

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 12th day of April, 2002.

Original Application No.598 of 2001.

CORAM :-

Hon'ble Mrs. Meera Chhibber, J.M.

1. Syed Zamir Abbas
Son of Shri Syed Anwar Ali,
Resident of 183/2, Darigaran,
Jhansi.
2. Syed Akhtar Abbas Abdi,
Son of Shri Syed Zamir Abbas,
Resident of 183/2, Darigaran,
Jhansi.

(Sri RK Nigam, Advocate)

. Applicants

Versus

1. Union of India through
General Manager, Central Railway,
Mumbai CST.
2. Chief Workshop Manager,
Central Railway Workshop,
Jhansi.

(Sri KP Singh, Advocate)

. Respondents

ORDER

By Hon'ble Mrs. Meera Chhibber, J.M.

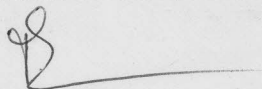
In this OA the applicant is seeking the following relief(s) (a) to declare that petitioner no.1 is entitled for medical decategorisation and and benefit of compassionate appointment to his son the petitioner no.2 on compassionate grounds in any Class IV Grade 'D' Category in any unit of the Railways.

2. The petitioner's case is that while working as Fitter Grade II (Wagon Repair) the applicant developed severe arthritis as a result of which he had to be under

42

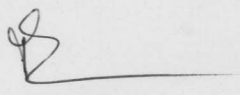
treatment from 13-11-1998 to 24-3-1998 and subsequently the special medical board declared him unfit in C-I Category. Due to decategorisation the applicant was offered an alternative job in the Progress Department on 12-7-1999 but since the applicant was totally confined to bed he refused to join the sendantry job on the ground that due to his low 4F on he is not able to perform the duties. Therefore, after settling his case let his dues be cleared so that he may spend rest of his life peacefully. The applicant states that he was forced to take voluntary retirement as he was totally bed ridden and had been requesting the authorities to send him before medical board for decategorisation but since he was not being referred to medical board for decategorisation and the respondents had threatened to initiate disciplinary action against him he was forced to ask for voluntary retirement. Therefore, looking at the circumstances this may be declared as Voluntarily retired due to decategorisation and accordingly his son's case may be considered for compassionate appointment.

3. The respondents on the other hand have contested the claim of the applicant and have invited our attention to the applicant's letter itself to show that there is no mention about his medical illness etc. at all but he had simply sought voluntary retirement by giving a notice of three months (refers to Annexure-CA-II). This notice of voluntary retirement was dated 6-11-2000 which was accepted by the administration on 04-7-2001 w.e.f. 6-2-2001 (Annexure-XVIII to the OA). They have further stated that after the applicant was decategorised he was called for suitable job but he never presented himself for further duties in the office and gave his unwillingness for the alternate job vide his letter dated 14-7-1999 (Annexure-CA-III) whereby the applicant

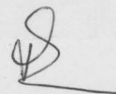


was directed to appear in office for performing duties on supervisory post but he never appeared. Thus, they state that both the claims made by the respondents are untenable in law as decategorisation is to be done by the medical board and the Board had already declared him fit for alternate job which was provided to him but instead of joining that he opted for voluntary retirement on his own. Thus the applicant cannot have any grievance now more so because he stood retired w.e.f. 6-2-2001 whereas the OA has been filed only on 4-5-2001 i.e. after his retirement.

4. We have carefully perused the pleadings as well as various Annexures and agree with the respondents' counsel that the applicant cannot be granted relief as claimed by him because once the applicant was declared to be medically fit for alternative appointment by the medical board on the basis of which the department did offer him alternative job also for the applicant on supervisory post in accordance with rules the applicant should have accepted the same and then made a request for remedial in case he felt he was totally incapacitated or should have approached the Court at that stage making out a case for seeking a direction to refer his case for the medical board for decategorisation or seeking voluntary retirement on medical grounds, but instead of doing that he had on own given notice for voluntary retirement which was accepted by the authority. Therefore, he stood retired w.e.f. 6-2-2001 and after his retirement he cannot now seek the relief from the Court to declare that applicant no.1 is entitled for medical decategorisation. That state is over. Therefore, the OA to that extent is totally untenable and liable to be dismissed. Therefore, the relief for declaring him entitled to medical decategorisation is rejected. However, we find



that the applicant had already given an application as back as on 29-9-1999 (Annexure-VIII to the OA) stating therein that he feels that he is not fit to perform his duties due to his failing health and had requested to consider his son for compassionate appointment. It seems that the authorities have not considered his request with regard to his request for compassionate appointment to his son. Therefore, we would direct the respondents to consider his request for compassionate appointment to the son and pass suitable reasoned order in accordance with law within three months from the date of receipt of the copy of the order. With the above directions the OA is disposed of. There shall be no order as to costs.



Member (J)

Dube/