

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1268 OF 2002.

THIS THE 17TH DAY OF OCTOBER, 2005.

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

1. Baboo Lal, aged about 60 years, S/o late Lachoo, R/o 243/3, Nainagarh, Nagra, Jhansi.
2. Rakesh Sahu, S/o Sri Baboo Lal, Aged about 34 years, R/o 243/3, Nainagarh, Nagra, Jhansi..

Applicants.

By Advocate : Sri M.P. Gupta

Versus.

1. Union of India through the General Manager, Central Railway, CST, Mumbai.
2. The Deputy Controller of Stores, Central Railway, Jhansi.

Respondents

By Advocate : Sri Lal Ji Sinha.

ORDER

The applicant no.1 who was medically incapacitated sought retirement on medical grounds, though offered an alternative job. He had ^{filed} O.A. no. 180 of 1994 for a direction to the respondents to treat him as retired on medical grounds w.e.f. 6.3.94. and the said O.A. was decided on 11.8.99.

The operative portion of which reads as under :

"In the light of the above discussion, the Railway Administration is directed to that the applicant as having retired from service on medical ground with 6.3.94 and grant him pensionary benefits and consider the application of compassionate appointment for his son as per rules applicable to such

employees within four months from the receipt of a copy of this application."

2. On the strength of the above, the said applicant no. 1 was treated as retired and his pensionary benefits disbursed to him. The applicant no.2 was sought to be appointed on compassionate grounds as provision does exist for such appointment in the case of medical invalidation. However, the same was rejected vide order dated 22.9.2000. Against the said order, the applicants 1 & 2 had preferred O.A. no. 461 of 2001, which was disposed of on 16.4.2001 with the following directions to the respondents:

"The impugned order, copy of which has been annexed as Annexure-1, is set aside and the competent authority in the respondents establishment is directed to re-examine the whole matter and pass appropriate detailed, reasoned and speaking order within 2 months from the date of communication of this order. The O.A. is disposed of accordingly. No costs."

3. It is in pursuance of the aforesaid order that the respondents have issued the impugned order dated 14.7.2001.

4. The applicants have challenged the aforesaid order, as according to them the following grounds on which the compassionate appointment was rejected are not valid :


- (a) The applicant no.1 was offered alternative appointment and as he had rejected the same, compassionate appointment cannot be considered.
- (b) As the applicant no.1 was not medically incapacitated for any of the post, compassionate appointment is not available to his ward.



5. Pleadings having been completed, Arguments have been heard. The counsel for the respondents reiterated the aforesaid two grounds.

6. The counsel for the applicants referred to the order-dated 22.9.95 which modifies the policy of grant of compassionate appointment as contained in Railway Board's circular dated 7.4.83 and 3/9/83. According to this order of 1995, in the case of medically de-categorized employee compassionate appointment of an eligible ward may be considered also, in cases where the employee concerned does not wait for administration to identify and alternative job for him, but chose to retire and makes a request for such appointment. This clarification meets the aforesaid two grounds of rejection. Though, alternative job was identified and offered, applicant no.1 rejected the same and his rejection was held valid by this Tribunal vide order dated 11.8.99 in O.A. no. 180 of 1995. The retirement of the applicant no.1, therefore, tantamounts to his retirement without any alternative job. Since the order dated 22.9.95 provides for compassionate appointment when alternative job can be granted, but the applicant chooses to retire, the same means that it is not necessary that for compassionate appointment the Railway servant should be found medically incapacitated for all the jobs.

7. In addition to the above, the counsel for the applicant has referred to para 4, (1) of the O.A. in



which he has alleged hostile discrimination inasmuch as one Sri Radhey Lal who was working as Lohar, was medically declared unfit for the said post and when offered alternative job, he refused to accept the same and his son Sri Khem Chandra was offered appointment on compassionate grounds. The reply therefore, vide para 9 of the CA only states that "the case of Sri Radhey Lal or Lala Ram are entirely different than the case of the petitioner. The petitioner was offered alternative job, which he did not join." The reply is not convincing since the respondents have not brought in the Counter as to how the two cases are different, thus, hostile discrimination also surfaces in this case.

8. In view of the above, the O.A. succeeds. It is declared as per the rules the applicant no.2 is eligible for being considered for compassionate appointment on the basis of retirement of his father (applicant no.1) on medical grounds. The respondents are directed to consider the case of the applicant no.2 for necessary compassionate appointment in accordance with the provisions thereof and offer suitable appointment to the said applicant no.2. This process shall be completed within a period of six months from the date of communication of this order. No costs.



MEMBER-J

GIRISH/-