

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A.No.802/93

Date of decision: 18.8.93

Shri B.C. Sharma

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Applicant

versus

Union of India & Ors.

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Respondents

CORAM:

Hon'ble Shri C.J. Roy, Member (J)

Shri R.K. Kamal, Counsel for the applicant

Shri K.K.Patel, Counsel for the respondents

JUDGEMENT(ORAL)

Heard both the counsel. The ld. counsel for the respondents has given a copy of the counter across the Bench which is taken on the file. A copy of it is also given to the other side. Alongwith the counter, a copy of judgement in OA 1838/92 rendered on 11.12.92 is also filed.

The applicant in this case, filed under Section 19 of the CAT Act, working as Guard "C" was medically decategorised on 26.12.91. Actually he was to retire on 31.8.1993. The instructions dealing with medically decategorised staff on railways framed by the Rly. Board are given as under:

i) Pending offer of alternative job to the medically decategorised staff, he can be granted extraordinary leave without pay upto six months.

ii) The Railway servant is to be retired if one or more alternative employments are not accepted by the medically decategorised staff and has to be paid all his dues forthwith.

iii) Instructions dated 24.5.82 and 27.12.83 issued by the Railway Board provide for consideration of appointment of a family member of the staff on compassionate grounds by General Manager, if the medically decategorised staff has less than 3 years to superannuate.

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The applicant further alleges that after decategorisation and after exhausting his leave due, he was ^htrust ^hupon to remain on extraordinary leave without pay. Subsequently he was offered the job of Senior Clerk in the scale of Rs.1200-2040 but this was not accepted by the applicant, which is at Annexure 7. But he prayed for his retirement and appointment on his son, who is a matriculate, on compassionate ground.

With this allegation, the applicant has prayed for the following relief in his OA:

- 1) To set aside and quash the impugned orders dated 28.9.92, 11.8.92 and 8.1.92;
- 2) To direct the respondents to retire the applicant from the date his due leave with pay expired, on the basis of emoluments as calculated for running staff for the post Guard C with all consequential benefits.
- 3) To direct the respondents to appoint his son to a suitable Group C posts on compassionate ground.
- 4) To direct the respondents to pay interest of 18% per annum on all retirement final settlement dues from the date of his refusal or alternative employment.

In Q.2 of the applicant, he has asked for other relief, which, across the Bench, the learned counsel ^{has} ~~is~~ not pressing for it.

Annexure A-5 is the Rules position where it is stated at 1315 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

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finally on the expiry of leave granted to him as stated in paragraph 1304 and should be paid all his dues forthwith".

The applicant claims that since he is not agreeable to accept the post offered to him, he should be paid all his dues forthwith according to the above said Rules.

The respondents have filed their counter reply. In their reply they have stated that they are willing to pay the dues to the applicant but he has not approached them for this issue. The other points are not germane to the case, so they are not considered.

On going through the judgement filed by the respondents in OA 1022/92 decided on 11.12.92, the Hon'ble Tribunal has held as follows:

"12. 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 25.3.91, 16.5.91 and 2.8.91. 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. 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."

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As I have considered that this is similar case, following the reasoning in that judgement, the same direction as given in that judgement are given in this case also. Therefore I hold that the applicant is entitled to the relief claimed by him, except in 8.2, as the learned counsel has not pressed for the same. I, therefore, quash and set aside the impugned orders at Annexure A-1, A-2 and A-3. The respondents are directed to retire the applicant from the due date on full pay. Pension and other retiral benefits should be calculated on the basis of average emoluments earned by him in the post of Guard C. The Respondents are also directed to pay interest at the rate of 12% per annum on the arrears of pension and other retiral benefits from the due date till the date of payment.

The respondents are also directed to consider the case of son of the applicant for appointment on compassionate ground in accordance with the rules and instructions.

The above said exercise and all directions shall be complied with by the respondents for implementation within three months from the date of receipt of the judgement.

The application is thus disposed of with no order as to costs.

[Signature]
(C. J. ROY)
Member (J)
18.8.93