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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No. 308 of 1993 Decided on: 5-3-97

Shri Johri and AnotherApplicant(s)

(By Shri B.S. Mainee _____ Advocate)

Versus

U.O.i. & AnotherRespondent(s)

(By Shri K.K. Patel _____ Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *yes* or not?
2. Whether to be circulated to the other Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 308 of 1993

New Delhi this the 5 day of March, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Johri
S/o Shri Nanak Chand,
Retired Boiler Maker,
Northern Railway,
Jind (Haryana).
2. Shri Kishan Singh
S/o Shri Johri
Eveready Dry Cleaners,
Railway Road,
Patiala Chowk,
Jind (Haryana).
...Applicants

By Advocate Shri B.S. Maine

Versus

Union of India: Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
New Delhi.
...Respondents

By Advocate Shri K.K. Patel

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This is the second round of litigation by the applicant No.1 (hereinafter referred to as applicant), who is aggrieved by the impugned order dated 21.10.1992 of the respondents denying offer of appointment to

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the applicant's son on compassionate grounds. The applicant was informed by the respondents' letter dated 3.4.1987, Annexure A-4 that on the basis of the suitability test held on 31.3.1987, the applicant was not found fit to be absorbed against the equivalent grade of Rs.380-560 in an alternate job and, therefore, it had been decided to retire him from service on medical grounds and to process the case for appointment of his son and he was asked to give his willingness for the same. The applicant, however, retired on superannuation on 31.5.1987. He filed O.A. No. 193 of 1991 which was disposed of with the direction to the respondents to consider that the applicant's case which deserved to be considered favourably for appointment of his son, in the respondents department, for which he may be considered eligible and suitable. Thereafter, the applicant filed a Contempt Petition CCP No. 281 of 1992. The Tribunal disposing the Contempt Petition observed as follows:-

"A reading of the entire judgment does not give the impression that the Tribunal held that the petitioner's son was entitled to be appointed on compassionate grounds under the Rules. A decision in this behalf was required to be taken by the authorities. In equity, what the Tribunal has observed is that the case should be considered favourably in the light of clause-4 of rule-4 and the commitment contained in Annexure A-4. If after the directions in the judgment, the authorities say that they are not satisfied that the petitioner's son fulfils the required conditions, it is not possible to take the view that the action of the respondents amounts to violation of the judgment of the Tribunal. If Shri Sawhney is right in his contention it would lead us to the inference that the action taken by the respondents in denying

the right for compassionate appointment to the petitioner's son is not in accordance with law. This is not a matter which we can examine in these Contempt of Courts proceedings. We leave this matter to be agitated by the petitioner in the appropriate proceedings. Reserving the liberty, as aforesaid, we drop these proceedings. No costs".

Following this, the applicant has filed this present application wherein he has impugned the orders of the respondents dated 29.10.1992.

2. Despite notice and several opportunities, the respondents did not file any reply. After admission of this case, the matter was taken up for hearing on the basis of the pleadings available on record. Accordingly, I have heard the learned counsel for the parties and also perused the pleadings in the O.A.

3. The facts are as follows:

The applicant was working as H.S.Boiler Maker under the Loco Foreman, Jind. He was examined by a Medical Board on 8.9.1986 and by the report of the Divisional Hospital, he was recommended for sedentary job for six months. The findings of the Medical Board were as follows:-

" The employee is a case of cerebral spondolysis with (R).....All other investigations are within normal limits . In view of this general condition and nature of work, he was recommended for sedentary job for six months and should be reviewed thereafter."

The applicant was due to retire on 31.5.1987. On 3.4.1987, he was informed by the respondents letter

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of that date and with reference to the suitability test held, he was not found fit to be absorbed in an equivalent grade and, therefore, the Committee Officers had decided him to retire from service on medical grounds and to process the case of appointment of his son and he was asked to give his willingness. The applicant had given his willingness by his letter dated 10.4.1987. The applicant contends that he was never allowed to rejoin after declaring him fit for resuming his original job and he continued to remain as an indoor patient in the Central Hospital till he was declared to have retired on 31.5.1987. The applicant's case is that the respondents in pursuance of the original offer did not process the case of compassionate appointment of his son, but delayed the matter till his retirement, i.e., 31.5.1987.

4. From the perusal of the record and the correspondence, there is no evidence to suggest that the applicant was declared fit for resuming his original job after the said period of six months. He was, however, recommended for sedentary job for 15 days more by the ADMO, Jind (Haryana) In-charge, Annexure-8 and by the order dated 25.5.1987, the Assistant Personnel Officer directed that he may be put to work as Helper to Boiler Maker Chargeman, a sedentary job upto 31.3.1987, as recommended by MS/Delhi. The averment of the applicant that he was never declared fit for resumption of his old job and that he was all along indoor patient in the Central Hospital till his

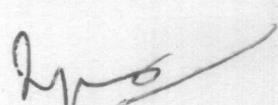
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retirement has not been contested. The applicant contends that there was no such job as Helper to Boiler Maker Chargeman to which he was recommended as late as 25.5.1987 when he was due to retire on 31.5.1987. This position is evident from the impugned order itself and the respondents have concluded that since he had retired on superannuation, it would not be possible for the respondents to offer appointment to his son on compassionate grounds under the existing rules. As the applicant was clearly told by the letter dated 3.4.1987 that it was decided to retire him from service on medical grounds and that appointment of his son would be processed, there does not seem to be any ~~ostensible~~ ground for the respondents to resile from this position without subjecting him to a proper medical test. The basis on which the decision was taken to retire him from service on medical grounds is not on record. On the same fact that such a decision was taken by Committee of Officers, is not denied. In fact, this has also been mentioned in the judgment in the previous O.A. itself. The learned counsel for the applicant has rightly contended that once the respondents decided to medically retire him from service and also agreed to process the case of appointment of his son, they are estopped from ~~resiling~~ ^{from} their decision and the impugned order violates the principles of promissory estoppel. By the earlier decision of the respondents which gives a clear indication that it has been decided to retire him from service on

medical grounds with the indicated action to process the case of appointment of his son, it cannot be denied that the respondents had given adequate grounds for in the applicant to believe/a bona fide manner that the respondents would abide by their decision. In any case, the applicant was not declared fit to resume his original job. Although the recommendation of the Medical Board which examined him originally on 24.10.1986 that he had to be recommended for sedentary job, in view of his condition, no action was taken till 25.5.1987, i.e., just a few days before his retirement to place him on a lighter job ie.sedentary job. In any case, he was already informed that he was not found fit for absorption against the equivalent post also. In the light of this position, the action of the respondents in rejecting the consideration for appointment of the son of the applicant, cannot be sustained.

5. In the facts and circumstances of the case, the respondents are directed to consider the appointment of the applicant's son in a suitable job subject to his being found otherwise eligible for such appointment.

6. The application is disposed of with the above directions. There shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)