

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.DA-1638/92

Date of decision: 11.12.1992

Shri Kripal Singh Applicant

Versus

Union of India through
the General Manager,
Northern Railway & Anr. Respondents

For the Applicant Shri R.K. Kamal, Advocate

For the Respondents Shri H.K. Gangwani, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who has worked as a Driver (Goods)
in the Northern Railway, filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
praying for the following reliefs:-

- (i) To set aside and quash the impugned orders
dated 25.3.1991, 16.5.1991 and 2.8.1991;
- (ii) To direct the respondents to retire the
applicant from the date his due leave expired,
on the basis of average emoluments earned by

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him as Driver (Goods) with all consequential benefits;

(iii) to direct them to pay interest at the rate of 18 per cent on all the retirement final settlements due from the date due leave of the applicant expired; and

(iv) to direct them to appoint his son to a suitable post on compassionate grounds in accordance with the relevant rules and instructions.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The applicant, who was working as Driver (Goods), was medically decategorised for the post of Driver on 24.9.1990. At that time, he was drawing a monthly pay of Rs.1850/- in the scale of Rs.1350-2200.

3. Chapter XIII of the Indian Railway Establishment Manual contains detailed provisions regarding absorption of medically decategorised Railway staff in alternative jobs. After medical decategorisation, the employee is stopped from performing his duties. To enable the Railway Administration to find an equivalent job for him for absorption, he is granted the leave due which may be extended upto a period of maximum six months of extraordinary leave without pay. Alternative jobs to be offered in writing should conform to the condition

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that the post should be such which the employee can adequately fill up and where his background and experience could be utilised. The post should be such as conforms to the lower medical category the employee is declared fit. He should be offered an equivalent post.

4. Rule 1315 of the India Railway Establishment Manual provides that "the Railway servant is to be retired if one or more alternative employments are not accepted. A Railway servant who refuses to accept one or more offers of alternative appointment, will retire finally on the expiry of leave granted to him as stated in paragraph 1304 and should be paid all his dues forthwith".
5. In the instant case, after medical ^{de-} categorisation, the applicant was granted leave and offered a lower grade job of a school teacher in the scale of Rs.1270-2040 on 7.11.1990. He refused to accept the same by letter dated 12.11.1990. He requested for retirement and also prayed for appointment of his son, Shri Narender Kumar, on compassionate grounds. According to the Railway Board's instructions dated 3.9.1983, request for compassionate appointment is to be considered by the competent authority. The Railway Board had further clarified in their letter dated 28.9.1983 that the consideration for appointment on compassionate grounds, would apply to cases where on being medically decategorised, an employee is offered

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alternative appointment on the same emoluments, but he does not accept the same and chooses to retire from service.

6. On 16.1.1991, the respondents again offered to the applicant a lower grade job of Shedman instead of retiring him from service. He did not accept this offer and repeated his request for retirement and consideration for appointment of his son on compassionate grounds.

7. The respondents again offered to the applicant the job of Assistant Superintendent in the scale of Rs.1600-2660 for which he was unsuitable due to his lower educational qualifications and lack of office experience.

8. The applicant again expressed his inability to accept the above offer as being incompatible with his qualifications and experience and again reiterated his request for retirement.

9. On 16.5.1991, the respondents rejected his request on the ground that if he wanted to retire, he might submit his unconditional request for the same. He made a representation on 19.6.1991 against the impugned order dated 16.5.1991 which was also rejected by the respondents by their letter dated 2.8.1991.

10. The applicant has submitted that the respondents have granted reliefs in the case of Shri Shiv Narain and

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Shri K.D. Bhagi, who were also medically decategorised employees. They were allowed to retire from service and their sons were given compassionate appointments.

11. The respondents have contended that the request made by the applicant for appointment of his son on compassionate grounds, is not covered under the rules. According to them, he has not submitted an unconditional request for retirement.

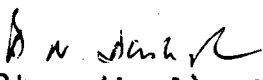
12. In our opinion, the applicant is entitled to seek voluntary retirement on his medical decategorisation, in case he refuses to accept the offers of alternative appointment made to him. The fact that he had also sought for appointment of his son on compassionate grounds, would not make the request for retirement conditional. A Railway employee in such a situation, is also entitled to request the respondents to consider engaging his son in a suitable job on compassionate grounds. The fact that he mentioned his retirement as well as appointment of his son on compassionate grounds in the same letter, will not make the request for retirement a conditional one. It is, however, for the respondents to take a decision as to whether in the facts and circumstances of the case, the son of the applicant could be appointed on compassionate grounds.

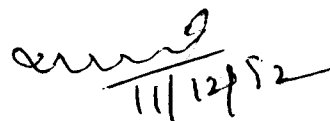
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13. In the conspectus of the facts and circumstances of the case, we are of the opinion that the applicant is entitled to the reliefs sought in the present application. We, therefore, set aside and quash the impugned orders dated 25.3.1991, 16.5.1991, and 2.8.1991. The respondents are directed to retire the applicant from the date the due leave expired. His pension and other retirement benefits should be calculated on the basis of the average emoluments earned by him in the post of Driver (Goods). The respondents are also directed to pay interest at the rate of 12 per cent ^{per annum} on the arrears of pension and other retirement benefits from the due date to the date of payment.
14. The respondents are also directed to consider the question of appointment of the son of the applicant in a suitable post on compassionate grounds in accordance with the relevant rules and instructions on the subject.
15. The respondents shall comply with the above directions expeditiously and preferably, within a period of three months from the date of receipt of this order. There will be no order as to costs.


(B.N. Dhoundiyal) 11/12/92
Administrative Member


11/12/92
(P.K. Kartha)
Vice-Chairman (Judl.)