

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 12th day of September 2003.

Original Application no. 457 of 2003.

Hon'ble Maj Gen K K Srivastava, Member (A).

1. Kamlesh Kumar Rai, S/o Sri D<sub>e</sub>shraj,  
R/o Vill Simraha, Post Bhattagaon, Sadar Bazar,  
Jhansi.
2. Deshraj, S/o Sri Kishori, R/o Vill Samraha,  
Post Bhattagaon, Sadar Bazar, Jhansi.

.... Applicants

By Adv : Sri R K Nigam

Versus

1. Union of India through General Manager,  
Central Railway, Mumbai CST.
2. Divisional Railway Manager, Central Railway,  
Jhansi.

... Respondents

By Adv : Sri Anil Kumar

O R D E R

By Maj Gen K K Srivastava, AM.

In this OA, filed Under Section 19 of the A.T. Act, 1985, the applicants have prayed for quashing the impugned orders dated 1.7.2001 and 30.1.2002 (Ann A1 & A2), by which the request of compassionate appointment of applicant no. 1 has been rejected by the respondents. They have also prayed that the respondents be directed to issue appointment letter in favour of applicant no. 1 on compassionate ground in Class IV (Group 'D') category.

2. The facts, in short, are that the applicant no. 2.,

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who is the father of applicant no. 1 was appointed in the respondent's establishment as Class IV employee on 16.9.1961. As per channel of promotion he was promoted as Senior Shunter. He was sent for medical examination in the year 1999 and declared medically unfit in medical category A1 & A2, but he was found fit in medical A3 category with glasses. The grievance of applicant no. 2 is that he was not offered any alternative job from 1.6.1999 to 7.3.2000 and he was settled up. The case of his son (applicant no. 1) <sup>for Compassionate appointment</sup> was taken up and the respondents have rejected the same by the impugned order. Aggrieved by the same the applicants have filed this OA, which has been contested by the respondents by filing counter affidavit.

3. Learned counsel for the applicant submitted that the action of the respondents is arbitrary and not supported by any rules. He has placed reliance on certain <sup>relevant</sup> portions of the Railway Board's circular dated 26.2.1991 which lays down as under :-

"The railway servant who refuses to accept one or more offers of alternative jobs, will be discharged from service with full benefits and observance of proper procedure, including issue of 'Show Cause Notice'....  
....Efforts must be made to absorb the disabled Railway servant not only within the Division or Department but also in other Divisions or Departments."

4. Learned counsel for the applicant submitted that the respondents did not offer the applicant <sup>no 2</sup> any alternative job <sup>which</sup> within six months/as per Railway Board's instructions, they are bound to <sup>be</sup> and the respondents did not make any effort <sup>to</sup> to absorb applicant no. 2 within division or department and also in other division/department. Learned counsel for the applicant further submitted that it has been clearly laid down by the

Railway Board in their circular dated 18.1.2000 that in case where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases, request for appointment on compassionate ground to an eligible ward may be considered. No such exercise was carried out by the respondents. Learned counsel for the applicant finally submitted that the treatment of the respondents towards the applicants is discriminatory and in violation of the Rules/Instructions on the subject.

5. Resisting the claim of the applicant, Sri Anil Kumar, learned counsel for the respondents submitted that this OA has no merit and is liable to be dismissed. The applicant no. 2, on his own applied for voluntary retirement by letter dated 8.6.1999 (Ann CA 1) and also requested by letter dated 07.03.2000 for 'settle up' and, therefore, the case of the applicant deserves to be dismissed. Learned counsel for the respondents, further submitted that para 4 of the circular dated 18.1.2000 (Ann A6) is quite clear that the applicant no. 1 is not entitled for compassionate appointment. There has been no violation of Rules in this regard and the respondents have committed no irregularity or illegality.

6. Learned counsel for the applicant invited my attention to para 7 of the rejoinder affidavit, in which it has been alleged that the respondents themselves drafted the application which is being used to the detriment to the applicants. The matter was being dilly-dallied and he was being shuttled between DRM's Office and CMS's Office, in order to cover up their own



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administrative failure, these two application were prepared by the clerk concerned himself.

7. Learned counsel for the applicant has also argued that the Rules regarding voluntary retirement is very clear, once he filed his application for voluntary retirement on 8.6.1999, as stated by the respondents, the applicant should <sup>he been</sup> have ~~automatically spared~~ after expiry of 90 days. But the same was not done and he was settled up only on 7.3.2000.

8. I have heard learned counsel for the parties, considered their submissions and perused records.

9. The grievance of the applicant no. 2 is two fold. Firstly-, he was not offered any alternative appointment and, Secondly-, his son has been denied the compassionate appointment for which he is legally entitled to. I have carefully perused annexures CA 1 & CA 2. The perusal of these two annexures do not leave any doubt whatsoever that the applicant applied for voluntary retirement and, thereafter, for settling up. I am not inclined to accept the arguments of learned counsel for the applicant that these two applications were drafted by the respondents themselves to cover up their own administrative lapse and also since applicant no.2 is an illeterate person, he signed the same in good faith. The applicant cannot ~~turn~~ around at this stage that these two applications were drafted by the respondents and he signed them innocently. I am also not inclined to accept the argument of learned counsel for the applicant that the applicant should have <sup>he been</sup> relieved after 90 days from the date of application dated 8.6.1999 (Ann CA1). There is nothing on record to show that the applicant's voluntary retirement

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was considered by the respondents and in absence <sup>of</sup> for any approval from the respondents regarding voluntary retirement, the applicant no. 2 cannot take this plea. From perusal of annexure CA 2, it is clear that the applicant himself asked for 'settle up' and, therefore, no illegality has been committed by the respondents in settling up the applicant w.e.f. 7.3.2000. Now comes the question of compassionate appointment of applicant no. 1. In the last paragraph of the letter dated 7.3.2000, the applicant <sup>he</sup> No 2 himself mentioned that only five months were left over for his superannuation. It appears that the applicant sought for settle up with a view that he shall be able to secure compassionate appointment for his son who is applicant no.1 in this OA. I have also perused the impugned order with reference to the Railway Board's circular dated 18.1.2000 (Ann A6) and I do not find that the impugned orders suffers <sup>he</sup> from any error of law. It will also be relevant to mention here that para 1 (V) of the order of the Railway Board (Master Circular) dated 12.12.1990, <sup>is relevant in which</sup> which reads as under:-

"Where, on being medically decategorised, a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment, provided that if he has less than three year of service at the time of decategorisation, personal approval of the General Manager is to be obtained before the compassionate appointment is made."

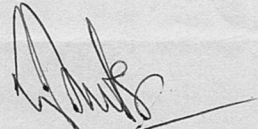
Since only 05 months were left over <sup>he</sup> the applicant no. 2 to superannuate, he cannot claim the right of compassionate appointment for his son.

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10. In the facts and circumstances and the aforesaid discussions, the OA is devoid of merit and accordingly the same is dismissed.

11. There shall be no order as to costs.



Member (A)

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