

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 56 of 1996

Allahabad this the 9th day of Feb. 1999

Hon'ble Mr. S.L. Jain, Member (J)

1. Kunwar Singh, Son of Shri Phool Singh, R/o H.No.1/31, Pratapura, Nagra, Jhansi.
2. Mahendra Singh S/o Shri Kunwar Singh, R/o H.No.1/31, Pratap-pura, Nagra, Jhansi.

Applicants

By Advocate Sri Rakesh Verma

Versus

1. The Union of India through the General Manager, Central Railway, Bombay V.T.
2. The Divisional Railway Manager, Central Railway, Jhansi(U.P.)

Respondents

By Advocate Shri A.K. Gaur

ORDER

BY Hon'ble Mr. S.L. Jain, Member (J)

This is an application under section 19 of the Administrative Tribunals Act, 1985 for a direction to consider the request of the applicant no.1 for appointment of applicant no.2 in railways on compassionate ground and to offer appointment to him w.e.f. the date, the applicant no.1 made such a request or from any other date as may deem fit.

2. There is no dispute between the parties in respect of the fact that the applicant no.1 retired from railways on 11.6.1993 on medical grounds when he was working as Fitter Grade II in A.C.Shed of Central Railway at Jhansi. The applicant made an application on 10/5/93 for appointment of his son-applicant no.2 on compassionate grounds in the railways, another application on 08.6.94, September, 1994, 24.10.1994, 31.10.1994, 25.11.1994, 26.12.1994 but his request was not acceded by the respondents. Even notice dated 16.8.95 was not replied too.

3. The applicant's case in brief is that according to the date of birth of the applicant no.1, the age of retirement being 58 years, superannuation was on 31.12.1997. He was to retire at least after 4 years. He suffered injuries on 30.3.91 on duty, admitted in hospital at Jhansi on the same date and was later on sent to Central Railway Hospital at Byculla, Bombay for treatment and later, he was treated at Railway Hospital, Jhansi. He was declared unfit. The son of the applicant no.1-Lakhan Singh is working in the railways for last 15 years and is living separately having nothing to do with his family since the inception of the employment. The other son - applicant no.2 and wife of applicant no.1 and the members, of who were dependant on applicant no.1. There is no one in the family to act as bread winner of the family. The applicant no.2 will act as bread winner of the family. Hence, this O.A. with the afore-said reliefs.

4. That respondents have denied the said allegations and stated that the date of birth of the applicant according to the service record is 18.12.1936, he was to be superannuated on 31.12.1994 and not on 31.12.1997. The applicant no.1 was ^{not} injured on duty, remained absent since 13.3.91, his case for compensation is pending before the Labour Court, Jhansi numbered 01/96. The applicant no.1 has received settlement dues and getting pension at the rate of Rs.650/- plus D.A. admissible as per rules. The applicant no.1 was medically unfit for all categories. Hence, respondents prayed for dismissal of the O.A. along with cost.

5. The learned counsel for the applicant relied on Master Circular on appointment on compassionate grounds dated 12.12.1990 specifically on para-I(v) which is as under ;

"I(v) . Where, on being medically decategorised, a ^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 appointment is made."

6. On perusal of the same, I find that a railway employee who is medically decategorised is offered alternative employment on the same emoluments and chooses to retire, request for compassionate appointment on the four essential conditions to apply the same. The applicant is able to satisfy only one condition, medically decategorised, rest of the

conditions namely-offered alternative employment on the same emoluments, choses to retire, ~~request for~~ ~~compassionate appointment~~ are not satisfied by him.

7. As he was medically decategorised for all purposes, there was no right ^{available} acceded in his favour for seeking alternative employment on the same emoluments. Hence, question of his selection to retire and request for compassionate appointment did not arise.

8. Learned counsel for the respondents relied on the same Master Circular Para-I(iv) which is as under;

"When Railway employees become crippled while in service or develop serious ailments like heart disease, cancer, etc. or otherwise medically decategorised for the job they are holding and no alternative job of the same emoluments can be offered to them."

9. On perusal of the same, I find that it is the inability of the employer in offering the job to the decategorised employee which gives a right to the employee for seeking compassionate appointment.

10. The case in hand is neither a case of inability of the employer in offering the appointment, nor applicant no.1 was entitled for any alternative employment as he was medically decategorised for all purposes, hence, Master Circular Clause I(iv) (v) do not apply to the present case.

11. I do not find any other provision which

entitles applicant no.2 to seek compassionate appointment and no other provision has been argued before me.

12. Regarding date of birth of applicant no.1 there is a dispute between the parties. It must have been proper to place the service record before the Bench. On perusal of R.A., I do not find the fact that the retirement was due on 31.12.1994, is challenged. On the other hand, it is stated that "his due retirement was 31.12.1994 as recorded by the railways without making any dispute with regard to his date of birth at this stage." Thus, the applicant no.1 has not come to the Tribunal with clean hands. The respondents have rejected the claim regarding compassionate appointment and I do not find any reason to interfere in the same.

13. In the result, O.A. is liable to be dismissed and is dismissed accordingly. As the applicants have not come with clean hands, it is a fit case to order the applicant to pay cost to the respondents, amounting to Rs.650/- (legal practitioner fee Rs.500/- plus other expenses Rs.150/-) within one month of the service of the order.

Al. D. M.
Member (J)

/M.M./