

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 290/00278/14

Reserved on : 25.04.2015

Jodhpur this the 27/4/2016

CORAM

**Hon'ble Ms Praveen Mahajan, Administrative Member**

Navratan S/o Shri Lachhi Ram, aged about 31 years, resident of Village & Post – Loha, Tehsil-Ratangarh, Distt Churu, his father was last employed on the post of Store Chowkidar, in the office of Senior Section Engineer ( P Way), Sujangarh, NWR.

.....Applicant

(By advocate : J.K. Mishra)

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur - 17.
2. Divisional Railway Manager, NWR, Jodhpur Division, Jodhpur.
3. Senior Divisional Personnel Officer, NWR, Jodhpur Division, Jodhpur.

(By Advocate : Mr Kamal Dave)

.....Respondents

ORDER

*Dahajan*

The present application has been filed u/s 19 of Administrative Tribunals Act, 1985, challenging the order dated 03.07.2014 by which the respondents have rejected the claim of the applicant for compassionate

2. The present OA filed by the applicant is 3<sup>rd</sup> round of litigation. The necessary facts giving rise to the present OA are that the father of the applicant Shri Lachhi Ram served in the respondent department during the period from 01.03.1975 to 24.07.2007. He was a regular employee on the post of Gateman and declared unfit for the same on 19.10.2000. Shri Lachhi Ram was decategorized on his own request and given alternative employment on the post of Chowkidar. It has been averred that the physical condition of Shri Lachhi Ram got deteriorated to an extent that he was not even in a position to walk or move and unable to perform any official work. Therefore, Shri Lachhi Ram submitted an application through proper channel in the year 2007 requesting to retire him from the service on medical grounds. He requested to offer appointment to his son on suitable post while referring to RBE No. 78/2006 & 165/2006. Shri Lachhi Ram was allowed to retire w.e.f. 24.07.2007 and was granted pension and other retiral benefits. The applicant filed an application on 24.10.2008 for appointment on compassionate grounds and submitted requisite information to the competent authority. Vide communication dated 10.11.2008 father of the applicant was informed that the case of the applicant for compassionate appointment is under consideration. The applicant served notice for demand of justice through his counsel. The respondent authorities vide communication dated 07.05.2010 informed that his case is still pending consideration. The applicant had to file OA No.

A/6). The respondents rejected the claim of the applicant vide letter dated 23.05.2012 (Annex. A/7). The applicant had been served another letter dated 07.08.2012 enclosing decision dated 25.10.2010 wherein it was said that his case was already finalized before issue of RBE No. 78/2006 dated 14.06.2006 whereas the father of the applicant retired from service only on 31.08.2007. In these circumstances, the applicant again approached this Tribunal by way of OA No. 58/2013. This was disposed of by the Tribunal vide order dated 13.12.2013 with a direction to the applicant to file fresh representation to the respondents. The respondents were directed to decide the same in the light of RBE No. 165/2006. Accordingly, the applicant filed detailed representation dated 03.01.2014 (Annex. A/10). The same has been turned down by the subordinate authority itself vide order dated 03.07.2014 (Annex. A/1). Aggrieved with the order 03.07.2014, rejecting the claim of the applicant, the applicant filed present OA challenging the legality of the same.

3. The respondents in their reply took the stand that the Hon'ble Tribunal in OA No. 58/2013, directed the respondents to decide representation in the light of RBE No. 78/2006 and 165/2006 within a period of 6 months. The representation, in compliance of direction, was examined again and the result of such communication was informed to the applicant vide order Annex. A/1. The respondents have further averred that medical decategorization of the employee can either be to offer alternative post or to serve after having found the medical decategorization

*Sharma*

is also totally incapacitated to serve any further, he can be allowed voluntary retirement. The father of the applicant was declared medically unfit for the post of Gate man on 19.10.2000 and was offered alternative appointment on the post of Chowkidar. The factum of medical decategorization was considered by the respondent in making an offer for alternate appointment which the father of applicant accepted way back in the year 2001. After having accepted the offer, he served till seeking voluntary retirement, which was allowed w.e.f. 24.07.2007. In the present case, after having served on the alternative post for years together, the applicant has no case for seeking compassionate appointment. Thus, the respondents have rightly denied the claim of the applicant for compassionate appointment.

4. By way of rejoinder, the applicant denied the averments made in the reply as vague and misconceived.

5. Heard both the counsels. Both the Ld. Counsels reiterated their respective contentions. Ld. Counsel for the applicant stated that he has approached the Hon'ble Tribunal for the 3<sup>rd</sup> time but his grievance has not been redressed. The applicant had filed an OA No. 456/2011 which was disposed of vide order dated 05.03.2012. The respondents rejected the claim of the applicant vide order dated 24.05.2012 against which the applicant filed OA No. 58/2013. The Hon'ble Tribunal again directed the respondents to consider the representation of the applicant in the light of Railway Board's Circular RBE No. 78/2006 and 165/2006. The same has


stated that at the outset, the order dated 03.07.2014 has not been passed by the competent authority and hence, needs to be set aside. Taking the court through both the circulars, the Ld. Counsel for applicant stated that para 6 of RBE No. 78/06 categorically states that it is the General Manager himself who is to assess objectively whether the compassionate appointment is justified or not. Similarly, in RBE No. 165/06, it is the General Manager (Para 2) who is the competent authority to consider and decide all cases, including those where the employee has been medically decategorized.

6. The Ld. Counsel for respondents while not disputing the claim of the applicant about the competent authority, stated that what is relevant currently, is not the technicalities but whether the applicant, was at all, eligible for compassionate appointment. Going through the facts of the case, he stated that this situation is not covered by claim for compassionate appointment for the reasons, very elaborately, stated in the reply. Taking the Court through the letter & spirit of the circulars, the Ld. Counsel emphatically justified the action of respondents in rejecting the claim of the applicant.

7. I have gone through the facts of the case. In the instant case, the order dated 03.07.2014 (Annex. A/1) has been issued by Sr. Personnel Officer in DRM's office. In both the circulars it is the General Manager who is the competent authority to decide such cases, whereas the impugned order Annex. A/1 has been passed by respondent No. 3 i.e. Sr. Divisional

respondents twice, to consider representation/facts of the case, in light of relevant circulars etc. In view of the same and even in normal course, it is expected that the competent authority should show due seriousness by applying himself, to ensure judiciousness, rather than leaving the decision casually to his subordinates.

8. Hence, without going into the merit of the case, the OA is disposed of with the direction to respondent No. 1 i.e. General Manager, North-Western Railway, Jaipur to re-examine the case of the applicant, taking into account all the relevant circulars, representations of the applicant etc. and arrive at an objective assessment. This should be done by way of speaking and reasoned order. This may be done within a period of 03 months from the date of pronouncement of order. No costs.

  
[Praveen Mahajan]  
Administrative Member

ss/