

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 15th day of September 1995.

ORIGINAL APPLICATION NO. 1551 of 1992.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A.
Hon'ble Mr. T. L. Verma, Member-J.

K. C. Srivastava,
son of late Sri Jai Prakash Lal,
Officer Superintendent-II/
D.R.M.(P), N.E.Railway, Varanasi.....applicant.
(By Advocate Sri (Dr.) R.G.Padia & Sri H.S.Srivastava)

Versus

1. Union of India through the Ministry of Railway,
Rail Bhawan, New Delhi.
2. The General Manager,
North-Eastern Railway,
Gorakhpur.
3. The Divisional Railway Manager (Medical)
N.E.Railway, Varanasi.
4. The Chief Medical Officer,
North Eastern Railway,
Gorakhpur. Respondents.
(By Advocate Shri Amit Sthakker)

S.Q.R D.E.R

(By Hon. Mr. T. L. Verma, Member-J)

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed
for quashing the second portion of order dated 1.5.1992

in so far as it gives direction that as per Railway Board's circular No.85/H/5/10 dated 27.6.1990, the applicant is to continue in sick list till his retirement as also to quash letter dated 12.10.1992 issued by the Chief Medical Officer and for a direction to the respondents to forthwith provide a suitable job to the son of the applicant as per his qualification on compassionate grounds as per Circular dated 25.4.1983.

2. The applicant while working as Superintendent-II in the office of Divisional Railway Manager (P), North-Eastern Railway, Varanasi was admitted in Railway Hospital Varanasi on 4.5.1991 for treatment. It is stated that after the death of his wife on 30.5.89, he was not keeping good health inasmuch as he ~~therefore~~, completely lost vision in both the eyes and had to undergo operation. While he was admitted in serious condition in Railway Hospital, Varanasi, his health, it is stated, continued to deteriorate day by day. He was, therefore, referred for further treatment and opinion to Banaras Hindu University on 24.6.1991 vide Annexure-A-1. The applicant was returned ~~to~~ to the Railway Hospital, Varanasi on 12.8.1991 after getting treatment and that the treatment prescribed by the doctors of Banaras Hindu University is being continued. It is stated that because of his failing health, the applicant was not ~~in~~ in a position to perform his duties and accordingly special Medical Examination was held on 9.9.1991. The Medical Board, however, deferred its decision and the applicant was referred to Medical

Superintendent Psychiatry Department, O. P. D. Section, S.S.I. Section B.HU Varanasi for opinion regarding his fitness for duties as Office Superintendent.

The Superintendent gave his opinion after examining the applicant and issued certificate (Annexure-A-3) stating that the applicant was not fit for mental work. The certificate is dated 18.1.1992. After the above letter, the III medical board was constituted and on 5.3.1992, this Medical Board also did not take any decision with regard to fitness of the applicant and the decision was deferred wilfully and with sole object of defeating the rightful claim of the applicant which he was entitled to get under the Railway Establishment Code for getting a job for his son on the compassionate ground. The applicant, therefore, filed a representation on 16.4.1992 before the Medical Board for taking an early decision with regard to the physical condition of the applicant. The Chief Medical Superintendent, thereafter, asked the applicant vide his letter dated 6.3.1992 to furnish details in regard to the vision by putting the contact lense. In pursuant of the said instructions, the applicant attended Sitapur Eye Hospital, Sitapur on 13.3.1992, 2.4.1992 and 13.4.1992.

It is stated that even after putting contact lense, the vision of the applicant did not improve. The IVth Medical Board met on 1.5.1992 and decided unanimously that the applicant was not fit to work in any category and further that the applicant will continue in sick list till his retirement. The applicant filed an appeal against the said decision of the Medical Board which was decided by the

Chief Medical Officer on 12.1.1993. While disposing of the appeal of the applicant, the Chief Medical Officer observed that in view of the provisions contained in Railway Board's letter No. 85/S/5/10 dated 27.6.90 the applicant cannot be invalidated on medical ground after 57 years of age. The employee, may, however, be considered for voluntary retirement if so advised. Being aggrieved by the aforesaid order of the respondents, this application has been filed for the relief, mentioned in para 1 of this order. The impugned order of the respondents has been assailed on the ground that the same is arbitrary and contrary to the provisions of para 2237 (S.R.233 sub para (ii)) of Railway Establishment Code-II and para 529(ii) of the Indian Railway Medical Manual.

3. The respondents have contested the claim of the applicant on the ground that his father was declared medically unfit after he attained the age of 57 years and as such was to remain on sick leave. ~~therefore was~~ not entitled to opt for retirement, in view of the instructions contained in Railway Board's letter dated 27.6.1990.

4. The general principle of law as laid down by Hon'ble Supreme Court in Umesh Nagpal vs. State of Haryana reported in Judgment Today 1994(3) page 525 is that as a ~~rule~~ ^{rule} appointment in public services should be made strictly on the basis of open invitation of application and merit. There are, however, some exceptions to the

aforesaid rule. One such exception is in favour of dependents of deceased government servant who dies in harness. The benefit of compassionate appointment has also extended to cases where the employees in service become crippled, develop serious ailment such as heart diseases, cancer etc. or become medically decategorised for the job they are holding and no alternative job, with same emoluments can be offered to them, one son/daughter of such an employee shall be eligible for compassionate appointment if such employee opts for retirement. The learned counsel for the applicant states that father of the applicant was declared unfit for all categories of Railway Service, hence he was entitled for appointment on compassionate ground on some post for which he was eligible in terms of the instructions issued by the Railway Board vide Circular No. E(NG)III/78/RCI /I dated 30th April, 1979.

