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(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD.

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Registration No. 703 of 1986 (T).

Abdul Mazid and another . .vs. . Union of India and others.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.

Hon'ble Shri Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Suit No. 111 of 1984 Abdul Mazid and another versus Union of India and others filed in the Court of Munsif-I, Jhansi, has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

Abdul Mazid, to be described as plaintiff no.1, was employed as skilled fitter, Local Shed Central Railway, Agra Cantt. His son Sabbir, plaintiff no.2, aged about 23 years at that time had also worked as casual labour for 400 days. On 24.1.1984 Abdul Mazid and his son Sabbir Ahmad filed this suit for mandatory injunction to appoint plaintiff no.2 in Class IV category.

Plaintiffs' case is that plaintiff no.1 retired on 4.7.1980 as skilled fitter because he was medically unfit on account of defective vision. He made various representations for the appointment of his son on compassionate ground, but his prayer was rejected. Hence this suit. The case of the Department is that plaintiff

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no.1 was more than 55 years of age, therefore, his son, plaintiff no.2, could not be given any job on compassionate ground. On 15.9.1983 in reference to the application dated 22.8.1983 of plaintiff no.1 the following order was communicated to him:-

"Your case was reviewed by the D.R.M. on 2.8.1983, ~~your case was again reviewed in reference to your letter~~ when you took interview. The case has been reviewed again in reference to your letter dated 22.8.1983.

You are medically decategorised due to defective vision, ~~when~~ you had already crossed 55 years of age. ~~you had already crossed 55 years of age.~~ According to the Board's instructions the appointment on compassionate grounds in such cases is not permissible.

The case is treated closed by this office."

Plaintiffs' contention is that there was no such order to the effect that if the employee is decategorised due to defective vision and has crossed 55 years, his son cannot be appointed on compassionate ground. Plaintiff no.1 retired in 1980. The reference to the letter of 1982 has no meaning because it was not in existence. However, plaintiff no.1 had retired and he made a prayer for appointment of his son, plaintiff no.2, on compassionate ground. We gave sufficient opportunity to the learned counsel for the respondents to show any rule etc. under which appointment on compassionate ground could not be made if the employee had crossed 55 years of age,

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specially in the year 1980 when plaintiff no.1 had retired and he made a representation in the same year for appointment of his son on compassionate ground.

In the case of Smt. Munni Devi vs. General Manager, Northern Railway and others, ATR 1986 (I) relevant portion of (CAT), Circular Letter No.E(NG)III/78/RCI/1 dated 7.4.1983 has been quoted as below:-

"1. Circumstances in which compassionate appointments may be made.

Appointments on compassionate grounds relate to those appointments which can be made of dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments on compassionate grounds may be made are as below:

(i). . . .

(ii). . . .

(iii). . . .

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

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Note: The appointment on compassionate grounds is admissible to the dependents/wards of regular employees only."

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According to this Circular Letter, in order to ensure welfare of the Railway employees and their families special provision to offer employment to the dependents of the Railway employees without going through any selection has been made.

~~According to this circular letter, A~~ son is eligible to be appointed on compassionate ground, of course, subject to fulfilment of conditions of eligibility regarding age, educational qualification etc. prescribed for appointment to the post or grade concerned. In short, plaintiff no.1 retired in 1980 and in the same year he moved an application for appointment of his son, plaintiff no.2, on compassionate ground.

At that time it could not be shown that there were instructions under which his prayer could be rejected on the ground that he had crossed 55 years

~~of age. The R.R. claim under Cause of Petrs v. Aghanting on compassionate ground only is pressed.~~

In view of the above, this application

~~as stated below~~
(O.S.No. 111 of 1984) is allowed with costs on parties. The impugned order dated 15.9.1983 is set aside with the direction that case of plaintiff no.2, son of plaintiff no.1, may be considered for appointment on compassionate ground; provided he fulfills the conditions of eligibility regarding age, educational qualification etc. We do not mean that the authorities cannot use their discretion to relax upper age limit if the case so merits.

December 18, 1986. Vice Chairman.
R.Pr./

[Signature]
B.R.I & R.P.
Member (A).