

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 213 of 1992

Amrit Lal Applicant.
Vs.
Union of India & Others Respondents

Hon'ble Mr. S. Das Gupta, A.M

This O.A.no. 213/92 has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking directions to the respondents to appoint the applicant on compassionate ground to suitable post for which he is found fit.

2. Briefly stated the facts of the case are that the applicant claims to be adopted son of one Dhani Ram, ^{who} was ~~R~~ailway employee and who was medically decategorised in April 1986. Thereupon the wife of the Government servant submitted an application to the respondents for compassionate appointment of applicant no.1 as the adopted son of medically decategorise government servant. The same was however, rejected by the respondents vide their letter dated- 16.4.86 (Annexure A-8) stating therein that the deed of adoption submitted by the applicant was not valid and as such the applicant could not be considered for compassionate appointment. Subsequently, the applicant filed a declaratory suit under section 34 of the Specific Relief Act seeking a declaration that he is adopted son of the medically decategorised government servant. This suit was decreed in his favour. Thereafter, the wife of medically decategorised government servant submitted another application for compassionate appointment for the applicant on 21.2.1988 followed by representation

to the railway minister. However, the respondents have not given any favourable consideration to the request of the applicant, hence this petition.

3. In their Counter-Affidavit the respondents have resisted the claim of the applicant on the ground that there is no valid adoption of the applicant no.1 by the medically decategorised government servant and he is not entitled to be consider for compassionate appointment. They have also taken ~~an~~ ^{that} plea at the time of medical ~~category~~ ^{that} the government servant was 57½ years. During the course of argument the learned counsel for the respondents urged that under the existing rules of the Railways relating to the compassionate appointment, the family was not entitled to this relief as the government servant was 57½ years old.

4. I have carefully heard the rival contentions of the counsel for both the parties and perused the records.

5. I would like to take up ^{u. first} the second plea of the respondents which relates to the age of the government servant at the time of retirement since this point was urged by Sri G.P. Agrawal, counsel for the respondents at some length. In this connection he sought to rely on the railway board Master Circular no.E(NG)II/90/RC-1/117 dated 12.12.90. Instructions contained in Para 1 (IV & V) are relevant in this regard and quoted below :

1(IV). When Railway employees become crippled
or
while in service ^{or} develop serious ailments like

heart disease, 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.

1(v). Where, on being medically declassified, a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment, provided that if he has less than three years of service at the time of declassification, personal approval of the General Manager is to be obtained before the compassionate appointment is made.

6. It would be clear from the above instructions that the question of age of employee at the time of retirement will come in question only when on being medically declassified a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment. In this case, it is the contention of the applicant that the retiring railway employee was not offered any alternative employment whereas, the respondents in their counter have averred that he did not seek alternative employment and that it was obligatory on his part to request for alternative job. Respondents have not however, cited the rules under which the medically declassified employee is obliged to seek alternative employment. Whatever be ~~is~~ a rule, the position in this regard, it is an undisputed fact that no alternative employment was offered to the employee and therefore the question of his refusing the same and

choosing to retire does not arise. In this view of the matter the instruction contained in para 1(V) of the Master Circular no. E(NG)II/90/RC-1/117 dated 12.12.90 is clearly not applicable to this case and therefore the age of the employee at the time of retirement is immaterial in relation to the question of compassionate appointment which, in this case, shall be guided by the instruction contained in para 1(IV) of Master Circular, which does not lay down any age bar.

7. I have taken judicial notice of the fact that the rules framed by Government of India, Department of Personnel, ^{governing} compassionate appointment, was compiled in Swamy's Complete Manual on Establishment and Administration for Central Government Servant ^{by A. Lipules} that in respect of Government Servant retiring on medical ground, compassionate appointment may be considered provided such retirement takes place before attaining the age of 57 years in the case of group D employees and 55 years in respect of all other employees belonging to other groups. I made specific query to the learned counsel for the respondents as to whether similar provisions exist in respect of the department of Railways. The learned counsel however, has been able to produce only a copy of Master Circular dated 12.12.90, the relevant ^{instructions} ^{been} contained in which, have already ^{been} analysed supra.

8. In view of foregoing I am unable to accept the contention of the respondents that the applicant

is not entitled to be considered for compassionate appointment on the ground that the railway employee had attained the age of 57½ years at the time of retirement. This plea is therefore rejected.

9. I may now come to the more substantive plea relating to the validity or otherwise of the adoption of applicant. A copy of the deed of adoption which has been filed with Annexure (A-3) is a registered document in which it has been stated that one Sri Dhani Ram and his wife, having no child of their own, are adopting one of the sons, named Amrit Lal, of Dhani Ram's real brother Sukh Ram. Both the parties to the stated adoption have affixed their L.T.I. on the documents. Admittedly this deed was registered long after 8.10.70 when the applicant claims that he was adopted by Dhani Ram and his wife.

10. As regards the acceptability or otherwise of the registered deed of adoption, section 16 of the Hindu Adoptions and Maintenance Act, 1956 is relevant. This section reads as follows :

"16. Presumption as to registered documents relating to adoptions- Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

11. In this particular case though the deed was registered long after the stated date of adoption, there are various ruling of the Courts that the document of adoption must have some narration with respect to the facts of adoption. ^{u. a. that it} It need not be an adoption in ^{Contemporaneous} ~~contemptuous~~ with the document. It may even be a previous adoption to acknowledge by the document. In view of this the deed which was registered purporting to be a deed of adoption of Amrit Lal by Dhani Ram and his wife would ^{give} ~~come~~ arise to a presumption that the adoption was made in compliance with the provision of the Hindu Adoption and Maintenance Act, 1956, ^{unless} ~~in this~~ it is disproved.

12. In the above view of the matter onus would lie on the respondent to disprove the fact of adoption of Amrit Lal by Dhani Ram and his wife ^{u. as} has been claimed in the deed of adoption. Neither in the Counter-affidavit nor during the course of argument the respondents have been able to produce any material which would go to disprove the claim of adoption ^{of} ~~as~~ Amrit Lal by Dhani Ram and his wife. Respondents are therefore, not competent to reject the request of the applicant for compassionate appointment on the ground of validity of the deed of adoption.

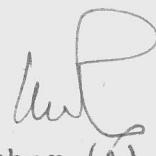
W.L.

13. We can look at this matter from the slightly different angle also. Para III of the Master Circular dated 12.12.90 stipulates that the compassionate appointment may also be extended to a near relative.

In this case Amrit Lal, the applicant is stated to be of the son real brother of Dhani Ram, the medically declassified railway employee. Even if the respondents dispute the fact of adoption of the applicant, his being the son of the real brother of Dhani Ram has not been disputed. The applicant should therefore qualify for compassionate appointment as a near relative if, not as an adopted son.

14. In view of the foregoing discussions the application succeeds. The respondents are directed to consider the request of the applicant and appoint him against any post for which he is found fit within a period of three months from the date of communication of this order.

15. There shall be no order as to costs.



Member (A),

Dated : 13 January, 1994
(M.M.)