

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO.588 of 2002.

Allahabad this the 21st day of March 2005.

Hon'ble Mr.D.R. Tiwari, Member-A

1. Arun Kumar Singh
son of Sri Jagdish Narain Singh,
resident of Village Barawadih,
Post Office Baikunthpur, District Deoria,
at present resides at Azad Nagar Sector
NO.2, Industrial Estate, Gorakhnath,
Gorakhpur.
2. Jagdish Narain Singh
son of late Shri Ram Bachan Singh
resident of Mohalla Azad Nagar, Sector
NO.2, Industrial Estate, Gorakhnath,
Gorakhpur.

.....Applicant.

(By Advocate : Sri S Dwivedi)

Versus.

1. • Union of India, through the Secretary,
Ministry of Railway, New Delhi.
2. Railway Board, Board House, New Delhi,
through its Chairman.
3. General Manager, North East Railway, Head
Quarter, Gorakhpur.
4. Divisional Railway Manager (Karmik) North
East Railway, Lucknow.

.....Respondents.

(By Advocate : Km. S Srivastava)

ORDER

By this O.A., filed under section 19 of the
A.T. Act 1985, the applicant has prayed for
quashing the impugned order dated 8.1.2002
(Annexure No.1) and has further prayed for

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issuance of direction to the respondents to provide the suitable appointment to applicant NO.1 as per his qualification on compassionate grounds in compliance of the circular dated 22.09.95 as well as Circular dated 10.11.2000.

2. The relevant facts to decide the controversy is that the applicant No.1 is the son of applicant NO.2 who was working as Diesel Driver at the relevant time in the North East Railway. Applicant NO.2 was declared medically decategorised on 5.7.1996. He was to retire from service on 31.8.1996. This is the second round of litigation as the applicant approached this Tribunal and filed O.A. No.216 of 1999 which was decided on 27.7.2001 (Annexure 6) with the following directions:

"The O.A. is accordingly allowed. The order dated 8.9.1998 is quashed. The respondents are directed to reconsider the claim of the applicant for appointment on compassionate ground and in the light of Board's circular and the judgment of this Tribunal in case of Shriprakash (Supra). No order as to costs. The applicant shall provide copy of the judgment and copy of the circular to the concerned authority along with copy of the judgment".

3. In pursuance of the above direction, the applicant submitted to the respondents a detailed application along with order of this Tribunal with circulars dated 22.09.1995 and 10.11.2000 issued by the Railway Board. He also reminded the

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Competent Authority vide his letter dated 18.10.2001 (Annexure NO.7). After some time he received a letter from Divisional Railway Manager, North East Railway rejecting his request for appointment on compassionate grounds.

4. Aggrieved by the above order, the applicant has filed the instant O.A. and has assailed the order on various grounds mentioned in Para 5 of the O.A. The basic ground pleaded by the applicant is that he chose to retire from the service before the date of his superannuation. He took this action to take advantage of the provision contained in Railway Board Circular dated 22.09.1995 para 3 of the above circular may be extracted which is as under:

"After careful consideration of the matter Board have decided that in partial modification of Board's letter NO. (NG) III/78/RC-1/1 dated 3.9.1983, in the case of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses retire and makes a request for such appointment".

5. The impugned order has also been challenged on the ground that the compassionate appointment are not mandatory rather it is obligatory. The reason given in the impugned order that such appointment is normally done to help the family when the condition of the family is very pitiable and the

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ex-railway employee had adequate service left. The applicant has submitted that it is against the directions contained in the Railway Board circular dated 22.9.95 and 10.11.2000.

6. The respondents, on the other hand, have filed a detailed counter affidavit and resisted the contention of the applicant. They have argued that the applicant's father has been declared medically decategorised on 5.7.96 and is due date of retirement was on 31.8.96. They have submitted that on the date of decategorisation he had only 1 month and 26 days service left. He applied for retirement on 17.8.1996. He called before the Standing Committee on 19.8.96 and the Standing Committee offered him the post of Head Clerk but he refused and requested for retirement. The Standing Committee allowed to superannuate on due date, by grant of leave due/extra-ordinary leave. In view of this, the respondents have argued that he retired on 31.8.1996 on the date of his superannuation. He was allowed full pensionary benefits including the other retiral benefits. Accordingly, he cannot claim the compassionate appointment of his son under the provision of Railway Board Circular dated 22.9.1995 and 10.11.2000.

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7. During the course of the argument, the learned counsel appearing for the applicant has reiterated the legal pleas and grounds from the pleadings of the applicant. He emphatically argued that what was required under the scheme was that once the medically decategorised employee makes a request for retirement and does not wait for the alternative job; he is entitled for compassionate appointment of one of his ward. He also submitted that it is wrong to maintain that the normal retirement in spite of his request to retire him prematurely would stand in the way of getting compassionate appointment of his ward. He submitted that the applicant's father made an application for premature retirement on 17.8.1996 and he also submitted before the Standing Committee on 19.08.1996 that he was not interested in getting the job of Head Clerk being offered to him and he sought retirement. The counsel for the applicant also relied in the case of Sri Prakash Vs. Union of India in O.A. No.1411 of 1988 decided on April 19, 1993 reported as 1993 (2) U.P.L.B.E.C. 28 (trib).

8. The counsel for the respondents during the course of the hearing submitted that once the employee did not retire before the normal date of retirement, he is not entitled for compassionate appointment of his ward. The counsel then

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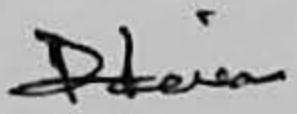
reiterated those legal pleas which had been taken in the counter affidavit of the respondents.

9. I have heard the rival submissions of the counsel for the parties and perused the records.

10. From the discussion above, the crucial question which arises for consideration is the validity of impugned order dated 8.1.2002. I have carefully read the impugned order and heard the arguments of the counsel for the parties. The grounds taken by the respondents while passing the speaking order is that the condition of the family is not pitiable and employee was not left with adequate service is not supported by the provisions of the scheme circulated by the Railway Board in their letter dated 22.9.1952. What is required to be seen is whether the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and makes a request for such appointment ?. In this case, the applicant's father applied for retirement on 17.8.1996 before the date of his retirement. In view of this, his case is fully covered by the scheme of Railway Board for employment on compassionate grounds on medical decategorisation on ex-railway employee circulated vide letter No. dated 22.9.1995.

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11. In view of the fact and circumstances mentioned above and the discussion made, the O.A. succeeds on merits and the impugned order is quashed. The respondents are directed to reconsider the case of compassionate appointment of applicant No.1. No order as to costs.


Member-A

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