

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO 159/93

~~159/93~~

DATE OF DECISION 05.04.1995.

Shri Vinaykumar C. Bhoi Petitioner

Mr. Y.V. Shah Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

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

CORAM

The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

JUDGMENT

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

: 2 :

Shri Vinayakumar Chandulal Bhoi,
C/o.General Workmen's Union,
CL Ry.Colony,
Mr.Ry.Hospital,
Godhra - 389 001.

...Applicant.

(Advocate : Mr.Y.V.Shah)

Versus

1. Union of India, represented by
the General Manager,
W.Rly., Churchgate,
Bombay - 400 001.

2. Divisional Rly. Manager,
W.Rly., Rly Yard,
Pratapnagar,
PO.Vadodara - 390 004.

...Respondents.

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 159 OF 1993.

Date: 05.4.1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.Y.V.Shah and Mr.N.S.Shevde learned counsels
for the applicant and the respondents respectively.

2. The applicant's father who was Loco Shunter under the
Respondents was declared medically unfit for the post.
According to the applicant he was not offered any alternate
employment, hence he sought voluntary retirement from service.
It is his contention that as his father was medically
deategorized, he is entitled for compassionate appointment.
He had approached Tribunal earlier in O.A./452/90, and
Respondents asked to consider and decide the applicant's

representation. However, the Respondents rejected the representation and the applicant has again approached this Tribunal against the decision rejecting his application for compassionate appointment. The applicant's mother is stated to be getting him monthly pension of Rs.500/- p.m. viz., which is hardly sufficient for the family. Hence, he prays for the following reliefs :

The applicant prays that the impugned order dated 17.9.92 be quashed and set aside, and the respondents be directed to offer the applicant a suitable employment in Rly. and issue such appointment order within time to be specified.

The Tribunal be pleased to award exemplary costs against the respondents in view of darings of its officials to make false statements about non-receipt of registered a.d. letter.

3. The respondents have filed reply. They have stated that the applicant's father who was a Railway employee was declared medically unfit for the post of Shunter. According to them after being medically declared unfit for the post of Shunter, the employee was offered alternative post of Fitter-Grade-III, after obtaining his willingness. His posting order was issued. According to them the employee did not report for duty and subsequently submitted his request for voluntary retirement by application dated 18.11.1983. The respondents after waiting for more than five years, issued orders dated 29.3.1988, accepting the voluntary retirement of the employee retrospectively from 17.2.1984, i.e. after expiry of three months after the

application was given by him. As the employee had not accepted the alternate job offered to him, he is not eligible for claiming compassionate appointment for his son. The applicant has however, refuted the contention of the respondents that the letter stated to have been issued by them on 22.8.93, was not in fact received by him and he filed a M.A. calling upon the respondents to produce the proof of delivery of the said letter to the father of the applicant. They have stated during the arguments by Mr.N.S.Shevde, learned counsel for the Respondents, that the records do not contain any acknowledgement for letter dated 22.8.1983, offering the applicant's father alternative employment as Fitter.

4. We have heard arguments from both sides. Mr.Y.V. Shah, learned counsel for the applicant contended that according to the Master Circular dated 12.12.1990, issued by the Railway Board, Railway employees who are medically decategorised for the job they are holding and no alternative job of the same emoluments is offered to them, they can be considered for compassionate appointment for their dependant. There is no dispute that the father of the applicant was medically decategorised from the post of Shunter. Mr.Y.V.Shah vehemently argued that the applicant's father had not received any offer for alternative employment. He also pointed out that the Railways was not able to produce acknowledgement of the letter dated 22.8.1983, Annexure-R/1, purporting to be a offer of the employment. It only shows no such letter was issued as otherwise the records will be

having acknowledgement. In his view, therefore, the employee was fully covered under the scheme and hence, the applicant should be granted the compassionate appointment. Mr.N.S.Shevde, learned counsel for the respondents on the other hand pointed out that the letter dated 22.3.1993, Annexure-R/1, was in fact issued but was unable to produce any proof of its being received by the applicant's father. According to Mr.N.S.Shevde as the applicant was offered alternative employment protecting his emoluments, and he refused to accept it and proceeded on voluntary retirement, his son cannot claim any right for compassionate appointment.

5. The main contention of the Respondents is that the applicant's father was offered alternative employment after decategorisation which he refused and hence not eligible for claiming compassionate appointment for his son. However, they have not been able to produce any acknowledgement of the letter offering a alternative employment to the applicant's father. Hence, there is no proof that such alternative employment was offered to the applicant's father. We have gone through the Master Circular on the subject dated 12.12.90, issued by the Railway Board and according to the para-I(V) provision exists for considering compassionate appointment for a employee who proceeds on voluntary retirement after being medically decategorised and chooses to retirement. The relevant provision is reproduced below :

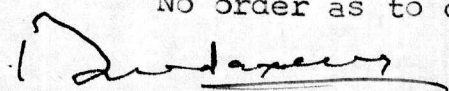
"Where, on being medically decategorised, a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment provided that if he has less than three years of service at the time of decategorisation, personal approval of the General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

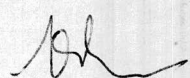
From the above, it is clear that such a person comes within the eligibility category for consideration of compassionate appointment. It is seen from the records that the date of birth of the applicant is 11.4.1936 and accordingly, he was aged less than 48 years at the time of giving voluntary retirement on 18.11.1993. In other words, he had more than ten years service before retirement and his case falls squarely within the provisions of the above quoted rule. We, therefore, feel that the applicant's case had not been considered on merits with proper application of mind. It deserves to be reconsidered and hence, we pass the following order :

ORDER

"The impugned order dated 17.9.1992 of the respondents, Annexure-A/1 is quashed and set aside. The respondents are directed to consider the case of the applicant for compassionate appointment on account of medically decategorisation of his father as per rules for any employment for which he may be suited within a period of three months from the date of receipt of this order and inform him accordingly. The application stands disposed of accordingly.

No order as to costs."


(Dr. R.K. Saxena)
Member (J)


(V. Radhakrishnan)
Member (A)

Date	Office Report	ORDER
21.9.95		<p>MA/623/95 for extention of time allowed, since two months of extention of time, as asked for is already over.</p> <p>MA/623/95 stands disposed of accordingly.</p> <p>This will be the final extention.</p> <p style="text-align: right;">12 (K. Ramamoorthy) Member (A)</p> <p>npm</p>

Date	Office Report	ORDER
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21.9.95

MA/623/95 for extention of time allowed,
since two months of extention of time, as
asked for is already over.
MA/623/95 stands disposed of accordingly.
This will be the final extention.

(K. Ramamoorthy)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 04/159/93 of

Transfer Application No. _____ of

CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : 13.05.95

Countersign :


16-5-95

Section Officer.



Signature of the Dealing
Assistant

INDEX - SHEET

NAME OF THE PARTIES MD. V.C. Bhoi

U. O. I. & O. O.

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