

RESERVED:

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 30TH DAY OF AUGUST, 2006
Original Application No. 104 OF 2004**

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.

Manoj Kumar Pandey, a/a 25 years
S/op Shri Kailash Nath Pandey
R/o Jaswan, tehsil Handia district
Allahabad.

.. Applicant

(By Adv: Shri K.P. Singh)

Versus

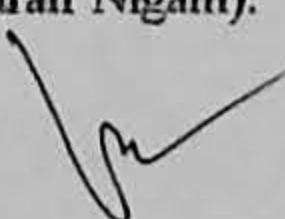
1. Union of India through the
Secretary, Ministry of Information
and Broadcasting,
New Delhi.
2. Director general Akashwani,
Akashwani Bhawan,
Sansad marg,
New Delhi.
3. Station Director,
Prasar Bharti, Bharti Bhawan,
Prasaran Nigam,
Allahabad.
4. Station Engineer,
Prasar Bharti, Bharti Bhawan
Prasaran nigam,
Allahabad.
5. Administrative Officer,
Prasar Bharti, Bharti Bhawan
Prasaran Nigam,
Allahabad. .. Respondents.

(By Adv: Shri Saumitra Singh)

ORDER

BY JUSTICE KHEM KARAN,V.C.

Applicant's father, Shri Kailash Nath Pandey was Junior Clerk in the office of
Akashwani, Allahabad (now Prasar Bharti Prasaran Nigam). As he was having



some mental ailment so he gave a letter dated 2.7.1996 (Annexure 2) expressing his desire to retire on medical grounds. It transpires from perusal of averments made in para 4.5 to 4.10 of OA and also from perusal of (Annexure III to Annexure VII) that the authorities got the applicant's father medically examined with, a view to ascertain the nature of the ailment and on being satisfied that he was no more in a position to perform his duties, issued an order dated 4.4.1997 (Annexure 8) retiring him w.e.f. 3.10.1996 under Rule 56 of the Fundamental rules. Soon there after Smt. Amrita devi Pandey mother of the applicant sent a letter dated 2.5.1997 to the Station Engineer requesting him to give compassionate appointment to either of his six sons. It transpires from the averments made in para 4.12 to para 4.21 of OA and the annexures referred there in, that the authorities did some exercise by getting the formalities fulfilled, proforma filled in referring the matter to the Director General, New Delhi for necessary orders. It appears that mother of the applicant named the present applicant as one of the sons to whom such compassionate appointment was to be given. It was vide letter dated 13.12.2003(Annexure A1) that the applicant informed that no such appointment was possible, as his father sought voluntary retirement under Rule 56 of the Fundamental Rules. It is this letter which is being impugned in this OA with a further prayer that the respondents be directed to treat the retirement of the applicant's father under Rule 38 of CCS(Pension) Rules, 1972 and to consider the appointment of the applicant on compassionate ground.

In their reply the respondents have tried to say that Rule 38 of the Rules of 1972 was not attracted in the case in hand, because retirement of applicant's father was not under those rules but under Rule 56 of the Fundamental Rules. It has also been said that after taking the additional benefit of service on account of voluntary retirement under Rule 56 and after taking other retiral benefits, it was not open to the applicant to seek compassionate appointment on the ground that retirement of his father was under Rule 38 of the Rules of 1972.

I have heard Shri K.P. Singh appearing for the applicant and Shri Saumitra Singh appearing for the respondents. Shri K.P. Singh has also given written argument.

Shri K.P. Singh has contended that for voluntary retirement under Rule 56 of the Fundamental Rules no ground was required to be shown or proved by the employee concerned and the only condition prescribed in the relevant rule was that he completed a particular service and had given the requisite notice. The learned counsel want to say that in case of voluntary retirement under Fundamental Rule 56., the authorities were not under a statutory duty to get the applicant's father medically examined by different doctors including expert in the mental disease so as to satisfy themselves about the existence or magnitude of the ailment. He says that the exercise undertaken by the respondents pursuant to the letter dated 2.7.1996 of the applicant's father was not in terms of Fundamental Rules 56 but was in terms of Rule 38 of the Rules of 1972 and therefore this retirement was for all legal purposes the retirement on medical ground under Rule 38 of the Rules of 1972 and the authorities committed error by mentioning it under Rule 56. Shri Saumitra Singh has tried to meet this argument by saying that once the father of the applicant and the members of the family accepted that the retirement was under Rule 56 of the Fundamental Rules as mentioned in the Office order dated 4.4.1997 and once father of the applicant got additional benefit of the service as provided in the case of voluntary retirement under Rule 56, it was now not open to them to turn around and try to say that it was under Rule 38 of the Rules of 1972.

