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O.A. NO. 73 OF 2001

Chintamani Acharya

....

APPLICANT

VRS.

UNION OF INDIA & ORS.

....

RESPONDENTS.

.....

13. ORDER DATED 4TH JULY, 2002.

Heard Mr. S. Mohanty, Learned Counsel for the Applicant and Mr. S. Roy, Learned Counsel for the Railways.

The facts of this case, as emerged from the materials placed on record, go to show that the Applicant, while working as Diesel Engine Driver in South Eastern Railways, remained sick for a prolonged period and within the knowledge of his authorities/Respondents he was given Medical treatment.

Documents placed in this case with the rejoinder go to show that the Applicant was continuing to remain in sickness; for which the Medical Superintendent of South Eastern Railway, at Khurda Road, on several occasions, certified that the Applicant should not be given heavy work and should be allowed to do/deal with comparatively lighter work; as is seen under Annexure-6, dated 6-1-1989 and Annexure-7, dated 13-7-1990.

Annexure-7 dated 13.7.1990 goes to show that the Applicant had to be removed to hospital for his sickness; as has been certified by the Assistant Station Master of Sakhigopal. Annexure-6, dated 6.1.1989 goes to show that while certifying that the Applicant to perform day duty only for a period of two months, the Medical Superintendent of South Eastern Railways at Khurda Road (on 13-07-1990 under Annexure-7) again certified

that the Applicant should be given light duty. Several other documents have been placed before me under Annexure-9, series to show that the Applicant was really sick for which he had to volunteer to take retirement but, the order by which he was allowed to take voluntary retirement, *prima facie*, do not show that the retirement was granted to the Applicant for his ailment. Undisputedly, the retirement order, under Annexure-R/1, does not show that the Applicant was given voluntary retirement for his sickness but other contemporaneous documents (as discussed above) go to show that the Applicant took retirement for reason of his ailment leading to his incapacity/total incapability to discharge his duties in the Railways. Despite of the said situation which was within the full knowledge of the Respondents, the Department *mala fide* did not grant retirement to the Applicant on the ground of permanent incapacitation and that is why he had to go on voluntary retirement. Even after granting voluntary retirement to the Applicant, under Annexure-R/1., the Applicant was not granted terminal benefits by the Railways for which he had to approach this Tribunal time and again which shows definite *mala fide* of the Respondents towards the Applicant. As it appears, only after approaching this Tribunal (in earlier round of litigation), the terminal benefits/pensionary benefits were granted to the Applicant.

During pendency of those litigations, the Applicant, also in order to remove the distress condition of his family, represented to the Authorities to provide compassionate appointment to his daughter named Swarnalata Acharya. While

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disposing of the earlier round of litigation (OA No.127/99) directing the Respondents to grant pensionary benefits to the Applicant, this Tribunal, however, declined to give any direction to the Railways to consider the representation of the Applicant/to consider the case of his daughter (Swarnalata Acharya) to provide her compassionate appointment. Since no heed was paid to the grievance of the Applicant (to provide compassionate appointment to his daughter, Swarnalata Acharya) the Applicant had filed the present Original Application for redressal of his grievances.

In the present Original Application, the Respondents/Railways have taken a stand that since the Applicant took a voluntary retirement, simplicitor, his family is not entitled to get benefits of compassionate appointment. The Respondents have also taken a stand that since on an earlier occasion, this Tribunal declined to give a direction to the Railways to consider the representation of the Applicant to provide a compassionate appointment to a member of his family, the prayer as made in the present Original Application, is bad on the ground of re-judicata/constructive res-judicata.

It is the case of the Applicant that for the reasons of his continuous sickness (which is confirmed from the medical papers placed in the present case), he virtually became incapacitated to discharge his duties in Railway service and in the said premises, he volunteered to go out of employment on premature retirement. On the other hand, it is the stand of the Railways that since the Applicant volunteered to take retirement, he was granted retirement. On the mere prayer to take voluntary

retirement, the Railways would have never granted the voluntary retirement as a matter of routine. The Authorities apparently being satisfied only about the prolonged sickness amounting to permanent incapacitation of the Applicant to discharge his duties to the Railways grant voluntary retirement. Or else the application for voluntary retirement was to be treated as a voluntary resignation; in the event, the authorities declined to grant retirement. Here is a case where the Authorities being satisfied, allowed the Applicant to go on voluntary retirement; obviously being satisfied about the stand of the applicant that he is incapable to discharge his duties for his prolonged sickness. It is not the case of the Railways in the counter filed in this case that the Applicant was fit to discharge his duties and yet, he volunteered to go on retirement. That being the position, I am inclined to hold that the Railways granted voluntary retirement to the Applicant for the reasons of his prolonged sickness; for which he was incapable to discharge his duties. The allegation of mala fide, as raised by the Advocate for the Applicant, in course of the hearing, I am inclined to accept; because on granting voluntary retirement, the authorities/Respondents/Railways promptly did not grant terminal benefits to the Applicant and, for the said reason, the Applicant had to approach this Tribunal in the earlier round of litigation. Even during pendency of the said litigation, the Applicant was not granted terminal benefits and only after directions were issued from this Tribunal, the Railways granted terminal benefits to the

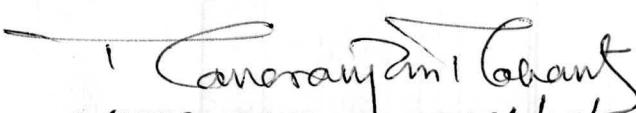
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Applicant; which totally shows the mala fide on the part of the Respondents/Authorities of the Railways against the Applicant.

Once, it is held that the Applicant had to face premature retirement for the reason of his prolonged sickness amounting to permanent incapacitation ,the Respondents are hereby directed to consider the case of Swarnalata Acharya, the daughter of the Applicant for providing her a compassionate appointment, which is definitely needed for removing the distress condition of the family of the Applicant.

While disposing of this Original Application, with the aforesaid observations and directions, the Respondents are directed to give prompt consideration to the case of the daughter (Swarnalata Acharya) of the Applicant for providing her a compassionate appointment befitting to her educational qualification, within a period of three months from the date of receipt of a copy of this order.

With the aforesaid observations and directions, this Original Application is allowed. No costs.


(MANORANJAN MOHANTY) 04/07/2002

MEMBER (JUDICIAL)

KNM/CM.