

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 28th day of August 1997.

Original Application no. 945 of 1995.

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

Sanjay Kumar Gupta, S/o Shri M.K. Gupta, R/o House no.
S-21/115-95 Vijay Nagar Market, Varanasi Cantt.

... Applicant.

C/A Shri O.P. Gupta

Versus

1. Divisional Railway Manager, Northern Railway, Lucknow
Division, Lucknow.
2. Union of India through General Manager, Northern Railway
Baroda House, New Delhi.

... Respondents.

C/R Shri A.K. Gaur

ORDER

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

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

2. The applicant has sought the relief of direction
to the respondents to consider him for compassionate appointment
as also the direction to treat the father of the applicant
as retired from railway service with effect from 31.08.87
on medical ground.

....2/-

3. The case of the applicant as presented in the application by him is that the father of the applicant was declared medically unfit for all categories by the Railway Doctor vide their letter dated 31.08.87. It is claimed that the father of the applicant was retired from Railway service with effect from 31.08.87 on the ground of medical unfitness for all categories. The applicant approached the respondents for compassionate appointment. On getting no reply, he filed OA 997 of 1994 before the Bench of this Tribunal which passed order dated 24.08.94 directing the respondents to consider the representation, stated to have been filed by the applicant, on merit and dispose of the same by reasoned and speaking order within a period of three months from the date of communication of the order. The order also mentioned that the application was time barred. However, pursuant to the direction given by the Tribunal, the respondents passed order dated 05.12.94 (Annexure A 1 to the OA) in which it has been stated that the D.R.M had personally considered the representation of the applicant and find from the service record of his father that his father retired on 30.09.87, which was the date of his superannuation. Therefore, the application of the applicant for compassionate appointment was not covered under extant rules and the representation was rejected.

4. The arguments of Shri O.P. Gupta for the applicant and Shri A.K. Gaur for the respondents have been heard and pleadings considered.

5. Learned counsel for the applicant has come on the ground that once the applicant's father was declared unfit for any category by the Director of Cancer Research Institute on the ground of his vision due to immature cataracts in both eyes,

the applicant's father should be deemed to have retired with effect from 31.08.87. Learned counsel for the applicant relied upon provision of paragraph 5.1 of circular of Railway Board E(NG) 1/90/REB/2 dated 24.04.91 which reads as follows:-

"A Railway servant coming under the category of para 4(a) above can not be retained in service and is not, therefore, eligible for alternative employment. If he/She is on duty he/She shall be invalidated from service from the date of relief of his/her duty which should be arranged without delay on receipt of medical authority."

6. It is clear from the averments and the documents filed by the applicant as well as respondents that the applicant's father retired from service sometime after 31.08.87, which was the date of declaration of applicant's father being not fit for any category by the Director, Cancer Research Institute N.E. Railway. The respondents have produced annexure C-2 which shows that the case of the applicant was put to CMS/CE/NR/Lucknow, who appears to have been competent authority for recommending retirement of the applicant's father and the Chief Medical Superintendent of Lucknow did not agree to retire him as medically unfit. Even the provision of paragraph 5.1 of circular dated 04.04.91 cited by the applicant and referred to earlier does not support the contention of the learned counsel for the applicant that the applicant's father is to be retired from the date of invalidation. The circular mentions that if Railway servant is completely incapacitated for further service, he has to be invalidated from service only from the date of relief which is to be arranged without delay on receipt of the report of the medical authority. Letter dated 07.12.89, ^{c 2 to the reply of the Respondents} filed as annexure/ shows that no medical certificate

was submitted by the applicant's father to this effect and the applicant was retired on 30.09.87 on his date of superannuation. Thus the only question is whether the applicant retired one month before his date of superannuation on the ground of invalidation or he retired on the date of his superannuation. All the evidence on record regarding his date of retirement indicates that the applicant's father retired on 30.09.87 except annexure A-3 furnished by the applicant which is the letter signed on behalf of the D.R.M Lucknow, addressed to Station Superintendent, Northern Railway, Varanasi for transfer of his availing previllage passes from Varanasi in which date of appointment has been mentioned as 30.07.59 and date of retirement as 31.08.87. However, this communication can not be taken to be proof of his retirement. The applicant has failed to prove that his father retired from Railway Service with effect from 31.08.87 and that his representation was, therefore, rejected on wrong grounds. He thus failed to establish for compassionate appointment.

7. The applicant has made application on the premise that once it is established that an employee is declared invalid and retired from Government Service on that ground, his dependent has compulsorily to be given compassionate appointment on that ground alone. However, the learned counsel for the applicant has not cited any order which confers such an absolute rights on the applicant. There are other essential ground which is to be taken into consideration in granting compassionate appointment to the ward of the employee who was invalidated from service. The applicant has given no such

// 5 //

ground which may establish his eligibility and entitlement for compassionate appointment.

8. Thus, in any view of the matter the applicant lacks merit and is ~~to be~~ dismissed on that ground.

9. There shall be no order as to costs.


Member-A

/pc/