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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 13.7.2001.

O.A.No. 8/1999

Moda Ram S/o Shri Ganeshi Lal, aged about 57 years, Ex.
Machinist, Loco Shed, Hanumangarh Junction, R/o Behind High
School, Sector 12, House No. 615, Near Bansal Ki Chakki,
Hanumangarh Junction.

.....applicant.

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern
Railway, Bikaner.
3. Chief Medical Officer, Northern Railway,
New Delhi.

.....respondents.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

Mr.Y.K.Sharma, Counsel for the applicant.
Mr.Kamal Dave, Counsel for the respondents.

ORDER

BY THE COURT :

The applicant had filed this O.A. with the
prayer that the impugned order dated 18.9.1997 (Annex.A/1),
be quashed and the respondents be directed to appoint Shri
Bharat Kumar Son of the applicant, on compassionate ground on
the post commensurate to his educational qualifications by
treating the applicant as having been medically
declassified, with no offer of alternative job.

2. Notice of the Original Application was

given to the respondents who have filed their reply to which no rejoinder has been filed by the applicant.

3. It is stated by the respondents in their reply that the applicant was declared medically unfit by a competent Railway Medical Board for all categories vide communication dated 10.2.1993 under Para 512 (2) (ii) of the Indian Railway Establishment Manual (for short 'IRMM'). It is also stated by the respondents that the order dated 10.2.1993 in which the applicant was found malingering in respect of his eye-sight, has not been quashed or over-ruled by any authorities and so long that order stands the applicant cannot be heard to say that he was retired on medical grounds. The applicant had never challenged the order dated 2.9.1993 retiring him on medical grounds invoking Para 512 (2) (ii) and, therefore, the applicant cannot claim compassionate appointment for his son. The O.A. deserves to be dismissed.

4. I have heard the learned counsel for the parties and have gone through the case file.

5. From the facts of the case, it appears that applicant had filed an O.A. earlier in which a direction was given to the respondents to dispose of the representation of the applicant dated 11.7.1995. The respondents after considering the representation decided the same vide impugned order dated 18.9.1997 (Annex.A/1). In this order, it has been mentioned that the applicant was retired on medical grounds invoking the provisions of Para 512 (2) (ii) of IRMM 1981. Under the prevailing orders if a Government servant is due to malingering retired then he is not entitled to seek compassionate

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appointment for any of his wards. Admittedly, in this case, the applicant has not challenged the order retiring him invoking the said Para and, therefore, the applicant cannot successfully plead that he was retired on medical grounds leaving a right open for him to seek compassionate appointment for his ward. Vide order dated 2.9.1993, Annex.A/1, the Divisional Personnel Officer informed the Divisional Railway Manager that the applicant was examined by the medical board. He was found to be malingering and could be retired by invoking provisions of Para 512 (2) (ii) of the IRMM 1981 and consequently, the applicant was retired. The letter dated 4.3.1994 (Annex.A/3), is also on the same subject and has taken into account the report of the Medical Board dated 10.2.1993 in communicating the fact of applicant's having been retired under the aforesaid Para.

6. It is not disputed that under Para 512 (2) (ii) it is clearly mentioned that if malingering is established, the employee cannot remain in service and he cannot be provided with any alternative employment. In this case, the applicant was not offered any alternative employment and due to malingering in respect of his eyesight, was ordered to be retired. It is not a case of simple medically de-categorisation and claiming compassionate appointment. Retiring a Railway servant on medical grounds on the basis of malingering, dis-entitles his claim for compassionate appointment of his ward. It was argued by the learned counsel for the applicant that the fact of malingering was not communicated to the applicant while he was retired and, therefore, the applicant is ^{not} bound by the findings of malingering given by the Medical Board, but, I do not agree to this proposition. The applicant was retired

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way-back in 1993. This cannot be believed that on his retirement the applicant had not come to know the grounds of retirement. Having not challenged the order of retirement, the applicant cannot claim after such a long lapse of time that the fact of malingering was not communicated to him else he would have challenged the same. The communications Annex. A/2 and A/3 are no doubt internal correspondence of the department but Annex.A/2 dated 2.9.1993 bears the signatures of Moda Ram also; this means that Moda Ram (applicant) was informed that he is to be retired on medical grounds by invoking the provisions of Para 512 (2) (ii) of the IRMM. Therefore, it is very difficult to believe that applicant did not know the ground of his retirement prematurely. The applicant was employed as a Khalasi on 20.5.1965 and was medically examined in February 1993 i.e. almost on completion of 28 years of his service. It is a common experience that sometimes in order to secure employment for his ward such tactics are adopted by the Railway employees who are ill-advised. The applicant seems to be an example of such a case.

7. I have gone through the ruling cited by the learned counsel for the applicant reported in WLR 1992 (CAT) Raj. 70. In my opinion, the facts of the ~~cited~~ case are different than the facts of the case in hand and, therefore, the rule propounded in this ruling, cannot be made available in the instant case.

8. One ~~thing~~ is also noted in this case that the person who is seeking compassionate appointment has not made any application. On the contrary, it is his father, i.e. the retiring Government employee who is claiming his son to be appointed on compassionate ground. This in my opinion ~~is~~ not permissible.

JW

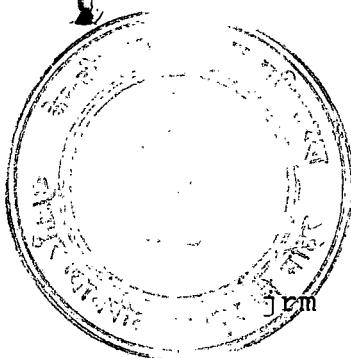
9. As stated above, due to applicant's own retirement under the provisions of Para 512 (2) (ii), the applicant is not entitled to claim any advantage of such compassionate appointment for his son. Therefore, the Original Application filed by the applicant deserves to be dismissed.

10. The Original Application is, therefore, dismissed with no orders as to cost.

AM 13/7/2001

(A.K.MISRA)
Judicial Member

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Recd
Woodall
23/7

By (initials)
23/7/2002

Part II and III destroyed
in my presence on 16.5.07
under the supervision of
section officer (1) as per
order dated 13.3.07

NAN
Section officer (Record)