

- CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 107 of 1994

Dated: 27 January, 1995

Hon. Mr. S. Das Gupta, Member (A)

Hon. Mr. J.S. Dhaliwal, Member (J)

Jagdish Chandra son of late Lilidhar
R/o Village & Post Lohni, District
Deoria Applicant.

(By Advocate Sri Sanjay Kumar)

Versus

1. Union of India through General
Manager, N.E. Railway, Gorakhpur.

2. The Chief Workshop Manager,
N.E. Railway, Gorakhpur. ... Respondents.

(By Advocate Sri J.N. Singh)

O R D E R

(By Hon. Mr. S. Das Gupta)

The applicant in this case is a son of

Ex-Railway Servant who was working as Machinist
Grade-II under the Respondent No. 2. The applicant's
father was taken ill and he was undergoing medical
examination at the Railway Hospital. He expired
on 19.1.1991. The applicant, on 9.2.1991,
informed the Railway Authorities regarding the
demise of his father and requested them for
clearence of the entire dues of his father. He
also made a request for employment on compassionate
ground. He, however, received a letter dated 11.2.1991
from the respondent no.2 addressed to his father
whereby, the latter was required to show cause
as to why his services would not be terminated
on the ground that he had been declared medically
unfit. A copy of this letter dated 11.2.1991 is
at Annexure- A 5. The applicant states that on

receipt of the said letter dated 11.2.1991, he again sent another letter dated 15.2.1991 informing the authorities that his father had already expired on 19.1.1991 while still in service. Thereupon, the respondent no. 2 had passed an order dated 14.3.1991 (Annexure- A 1) terminating the services of the applicant's father w.e.f. 10.12.1991. The applicant's request for compassionate appointment was also rejected by the respondent no.2 by his order dated 13.8.1991 (Annexure- A 2).

2. The applicant's case is that the order dated 14.3.1991 terminating the services of the applicant's father retrospectively from 10.12.1991 is wholly arbitrary and illegal. He contends that his father was on leave at the time of his death and, therefore, the death had taken place in harness. He ~~has~~ ^{is}, therefore, entitled to get employment on compassionate ground as well as other benefits such as DORG, the benefits under Group Insurance Scheme as admissible to Railway Servant ^{lying} ~~is denying~~ while on duty. It has been contended that in any view of the matter no order of termination can be passed with retrospective effect and as such, it cannot be held that the services of the applicant's father were terminated before his death. On the basis of these facts,

W.L.

the applicant has challenged the order dated
the order dated 13.8.1991
14.3.1991 by which his request for compassionate
employment was rejected and the order dated
28.6.1993 by which a request for reconsideration
of the matter was turned down.

3. The applicant has prayed for a direction to
the respondents to appoint him on compassionate
ground on any suitable posts for which he is
eligible and also to clear all the dues of
his father including D.C.R.G., payment under Group
Insurance Scheme etc treating him as having
expired while in service.

4. The basic facts of the case are not in
dispute. In the counter affidavit filed by the
respondents, a preliminary objection has been
taken to the maintainability of the application
on the ground of limitation. On the merit of the
case, it has been submitted that the applicant
was declared medically unfit for Railway Service
w.e.f. 10.12.1990 as per the medical certificate
dated 10.12.1990 annexed as Annexure-C.A.1. It
has been averred that since the applicant's father
was declared medically unfit w.e.f. 10.12.1990,
the respondents have correctly terminated
his services w.e.f. that date. It has also been

W.Y.

averred that the letter dated 11.2.1991 by which the applicant's father was directed to show cause why his services would not be terminated was issued due to clerical error. It has been contended that since the services of the applicant's father were terminated w.e.f. 10.12.1990, while he expired on 19.1.1991, he ~~should~~ not have been considered to have died while in service and in that view of the matter, the reliefs prayed for by the applicant cannot be granted.

5. We have heard the learned counsel for the parties and have carefully gone through the pleadings.

6. The only controversy in this case is as to whether the respondents could legally terminate the services of the applicant's father retrospectively w.e.f. 10.12.1990 by the impugned order dated 14.3.1991. If the retrospective termination of his services ~~was~~ done by the respondents is legally tenable, the application is obviously not entitled to any of the reliefs as prayed for. Even on the other hand, the respondents had acted without jurisdiction in terminating his services retrospectively, it has to be accepted that the applicant died in harness and the applicant shall be entitled to all the consequential benefits on such declaration.

W.L.

7. The cause of action in this case had arisen when the impugned order dated 14.3.1991 terminating the services of the applicant's father was issued. Since the application was filed on 21.1.1994 i.e. within a year from the date of the impugned order, the respondent's ~~however~~ plea that the application is barred by limitation has no force whatever. We shall consider in the succeeding paragraphs the main controversy in this case as indicated in para- 6 (Supra).

