

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 09th day of December, 2004.

Original Application No. 91 of 2002.

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

1. Raja Ram Gupta, a/a 62 years, erstwhile Assistant Station Master, Varanasi. R/o Mayur Vihar Colony, Phulwaria, Varanasi.
2. Umesh Prasad Gupta son of Shri Raja Ram Gupta, Aged about 30 years, Resident of Mayur Vihar Colony, Phulweria, Varanasi.

.....Applicant

(By Advocate : Sri S Mandhyan)

Versus.

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

.....Respondents.

(By Advocate: Sri A.K. Gaur)

O R D E R

By this OA filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 11.12.2001 (Annexure-1) coupled with the request not to give effect to the aforesaid order.

Filtering out the details, the necessary factual matrix to decide the controversy is that the applicant No. 1 was appointed as Assistant Station Master (ASM) on 26.06.1961 and after some time he developed certain physical elements and finally he was medically examined and he was declared unfit on 06.01.1997 for

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class A-2 and A-III. However, he was found fit for Class B-II and below with glasses (Annexure A-3).

Railway Boards circular dated 22.09.1995 makes provision for employment on compassionate grounds for medically decategorised railway employees (Annexure-4). It provides further that in the case of medically decategorised, compassionate appointment of his eligible ward may be considered in cases where the employee concerned does not wait for administration to identify an alternative job for him but chooses, to retire and makes a request of such appointment. Accordingly the applicant No. 1 made a request for appointment of his son- applicant No. 2 in his place on compassionate grounds vide his letter dt.09.01.1997 (Annexure-5). The retirement application was accepted vide order dt.19.02.1997 (Annexure-6).

After making the above request the applicant No 1 sent several representations to the competent authorities for providing compassionate appointment to Applicant No. 2 because it was provided under the Railway Board's Circular dated 22.09.1995. His representations date 11.04.1998, 23.05.1998 and 29.10.1998 (A-7, A-8 and A-9) did not bring any result. Subsequently he got his representation forwarded by Sri Virendra Singh, Member of Parliament to Minister of Railways for this purpose but even this did not bear any fruit.

Aggrieved by the above action of the respondents the applicants filed O.A. No. 872/99 in this Tribunal which was decided by its order dated 10.08.2001 with the following direction :-

"Keeping in view the facts and circumstances of the matter, I find that the case of the applicant No. 2 for compassionate appointment has not been properly thrashed and there is no order passed by the competent authority in this regard as nominated under Railway Establishment Manual and, therefore, the competent authority in the respondents establishment is directed

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to reconsider the matter and pass appropriate order within three months from the date of communication of this order. The OA stands disposed of accordingly. No order as to costs."

After the above direction of the Tribunal the applicant filed detailed representation including the order of the Tribunal to the competent authority. The competent authority passed a detailed order which is dated 11.12.2001 (Annexure-1). This order has been impugned by the applicant on various grounds mentioned in paragraph No.5 of the OA. It has been pleaded that the OA deserves to be allowed.

The respondents on the other hand have opposed the OA and filed a detailed CA. They have submitted that the applicant No. 1 was medically decategorised on 06.01.1997 from the post of ASM and as per rules prevalent invoke, he retired w.e.f 19.02.1997. The General Manager after enquiry found that the applicant No. 1 was left only with three months of service at his credit before his superannuation and hence his request for appointment of his son was not permissible. Accordingly his request was not accepted. It has been further submitted that Railway Board circular dated 22.09.1995 referred to along with OA is not applicable to the facts and circumstances of the present case and the case of the applicant is wholly distinguishable on the ground that the applicant was at the verge of retirement. There was only three months left for retirement and the appointment is not permissible in the rules invoking. Accordingly the OA is liable to be dismissed.

During the course of the hearing the counsel for the applicant submitted that the rejection of request for compassionate appointment by the respondents is illegal and arbitrary. It was contended that instead of serving the purpose of the compassionate appointment the order of the respondents has defeated its very purpose as being contrary to circular of 1995. It was also submitted that a

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discriminatory treatment has been met out to the applicant as they have clearly cited the cases of as many as seven persons who were granted compassionate appointment in case of whom length before retirement was less than one year and in some cases it was less than three months and still in some cases it was less than 28 days. This averment has been made in Para 12 of the OA and in the CA they have not denied this fact and simply have stated that ^{they are} matter of record. Hence he concluded his argument ^{for saying} that OA deserves to be allowed. The respondents on the other hand have vehemently argued that his case has been thoroughly examined and was rejected because the father of the applicant was left with only three months of service. The counsel also produced before the court a copy of the Railway Board No. E (NG) II/86/RC-1/46 dated 28.02.1986. This is on the subject of employment on compassionate grounds which stipulate that in a very special case the compassionate appointment should be approved by the GM and not by any authority lower to him. To this the counsel for the applicant submitted that this letter of 1986 may not be taken into consideration because the Railway Board Letter ^{dt. 22.9.95} is [^] subsequent to that of 1986.

I have very carefully heard counsel for the parties and perused the record.

The only question which survives for consideration whether the applicant No. 2 is entitled for compassionate appointment in view of the facts and circumstances mentioned above. It is very clear that there appears to be discrimination writ large on the face of record as the averments made by the applicant in Para 12 has not been denied. Secondly it is undisputed fact that the applicant No. 1 was medically decategorised and without ^{his waiting} for alternative job he sought retirement which was accepted by the competent authority. The applicant No. 1 took this action only in the hope that his ward would be provided job on the compassionate grounds as provided under the Railway Board's Circular of 1995.

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In view of the facts and circumstances mentioned above and the discussion made, the OA succeeds on merit and is allowed. The respondents are directed to reconsider the applicant for making appointment on compassionate grounds within three months from the date of communication of this order. No costs.



MEMBER-A.

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