

Appointment
on Compassionate
Ground
(No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

6

O.A. No. 8/91

~~T.A. No.~~
~~XXXXXX~~

DATE OF DECISION 3.2.1992

Shri Chhaganbhai Dalla Petitioner

Mrs. K.V. Sampat Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

: Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

1. Shri Chhaganbhai Dalla,
2. Shri Visnubhai Chhaganbhai.

C/o. Jitendra K. Ved., (B.A.L.L.B.),
Rly Colony G.L. Yard,
Quarter No. 406/B,
Nr. Railway Hospital.,
GODHRA (Panchmahal)-389 001.

...Applicants.

(Advocate : Mrs. K.V. Sampat)

Versus

1. Union of India Represented,
by the General Manager,
Western Railway,
Churchgate,
BOMBAY.

2. Divisional Railway Manager,
Western Railway,
Pratapnagar,
VADODARA - 390 004.

...Respondents.

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A. NO. 8 OF 1991.

Date : 3.02.1992.

Per : Hon'ble Mr. R.C. Bhatt : Judicial Member

None present for the applicant.

Mr. N.S. Shevde, learned advocate for the
respondents present.

This matter was listed for admission. There was also a previous order on 19th April, 1991, that the matter be listed for admission on which date it may also be heard finally. The Original Application ^{is} filed by the applicant no. 1, and his son the applicant no. 2, for a declaration that the applicant no. 1, is entitled to get applicant no. 2, appointed to service in Western Railway according to eligible category in terms of the

Divisional Railway Manager's letter dated 23rd June, 1988, Annexure-A/2. The applicants have amended the Original Application in which ^{they have} / ^{alleged that} applicant No.1 after his medical incapacitation / was not offered any alternate Railway Job. It is also alleged that at the relevant time of his medical incapacitation, he was aged 50 years, and had still eight years more time for reaching super-annuation, and also the applicant no.2, was a minor aged -ten years. The applicants have mentioned in para-3, of their application that no order was passed by the respondents on the applicant's application dated 5th February, 1990. It is alleged by the applicants that / ^{applicant No. 1} was serving in the Loco Department, Western Railway and he was medically decategorised by the respondents and no alternative job was given to the applicant no.1. The applicant no.1, applied for voluntary retirement with full pensionary benefits which was accepted by the respondents and he was permitted to retire from 25th December, 1978. He was declared medically unfit as Driver and he voluntarily retired as appears from Annexure-A/1, dated 6th February, 1979.

2. The case of the applicants is that the applicant No.1, relying on Divisional Railway Manager's letter dated 23rd June, 1986, to Ex-M.P. Shri Ranjitsing P.Gaekwad, dated 28th June, 1988, is claiming the appointment of his son applicant No.2, on compassionate ground because in para-4, of the said letter it is mentioned that when railway servant is declared medically unfit by the Railway medical authorities, the appointment on compassionate ground is admissible as per extant Rules. This was a reply regarding re-appointment or appointment of son in the case of

one Mr.R.B.Ghumre, Relying on this reply at Annexure-A/2, the applicant no.1, has prayed that the applicant No.2, should be provided with a job in Class-IV category on compassionate ground. The applicants have produced at Annexure-A/3, the representation dated 5th February, 1990, made to the respondents which according to them is not decided by the respondents.

3. The respondents have filed reply resisting the admission. Since the reply is filed to the Original Application, the matter is disposed of on merits treating it as admitted. None is present for the applicants. I have heard the learned advocate Mr.N.S. Shevde, for the respondents. I have gone through all the pleadings and documents on record and the authorities relied on by the applicants in Original Application. The respondents have mentioned in their reply that the applicant no.1, was declared unfit for A and B medical categories and fit for C/1, and below medical categories as per Divisional Medical Officer, Baroda's Certificate No.9/830, dated 3/4th July, 1978. The applicant no.1, was decategorised on his failure to pass the required Medical Examination, and was required to be discontinued from the post of Driver, Grade-C. It is important to note that the applicants have alleged in the application that the applicant no.1, was not offered in alter^{native} Railway job after he was medically decategorised, but this statement does not seem to be true, because the respondents have categorically contended in the reply, ^{that} steps were taken to find out alternative employment to the applicant no.1, and therefore he was

screened for alternative job. The fact that he was screened by the screening committee, is admitted by the applicant no.1, in his representation at Annexure-A/3, dated 5th February, 1990. The respondents have contended in the reply that the applicant no.1, was offered the alternative job of Lubricating Assistant for which he was considered suitable, but the applicant no.1, did not accept the said alternative employment. The applicants have concealed this fact that the applicant no.1, had shown his unwillingness to accept the job of Lubricating Assistant by an application dated 25th December, 1978, and requested for voluntary retirement, which was accepted by the competent authority vide Annexure-A/1. In this view of the matter, Annexure-A/2, relied on by the applicants cannot be of any help to the applicants. The applicant No.1, has concealed the fact that he was offered alternative employment and he has shown his unwillingness to accept the same and requested for voluntary retirement. There is no Rule shown that when the employee refuses to accept the alternative employment when he is medically decategorised and after showing his unwillingness to accept the alternative employment voluntarily retires, ~~xx~~ ^{nt} his depend~~e~~ / should be given appointment on compassionate ground. The respondents have also denied that any application dated 5th December, 1990, was received by the Divisional Office, Baroda, and no documentary evidence is produced to show that the application Annexure-A/3, was served on the respondents. However

even assuming for a moment that there was such representation I find no substance in the application of the applicants, because, he had sought voluntary retirement though he was offered alternative employment. More over the applicants have concealed the facts that the respondents had offered alternative employment to him, but ^{applicant No 1} showed his unwillingness to accept the same.


4. The applicants have referred to the decision in O.A./216/88, decided by this Tribunal on 6th March, 1991, in the case of Shri Sumendra N. Desai, Versus Union of India and others. I have gone through this decision, which shows that no suitable post of even a lower pay scale was offered to the petitioner ^{in that case} ~~petitioner~~. The instruction about the appointment on compassionate ground was also considered by the Tribunal. The Tribunal, on facts of the said case, directed the respondents to consider the application of the petitioner's son in the case for the suitable job by giving sympathetic consideration, etc., In this case the applicant no.1, has shown his unwillingness to accept the alternative employment offered to him after he was medically decategorised from the post, of the Driver, and therefore, the instruction referred to in the Judgment of O.A./216/88, will not help the applicants.

5. I have also gone through the decision in Anachankandy Chathu and Another Versus Divisional Railway Manager, reported in (1990) 12, Administrative

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Tribunals Cases-235, Central Administrative Tribunal,
Ernakulam Bench. The said decision also does not
help the applicants because in that case, the father
who was an employee working as a Cabinman was
found to be medically unfit for all Classes due to
defective eyesight. Therefore, the instructions about
the dependent on the compassionate ground was considered.
In the instant case, the applicant no.1, was not
found medically unfit for all Classes but he was
found medically unfit as a Driver, and he was offered
the alternative employment but he showed his unwilling-
ness to accept the same and requested for voluntary
retirement. Under these circumstances and facts the
applicant no.1, is not entitled to get his son the
applicant no.2, appointed in a suitable job on compassiona-
te ground. Result is that the application deserves
to be dismissed.

ORDER

* Application is dismissed. No order as
to costs. Application is disposed of.*


(R.C.Bhatt)
Member (J)

AIT