

Reserved

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 26<sup>th</sup> day of February 1997.

Original Application no. 1414 of 1992.

Hon'ble Mr. S. Dayal, Administrative Member.

Smt. Dukhana Devi,  
W/o Sri P.L. Pandey,  
R/o Kaily P.O. Kurahana,  
Distt. Varanasi.

... Applicant.

C/A Sri S.K. Dey.

Versus

1. Union of India through the General Manager, Eastern Railway, Calcutta.
2. The Chief Medical Superintendent, E. Rly., Mughalsarai.
3. The Divisional Railway Manager, Eastern Railway, Mughalsarai.

... Respondents.

C/R Sri A. Gthelekar

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. This application has been made for seeking the following reliefs:-

i. setting aside letters dated 16.6.92 and 24.7.92 issued by the respondents.

ii. Direction to the respondents for appointment of applicant's son on compassionate ground bytreating applicant's husband unfit for service on the basis of the Medical Certificate given on 30.03.91.

iii. Direction to the respondents to give pension and other terminal benefits to the applicnat with effect from 30.03.91, the date of the medical certificate.

3. The case of the applicant is that the applicant's husband joined Railway Service on 11.09.58 and continued as Shunting Master in the pay scale of Rs. 1400-2300 (RP). The applicant's husband was an old patient of some mental dise-ase and remained sick from 14.01.91 to 16.06.92. The superintendent of Ranchi Mansik Arogyashala, Kanke, Ranchi, advised on 28.03.91 that the applicant's husband was not fit for duty and that chances of his complete recovery were remote. Dr. K.C. Mondal of B.R. Singh Hospital, Sealdah declared him as a patient whose complete recovery was a remote possibility on 30.03.91. He was declared unfit for duty by a certificate dated 12.09.91 of B.R. Singh Hospital, Sealdah. The Doctor in charge of Deptt. of Medicine, I.M.S., B.H.U. Varanasi certified the applicant's husband on 31.10.91 as an official who was not in a position to do any duty and whose complete recovery was remote possibility. However, the Chief Superintendent wrote to the Station Superintendent, Moghalsarai, that the applicant 's husband should be given a less responsible job away from the Railway line. He did it in a memorandum dated 16.6.92. The Divisional Personal Officer asked bya letter dated 24.07.92 that the applicant's

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husband should immediately be given duty pursuant to the communication of Chief Medical Superintendent, Moghalsarai dated 16.06.92. All this was allegedly done with the malicious intention of depriving the applicant's son from becoming entitled for compassionate appointment.

4. Arguements of Sri S.K. Dey learned counsel for the applicant were heard and Sri Amit Sthelekar learned counsel for the respondents was allowed to file written arguements as he was busy in another court. The applicant's counsel was allowed to file judgment and provision of I.R.E.M relied upon by him. He also filed written arguements which were also taken into account.

5. Learned counsel for the applicant has drawn attention to Rules 1303 and 13.04 of Indian Railway Establishment Manual which provide for invalidation of ~~officials~~ / totally incapacitated and alternative job for officials incapacitated for service on the posts held by them. This case clearly falls under Rule 1303 and the official should have been invalidable after completion of six months from 30.03.91 i.e. from 01.10.91. The learned counsel for the applicant has appropriately cited the decision in a similar case in OA no. 163 of 1994 of Patna Bench delivered on 13.12.95 and of this tribunal in OA no. 475 of 1990 dated 24.11.92 in both of which the relief of consideration for compassionate appointment was allowed.

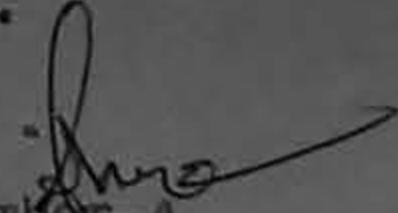
6. The respondents in their CA have taken the stand that the applicant's husband retired on 31.03.93 after attaining the age of superannuation and that he was given full pension. They have not stated whether the applicant's

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husband joined anytime between 16.06.92 and 31.03.93. The applicant has stated in the rejoinder affidavit that the applicant's husband never joined on any post during this period. The certificate given by the specialists clearly stated that the applicant's husband was never fit to do any duty and that his recovery was only a remote possibility. It is not known whether the Divisional Personnel Officer or the Chief Medical Superintendent, Moghalsarai considered the applicant's husband fit to perform <sup>the</sup> duty of Shunting Master. There is not even a whisper in the pleadings of the respondents that the Chief Medical Superintendent, Moghalsarai, determined the physical category of the applicant's husband and indicated an appropriate job for him. It is also not known whether the job of Shunting Master belonged to a safety category, and if it did, whether it could be entrusted to a certified psychotic. On the contrary Annexure A-8 to the OA suggests that the station Superintendent was unable to find work in the grade of Shunting Master outside the Railway line which entailed no responsibility.

7. The applicant's son is entitled to submit an application for compassionate appointment within a month of receipt of copy of this order and the respondents are directed to consider his case after calling him and obtaining whatever information they require for the purpose and pass final order on his application within a period of three months.

8. There shall be no order as to costs.

  
Member-A