case, we are of the view that the case of the applicant for medical decategorisation is not tenable nor his representation for compassionate appointment for his son, applicant No.2 sustainable, as it does not fall within the purview of the instructions of the respondents, as reproduced above. The O.A. is, therefore, dismissed, with no order as to costs.


(J.P. SHARMA)

MEMBER (J)


(I.K. RASGOTRA)

MEMBER(A)

'SKK'

January 29, 1992.

*Railway Board's letter No.E(NG)II/82/RC-1/48 dated 19.10.1982.