

(19) OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.836/1997

TUESDAY, THIS THE 28TH DAY OF JANUARY, 2003

HON'BLE MRS. MEERA CHHIBBER .. MEMBER (J)

Peeranmal,
S/o Tika Ram,
Working as Diesel Driver,
under Loco Foreman,
Northern Railway, Tundla,
C/o Murari Lal AYM,
121 J, Green Shep,
Rest Camp Rly Colony,
Tundla, Dist. Firozabad.

... APPLICANT

(By Advocate Shri Pankaj Barman)

Versus

1. Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway Division,
Allahabad.

... RESPONDENTS

(By Advocate Shri A.K. Pandey)

O R D E R

By this O.A., the applicant has sought a direction
to the respondents to issue an order of appointment in favour
of the applicant's son on compassionate grounds.

2. It is submitted by the applicant that he was
working as Diesel Driver under Loco Foreman at Tundla,
Railway Station within Firozabad, Northern Railway. He was
declared medically unfit for any kind of duty by the certificate

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dated 5.6.1990 issued by Safdarjung Hospital, New Delhi, where he was referred to undertake treatment on reference of Northern Railway Hospital, Tundla (Annexure-A1).

Subsequently, on 27.7.1990, another certificate was issued by Central Hospital, Northern Railway, as well, that applicant was not fit for running duty. Therefore, it is submitted by the applicant that his son is entitled to be given appointment on compassionate grounds, as he was declared unfit for duties. Accordingly, the applicant gave a representation on 31.7.1990 to the Divisional Railway Manager, Northern Railway, but, since the respondents have not given any reply, he has no other option but to file the present O.A.

3. The O.A. is opposed by the respondents who have stated that the applicant was never declared medically unfit for all classes by the Railway Doctors in terms of Railway Board's instructions dated 27.6.1990. Medical examination for invalidation on medical grounds of the Railway employees is to be conducted by the proper Board of Medical Officers and a decision of the same has to be taken by the General Manager on the expert advise of Chief Medical Director, if the individual is due to retire within the same year (Annexure-1). They have submitted that applicant was not declared medically unfit for all classes but was only an Railway sick with effect from 2.4.1990 to 31.7.1990 and retired with effect.

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from 31.7.1990 on attaining the age of superannuation.

Therefore, in case of superannuation, there is no provision for providing compassionate appointment to the sons and daughters of the employee. They have further submitted that the representation as annexed as Annexure-A2 with the O.A. was never received in the office and they received only two representations dated 17.2.1997 and 4.6.1997, which were duly replied to vide their letters dated 22.4.1997 and 26.9.97 stating therein clearly that his father was not declared medically unfit for all classes, as such, there is no provision for granting compassionate appointment to the son (Annexures-4 and 5).

4. Heard both the counsel and perused the pleadings as well.

5. Even though the applicant has stated that he was declared medically unfit for any kind of duty by Safdarjung Hospital as well as by Central Hospital, Northern Railway, the applicant has not annexed either any letter with his application to show that he was referred by the Tundla Hospital ⁸ to the Safdarjung Hospital ~~nor~~ the certificate which is alleged to have been issued by the Central Hospital, Northern Railway, New Delhi. He has only annexed one certificate from the Safdarjung Hospital, which too states as follows:

...4..

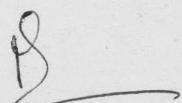


" TO WHOM IT MAY CONCERN

Certified that Peeran Mal 50 yrs.,
Male, MRD No.247759 is suffering
from Ac. Myocardial infection & RBBB
and he is unfit for duty.

Sd/-
Medical Officer,
Safdarjung Hospital
New Delhi."

This certificate neither gives any reference number nor is
addressed to Railway authorities, but, is a certificate issued
in normal course with the heading TO WHOM IT MAY CONCERN,
which clearly shows that this cannot be the opinion on a
case referred to by the Railway Hospital, as is alleged by
the applicant because in that case, there would have been
reference to the letter issued by the Railway authorities and
it would have been addressed to the Railway authorities as well.
The applicant has not annexed as stated above, any letter to
show that his case was referred by the Railway Hospital.
Therefore, in my considered view, no reliance can be placed
on this certificate. In any case, this certificate also does
not show that the applicant was totally incapacitated as it
only states that he is unfit for duty. This could be for some
temporary period as well. Apart from it, no other certificate
has been annexed by the applicant, whereas, the respondents
have annexed Annexure-CA-2, to show that the applicant was
only on Railway sick from 2.4.1990 to 31.7.1990. Being sick
and medically unfit to perform any duties are two totally
independent and different aspects. Simply because a person



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is sick, he cannot claim that he was medically incapacitated to perform any duties. Moreover, Annexure-CA-3, shows that he was superannuated in normal course on attaining the age of superannuation and was not retired due to medical grounds.

6. As far as applicant's grievance that respondents have not considered his application for compassionate appointment is concerned, that is also not sustainable in law, because, the respondents have annexed CA-4 read with CA-5 to show that they had already rejected the claim of applicant as back as on 22.4.1997. The present O.A. was filed on 21.4.1997 and notices were issued in the O.A. for the first time on 12.8.1997. If the applicant was aggrieved by this order, it was open to him to challenge the said order by amending his O.A. But no such effort was made by him. Accordingly there is no merit in the O.A. and even otherwise, the applicant has sought a direction to the respondents to issue an order of appointment in favour of applicant's son on compassionate grounds. The Hon'ble Supreme Court has repeatedly held that Courts cannot issue an order to give appointment to any individual and even in the best of the cases, they can only remit the matter back to the authorities for reconsideration. In the present case,



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the respondents have already considered the case of the applicant and have rejected the case on valid grounds.

Therefore, I do not find any ground to interfere in the case.

7. The O.A. is accordingly dismissed with no order as to costs.



MEMBER (J)

ppp.