After considering the respective submissions in the light of the Rule 56 (k) (i) of the Fundamental Rules and Rule 38 of the Rules of 1972, I am of the view that there is sufficient force in the submission of Shri K.P. Singh. The reason is that for accepting voluntary retirement under Rule 56 (k) (i) of Fundamental Rules, there was no requirement to get the applicant's father medically examined so as to ascertain whether he was mentally fit to discharge his duties. In other words, the authorities were not required to satisfy themselves about the genuineness of the ground for voluntary retirement. They had to see whether the applicant's father had put in required service or required age on the date he sought that retirement and had given the requisite notice. In case there were no grounds to refuse it in terms of Rule 56, voluntary retirement was to come to effect without proving the ground of such

retirement. These were the rules of 1972 which permitted the authorities to satisfy themselves about the alleged mental incapacity of the applicant's father to discharge his duties. On being satisfied they accepted his request. So for all legal and practical purposes retirement of applicant's father on the ground of his medical ailment was a retirement under Rule 38 of the Rules of 1972 and the authority concerned committed error by mentioning Rule 56 of the Fundamental Rules in place of Rule 38 of the Rules of 1972.

The second contention of Shri K.P. Singh is that in view of letter dated 30.6.1987 of Department of Personnel & Training (copy of which is Annexure 25) compassionate appointment to a son/daughter or near relative of a Govt. servant retiring under Rule 38 of the Rules of 1972 may be considered subject to the conditions mentioned therein. Shri K.P. Singh says that the case of the applicant ought to have been considered under that provision but the authorities appear to have rejected it on a technical ground that his father did not retire under Rule 38 of the Rules of 1972 on medical ground but under Rule 56 of the Fundamental Rules. Shri Saumitra Singh has argued that once the retirement was mentioned to be under Rule 56 of the Fundamental Rules it is now not open to the applicant to take the benefit of the scheme provided in government letter dated 30.6.1987. He says that even if the case of the applicant is examined in the light of the said scheme, it is not one which can be said to be exceptional one for such appointment.

It would be useful to reproduce the relevant portion of the said scheme provided in letter dated 30.6.1987. It is likewise:

- (b) "In exceptional cases when a department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules 1972, or corresponding provisions in the Central Civil Services Regulations before attaining the age of 55 years. In case of ground 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years.
- (c) To a son or daughter or near relative of a government servant who dies during the period of extension in service but no re employment."

In view of the conclusion arrived at in the preceding para, the case of the applicant should have been considered for compassionate appointment in terms of above mentioned letter dated 30.6.1987. After I have come to the conclusion that the retirement of the applicant on medical ground was in fact and in law was a retirement under Rule 38 of the Rules of 1972, so his case for compassionate appointment should have been considered in the light of the said scheme. I do not find force in the submission of Shri Saumitra Singh that after accepting letter 4.4.1997 providing that the retirement was under Rule 56 of the Fundamental Rules, it was now not open to the applicant to claim compassionate appointment under this scheme. Applicant's father could not have followed the consequences of the retirement under Rule 56 or under Rule 38 of the Rules of 1972. He was a mentally ill person. When mother of the applicant requested for compassionate appointment on 2.5.1997 soon within a month of letter dated 4.4.1997, she thought that in cases like one of her husband, compassionate appointment was permissible. It is surprising that the authorities did not inform her then and there that in a case of voluntary retirement under Rule 56 of the Fundamental Rules such compassionate appointment was not permissible. Conversely, the authorities processed her case by getting one or the other formality fulfilled and by referring the matter to the headquarter for higher orders. It appears to me that the authorities also took it for granted, that retirement on such medical ground entitled anyone member of the family of the employee concerned to get such employment. So it will be wholly unjust to reject the claim of the applicant on the technical ground put forward by Shri Singh.

Although Shri K.P. Singh has referred to few judgments of the Apex court and of different benches of this Tribunal (such as Balbir Kaur and anr vs. Steel Authority of India Ltd & Anr, 2002 SCC (L&S) 767, Savita Majumdar & Anr Vs. Union of India & Ors, Administrative total Judgments 2001 (1) 386, Anarkali and Anr Vs. Union of India & ors, Administrative Total Judgments 2001 (2) 387 and Nirmala devi Vs. Union of India & Ors reported in Administrative Total Judgments 2002 (1) pg 261) so as to say that retrial benefits coming to the family of the deceased

employee cannot be taken into consideration, for deciding the question as to whether such compassionate appointment can be given or not. But I am of the view that these appointments need not be looked into here as the respondents have not rejected the case on merits but have rejected merely on the technical ground that the retirement of the applicant's father was not under Rule 38 of the Rules of 1972 but under Rule 56 of the Fundamental Rules.

So in ~~of~~ view of the discussion made above, this OA is allowed and the impugned decision dated 11.12.2003 (Annexure 1) is quashed with the direction to the respondents to consider the case of the applicant for compassionate appointment under the scheme provided in government letter dated 30.6.1987, treating the retirement of his father on medical ground under Rule 38 of the ~~Rules~~ of 1972 rather than under Rule 56 of the Fundamental Rules. No order as to costs.

VICE CHAIRMAN

30.8.06

Dated: August 30, 2006
Uv/