

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.190/2013

Jodhpur this the 11th day of March, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

2. Bijendra Kumar S/o Shri Ram Kumar, R/o Hanumangarh, at present R/o Santosh Kumar Arora Wali Gali, Ward No.5, House No.5, Gandhi Basti, Mandi Dabwali, District Sirsa (Haryana) and his father was working under respondent No.4 as Loco Pilot (Goods).

.....Applicant

None present for the applicant.

Versus

- 1: Union of India through the General Manager, North-Western Railway, Jaipur.
- 2: Divisional Railway Manager, North-West Railway, Bikaner.
3. The Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.
4. Crew Controller (Incharge), Northern Western Railway, Hanumangarh.

..... Respondents

Mr. Subhash Kachwaha, present, on behalf of Mr. Vinay Jain.

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for seeking the following reliefs:-



- a. *By an appropriate order or direction, the respondents may kindly be directed to consider and provide an appointment to the applicant as per provisions for compassionate appointment to the medically declassified employee's ward.*
- b. *By an appropriate order or direction, the respondents may kindly be further directed to decide the appeal preferred by the father of applicant against erroneous medical examination report given by Chief Medical Officer and provide all consequential benefits admissible upon it.*
- c. *Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- d. *Application of the applicant may kindly be allowed with costs.*

2. Short facts of the case, as averred by the applicant, are that father of the applicant Shri Ram Kumar was appointed in Railway on 28.6.1978 and promoted to the post of Loco Pilot (Goods). The applicant's father while serving as Loco Pilot (Goods) was sent for medical examination before the Chief Medical Officer (CMO), North Western Railway, Bikaner. The CMO did not find him fit to continue as Loco Pilot (Goods). Father of the applicant preferred appeal against the report of the CMO as per para 522 (2)(1) of Indian Railway Manual, 2000 within 7 days from the medical report but the appeal is still pending consideration. Thereafter under the influence of the officers in Railway, father of the applicant requested for voluntary retirement as per rules with request to accord appointment of the applicant. Applicant's father was granted voluntary retirement w.e.f. 4.12.2011 and pension has been sanctioned to him. It is alleged that the father of the applicant on the assurance given by the authorities for providing appointment to his son on compassionate grounds submitted application

and from the circulars related to appointment on compassionate grounds of wards of medically incapacitated railway employees it is clear that railway authorities are bound to consider the matter of wards of medically decategorized employees for appointment on priority basis, but the respondent-department has not considered the case of the applicant, therefore, the applicant has filed this OA praying for the reliefs as extracted above.

3. By way of filing reply, the respondents have denied the right of the applicant. So far appeal filed by father of the applicant is concerned, it has been submitted that no appeal has been filed. The respondents have also denied the averment made by the applicant that his father was advised by his immediate senior officer to seek voluntary retirement so that one of his ward will get the job. It has further been submitted that Railway Board has issued instructions vide RBE No.78/2006 dated 14.6.2006 and as per these instructions appointment can be given only if the decategorized staff have atleast five years or more service left. Accordingly, the Crew Controller informed the applicant's father vide letter dated 3.8.2011 that as he has been medically decategorized on 14.7.2011 and his service remained less than five years, hence there is no provision for appointment on compassionate grounds of his ward. The respondents have also submitted that applicant has got no case in his favour nor he has got any legal right to be considered for appointment on compassionate ground because in view of railway board's letter dated 14.6.2006 applicant

cannot submit application for appointment because at the time of seeking voluntary retirement by applicant's father, the remaining service left was less than five years. Applicant's father was not totally declared medically unfit rather he was declared medically de-categorized and in this situation he has got option to submit application for absorption in other category, but instead of choosing alternate absorption in other category, he has submitted application for voluntary retirement. Therefore, the OA deserves to be dismissed.

4. Heard the counsel for the respondents and perused the material available on record.

5. Counsel for the respondents contended that the father of the applicant had on the relevant date of medical declassification i.e. 14.07.2011 less than 5 years service left, therefore, his ward is not entitled to have any right of consideration for appointment on compassionate grounds. He further contended that at the time of seeking voluntary retirement, as the father of the applicant had less than five years service left and therefore in the light of the circular referred by the applicant in his application, his claims has been considered and after due consideration the order at Annexure-R/2 was rightly passed.

6. We have perused the relevant circulars and order at Annexure-R/2 passed by the competent authority. In the light of the Railway Board's Circular Annexure-R/1 and the order at Annexure-R/2 passed by the competent authority regarding the rejection of the claim of the

applicant, as the applicant's father had less than 5 years service left on the relevant date, in our considered view no case is made out for interference. Therefore, the applicant is not entitled to have any relief in his favour.

7. Accordingly, the OA is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

R/rss

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