

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.950 OF 2002

ALLAHABAD THIS THE 29th DAY OF october ,2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

1. Jagdish Lal Srivastava,
Retired Assistant Post Master,
Deoria, Ram Prasad Bismil Marg,
Ward No.9, Salempur,
District-Deoria.
2. Alok Kumar Srivastava,
Son of Jagdish Lal Srivastava,
Resident of Ram Prasad Bismil Marg,
Ward No.9, Salempur,
District-Deoria.

. Applicants

(By Advocate Sri S.C. Mandhayan)

Versus

1. Union of India,
through Secretary,
Ministry of Communication,
Department of Post,
Government of India,
New Delhi.
2. The Chief Post Master General,
U.P. Division, Lucknow.
3. The Post Master General, Gorakhpur Division,
Gorakhpur.



4. The Senior Superintendent of Post Office,
Deoria Division, Deoria.

. Respondents

(By Advocate Shri V.K. Pandey)

ORDER

By this O.A. applicants have challenged the order dated 15.02.2001 and 20.02.2001 whereby respondents have rejected the claim of applicant no.2 for compassionate appointment (Page 11). He has further sought a direction to the respondents to appoint applicant no.2 as Dak Sahayak on compassionate grounds.

2. The brief facts as alleged by applicants are w.e.f. 08.11.1999 that applicant no.1 was granted invalid retirement/as he was found to be unfit for retention in service due to his ill health (page 20). Before retirement, applicant no.1 gave an application for compassionate appointment in favour of his son applicant no.2 as he had a large family consisting of his wife, four sons and three daughters and they were all dependant on applicant no.1. The request was rejected on the ground that applicant no.1 had crossed 55 years of age. Being aggrieved applicant no.1 filed an appeal on 21.05.2001 stating therein that applicant no.1 had proceeded on leave from 15.11.1998 till he retired therefore, his retirement should be treated either



from 15.11.1998 or the date when he applied for invalid retirement i.e. 24.07.1999. In such a case his age would be below 55 years and applicant no.2 would become entitled for compassionate appointment.

3. Respondents have opposed the O.A. They have submitted that applicant no.1 was appointed as Postal Assistant on 01.10.1965. He was granted promotion under BCR scheme w.e.f. 01.10.1991 vide his application dated 24.07.1999 applicant no.1 informed the authorities that he is suffering from loss of eye sight without giving any supporting medical certificate. He was called upon to submit medical certificate vide letter dated 28.07.1999. Applicant no.1 submitted certificate dated 10.09.1999 issued from eye Hospital Sitapur Deoria alongwith his application dated 13.09.1999.

4. In accordance with rules applicant was sent for medical examination before the Chief Medical Officer Deoria. Chief Medical Officer Deoria gave his report on 04.11.1999 stating therein that applicant is invalid due to eye sight. He was accordingly retired w.e.f. 08.11.1999.

5. His report for compassionate appointment was considered but since it was not in accordance with



instructions dated 28.12.1998 issued by Director General, therefore, his request was rightly rejected. They have explained that applicant was given full salary and allowances w.e.f. 15.11.1998 to 08.11.1999 therefore, his request to retire him w.e.f. 15.11.1998 cannot be accepted. They have thus, prayed that O.A. may be dismissed.

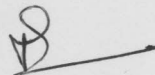
6. I have heard both the counsel and perused the pleadings as well as judgment dated 06.12.1993 given in O.A. No.280 of 1993 referred to by the counsel for applicant. Since respondents had relied on instructions dated 28.12.1998, I had directed the respondents to place it on record. They have produced it, which is taken on record.

7. Para 2 of the scheme for ready reference reads as under:-

"2. TO WHOM APPLICABLE

To a dependent family member-

- (A) of a Government Servant who-
 - (a) dies while in service (including death by suicide); or
 - (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rule 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or
 - (c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group



'D' Government servants); or"

This clearly shows that the case for compassionate appointment could be considered for dependant family member if Government servant retires on medical grounds provided he retired before attaining the age of 55 years.

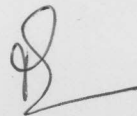
8. In the instant case, admittedly applicant no.1 crossed 55 years of age on 08.11.1999 when he was retired on medical grounds. It is also not disputed by applicant that he was declared invalid by medical board only on 04.11.1999. If applicant was to retire on medical grounds naturally it had to be based on medical report only, therefore, applicant could not have been retired before he was declared medically unfit by the medical board. Moreover, simply because he gave application he does not become entitled for retirement immediately as respondents have to complete the formalities, therefore, request of applicant that he should be deemed to have retired from the day when he fell sick or gave his application was rightly rejected specially so when applicant has already been paid the salary for the intervening period.

9. As far as judgment referred to by the counsel for the applicant is concerned, it does not lay down any principle of law. Therefore, it cannot be used as a binding precedent. Moreover, in that case also court observed that applicant should have been retired



immediately after he was declared completely incapacitated by the Chief Medical Officer and not before that date. Whereas in the instant case, respondents have themselves retired the applicant within four days after he was declared totally incapacitated by the Chief Medical Officer because the report of Chief Medical Officer is dated 04.11.1999 and applicant no.1 was retired on w.e.f. 08.11.1999 therefore, this judgment does not advance the case of applicant in any way.

10. In view of the above discussion, this O.A. is found devoid of merits. The same is accordingly dismissed with no order as to costs.



Member-J

/ns/