5. It is not disputed that the applicant was admitted for treatment in the Railway Hospital on 14.12.1992. From letter dated 24.6.1991, addressed to Superintendent, Banaras Hindu University, Varanasi, (Annexure-A-1), letter dated 20.9.1991 (Annexure-A-2) and letter dated 6.3.1992 (Annexure-A-5) it is more than clear that the applicant was suffering from Alcoholic dementia, cirrhosis of liver and some chronic ophthalmic problem, and was under treatment. He was on leave on medical ground since 4.5.91 and remained on various kind of leave admissible till the final medical board held on 1.5.1992.

~~.....~~ ^{him} declared medically unfit for any category of Railway Service. The learned counsel of the applicant has argued that according to Rule 2237 (S.R.-233 Sub Rule (ii)) of the Indian Railway Establishment Code Volume-II and para 529(2) of the Indian Railway Medical Manual, an Railway Servant who was declared by the medical authority to be completely and permanently in-capable for further service, shall, if he is already on leave, be invalidated from service on the expiry of that leave or extension of leave if any, granted to him under Sub-Rule (i) and that since the applicant was already on leave on medical ground, from 4.5.91 to 22.2.92, and extra ordinary leave with effect from 23.2.1992 for example for about one year till the final medical Board was held on 1.5.92, the respondents had no option but to invalidate the applicant under the provisions of Indian Railway Establishment Code referred to above. We are unable to accept this arguments. In this connection, relevant portion of Rule 529 is extracted for convenience of reference :-

"529,Grant of leave to a Railway Employee who is likely to be fit to return to duty :-

(i).....

(ii) If a Railway Employee is declared by a Medical authority to be completely and permanent-ly incapacitated for further service, leave or extension of leave may be granted to him after the report of the medical authority has been received, provided that the amount of leave as debited against the leave account together with any period of duty beyond the date of the medical authority's report does not exceed six months."

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In this connection reference to Railway Board's instructions issued under D.O.No. II/174/II (Loco dated 27.6.1990(Annexure-A-11) regarding decategorisation and medical invalidation of a Railway employee is also relevant. According to the aforesaid instructions, the date of acceptance of report of Chief Medical Officer is the date of certification of invalidation on medical ground and that in case where the date of medical certification falls in the last one year of service, an employee can be medically invalidated only for terminal stage of fatal illness or massive injury with recent loss of both lower limbs and or both upper limbs and for all other cases, including diminution of loss of vision, high blood pressure and uncontrolled diabetes, leave may be granted under para 529 of the Indian Railway Medical Manual.

The applicant was declared unfit for all categories of Railway service on 1.5.92. The father of the applicant was to retire w.e.f. 31.10.1992 on attaining the age of superannuation. The report of the Chief Medical Officer, declaring the father of the applicant medically unfit, was thus, accepted in the last year of his service.

6. According to the instruction No.3 contained in D.O.Letter No.85/11/5/1C dated 27.6.90(Annexure-A-11) the father of the applicant would have been entitled for invalidation on medical ground had he been in terminal stage of fatal illness such as cancer, and heart diseases or had received massive injury resulting in loss of both lower or

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both upper limbs. Case of the applicant is not covered by the above exception. According to para 529 of the Railway Board Medical Manual, a Railway Employee, who is declared by a medical authority to be unfit for further service, leave or extension of leave may be granted to him after the report from medical authority is received, provided that the amount of leave as ~~detained~~ debited against the leave account together with any period of duty beyond the date of medical authority's report does not exceed 6 months.

7. The father of the applicant was declared unfit to work in any category of Railway Service by the constituent Medical Board on 1.5.1992. He was informed of the said decision by the letter dated 1/7.5.1992 (Annexure-CA-1). He was due to retire with effect from 31.10.1992 on attaining the age of 58 years. He was thus, required to remain on sick leave for 6 months after he was declared unfit to work in any category of Railway Service. The period of his sick leave, thus, will not exceed the period of six months as prescribed under para 529 of the Indian Railway Medical Manual. The applicant, therefore, may not be entitled to the benefit of compassionate appointment and the relief claimed therefore, is not admissible to him.

8. Before parting with the case we deem it necessary to record that there is inherent contradiction in the instructions contained in letter dated 27.6.1990 and the provisions of para 529 of the Indian Railway Medical Manual, as such All the employees, who

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do not come within the exception as provided in para 3 of letter dated 27.6.1990 for invalidation on medical ground but are found unfit to work in any category of Railway Service in their 57th years, will have to remain on sick leave for the rest of the period of their service which may range from 11 month to one month. Para 529 of the Indian Railway Medical Manual provides that the leave or extension of leave to such an employee can not be granted exceeding 6 months. The instructions do not spell out as to how the period in excess of six months will be treated.

9. In addition to the above the illness, which has lead to the declaration of the employee as unfit for any work as Railway Servant may have continued for a long period, as generally happens, and in that process exhausted all kinds of leave admissible to him on the date of certification. If such an employee is not medically declassified and compelled to remain on sick leave, he may have to remain without pay for the remaining period of his service. This does not appear to be fair and just. The respondents may in appropriate cases retire an employee, who in their opinion has become dead wood, according to Rules. If that is done, the retired employee will get his terminal dues, but, by compelling him to remain on sick leave that too without pay obviously will be oppressive and harassing. The principle of fair play and justice, therefore demands that the employee who is compelled to remain on sick leave should be paid salary and other allowances for that period, if no leave is due to him.

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10. In the circumstances, mentioned above, we expect that the Railway Board shall consider the desirability of suitably amending the instructions to remove the anomalies as indicated above and consider afresh the case of applicant in view of the aforesaid observations. We accordingly dismiss this application leaving the parties to bear their own costs.

J. M.
J. M.

A. M.
A. M.

VKP/-