8. The respondents have not indicated in their counter affidavit the rules under which the services of the applicant's father could have been terminated retrospectively w.e.f. 10.12.1990. However, the detailed reasons therefor have been given in the letter dated 28.6.1993 (Annexure- A 3) which is a Demi Official letter. It has been indicated therein that such termination of the services of the applicant's father was done in terms of para 1302 and 1303 of 1989 edition of the Railway Establishment Manual Vol. I(IREM for short). Para-6 of this letter, which is in Hindi, freely translated, reads that the applicant by his letter dated 9.2.1991 had given an intimation of the death of his father, but since the latter had been declared unfit for all posts on 10.12.1990, his services were terminated w.e.f. that date. Para- 10 thereof indicates that in accordance with the extant rules, the applicant's

father was required to be given a notice to show cause against a decision to terminate his services on being declared medically unfit but since the intimation of his death had already been ~~given~~ given and received on 9.2.1991, the show cause notice which was issued on 11.2.1991 was a clerical error.

9. Para-1302 of the IREM reads as follows;

"1302. Classification of Railway servants declared medically unfit- Railway Servants declared medically unfit for further service are divisible into two groups:

- (i) Those completely incapacitated for further service in any post on the Railway, i.e., those who cannot be declared fit even in the 'C' medical category.
- (ii) Those incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts, corresponding to this lower medical category."

Para- 1303 of the IREM reads as follows:

"1303. Railway servant totally incapacitated for further service: A railway servant in group(i) above cannot be retained in service and is not, therefore, eligible for alternative employment. If he is on duty, he shall be invalidated from service from the date of relief of his duty, which should be arranged without delay on receipt of the report of medical authority. If, however, he is granted leave, he shall be invalidated

from service on the expiry of that leave or extension of leave. The leave or extension of leave that may be granted to him after the report of the medical authority has been received, will be so limited 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 6 months."

10. It would appear from a reading of these paras of the Manual that once a Railway Servant is declared completely incapacitated for further service in any post on the Railways, he shall be invalidated from service from the date he is relieved of his duty, in case, he is on duty and such relief should be arranged without delay on receipt of the report of the medical authority. If, however, he is on leave, he shall be invalidated on the expiry of the leave. In the instant case, the applicant's father was declared totally incapacitated for further service on 10.12.1990. During the period intervening between 10.12.1990 and 19.1.1991, the applicant has contended that his father was on leave. There is no specific denial of this fact. Infact, in reply to para 4.2 of the applicant in which it has been inter alia averred that the applicant's father took medical leave after undergoing medical examination, the respondents have stated in para-4 of their counter affidavit that the contents of para 4.2 of the application are matters of record. The

averments that the applicant's father was on medical leave, is therefore, admitted in the absence of any specific denial. We may now advert again to the provisions contained in para 1303 of the IREM Vol. I which indicates that in case the Railway Servant who is declared completely incapacitated is on leave, he shall be invalidated from service only on the expiry of the leave. In that view of the matter, the applicant's services could not have been terminated retrospectively w.e.f. 10.12.1990 i.e. the date on which he was medically examined and declared unfit. Infact, it is clear from para 10 of the letter dated 28.6.1993 that before the termination of service, there is a requirement ~~that~~ of giving a notice to the Railway Servant to show cause why his services shall not be terminated on medical grounds. It is, therefore, clear that in any view of the matter, the services of ^a Railway employee who has been declared completely incapacitated ~~not~~ ^{can} not be terminated on the day he was so declared unfit. The order dated 14.3.1991 retrospectively terminating the services of the applicant's father w.e.f. 10.12.1990 is, therefore, bad in law and cannot be sustained ^{on} ~~the~~ same token, it can also not be held that the applicant was not in service when he expired. Infact, the employer-employee relationship had not been extinguished at the time of the death of the applicant's father

WY

Since on the date of his death, he was on leave and the termination could have taken place only after the leave had expired.

ii. In view of the foregoing, the application is allowed. The impugned order dated 14.3.1991 terminating the services of the applicant's father retrospectively w.e.f. 10.12.1990 is set aside. The applicant's father shall be deemed to have been in service at the time of his death. The applicant shall be entitled to all consequential benefits with regard to D.C.R.G., the benefit under Group Insurance Scheme etc. He shall also be entitled to be considered on merits for employment on compassionate ground. Let the terminal benefits arising out of the aforesaid declaration be paid to the legal heirs of the applicant's father within a period of 3 months from the date of communication of the order. So far as the request for compassionate employment is concerned, the same shall be considered on merits and decided within a period 6 months from the date of communication of this order. There will be no order as to costs.

J. Ansari
Member (J)
(n.u.)

W
Member (A)