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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.566/09

Thursday this the 4th day of February 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

D.Sahadevan,
S/o.Damodara Panicker,
(Retd. Trackman (SNP),
Resident of Santhosh Nivas,
Aryancode, Ottasekharamangalam,
Neyyattinkara, Trivandrum.Applicant

(By Advocate Mr.M.P.Varkey)

V e r s u s

1. Union of India represented by General Manager,
Southern Railway, Chennai – 600 003.
2. Chief Personnel Officer,
Southern Railway, Chennai – 600 003.
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum – 695 014.Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 4th February 2010 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

In this OA the applicant seeks a declaration that his son Santhosh
Kumar is eligible for grant of compassionate ground appointment,
notwithstanding the fact that he has already retired from service on
31.5.2009.



2. The brief facts of the case: The applicant was medically decategorised on 11.3.1999 due to the disability he acquired while in service on 19.1.1997. Later on, vide Annexure A-1 order dated 30.7.2007 he was placed against a supernumerary post having same scale of pay as that of the post he was holding at the time of medical decategorisation, pending alternative appointment in the post with same scale of pay.

3. As regards the appointment on compassionate ground to the dependent of those Railway employees who were placed on supernumerary post due to medical decategorisation, the Railway Board has issued letter No.E(NG)II/95/RC.1/94 dated 18.1.2000, according to which if the employee is totally incapacitated and not in a position to continue in any post because of his medical condition and he chooses to retire voluntary, he can be allowed to opt for retirement and in such cases his request for appointment on compassionate ground to his eligible ward is to be considered. By the Annexure A-2 letter No.E(NG)II/95/RC-1/94 dated 14.6.2006, the aforesaid concession regarding compassionate ground appointment was extended to the dependent of partially medically decategorised staff also who seek voluntary retirement subject to the condition that such appointment was restricted only to Group 'D' categories and the partially medically decategorised employee should have atleast 5 years or more service left. When the aforesaid revised instructions dated 14.6.2006 was issued by the Railway Board the applicant submitted the Annexure A-3 letter dated 18.10.2007 expressing his willingness for voluntary retirement on medical ground and requesting the respondents to

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appoint his son Santhosh Kumar aged 33 years on compassionate ground. The respondents considered the aforesaid representation of the applicant and directed him to make an application in the prescribed proforma which he did vide Annexure A-3 (a) dated 20.2.2008. Thereafter, on consideration of the case, the respondents issued the Annexure A-4 order dated 2.6.2008 stating that in terms of the aforesaid Annexure A-2 order of the Railway Board dated 14.6.2006 only those employees who are medically decategorised on or after 18.1.2000 are eligible to get compassionate ground appointment for their wards consequent on opting for voluntary retirement. Since the applicant was medically decategorised on 11.3.1999 ie., prior to 18.1.2000, he was not covered by the above instructions.

4. The applicant has challenged the aforesaid Annexure A-4 letter of the respondents on the ground that the respondents had mis-interpreted the provisions contained in the Annexure A-2 order of the Railway Board letter dated 14.6.2006. He has submitted that the said letter does not envisages denial of such facility to those who were medically decategorised before 18.1.2000 and such an interpretation will be discriminatory and violative of Articles 14 and 15 of the Constitution of India. He has further submitted that all the persons who acquired a disability after 7.2.1996 come under one class as per the Disabilities Act as far as rights, privileges and protection under the said Act are concerned. He has also submitted that 5 years mentioned in the Railway Board letter dated 14.6.2006 is to be reckoned from the date of medical decategorisation and not five years just before his retirement on



superannuation.

5. The respondents had filed a reply affirming the decision they have taken in the Annexure A-4 letter dated 2.6.2008. However, they have submitted that the applicant has already retired on superannuation on 31.5.2009.

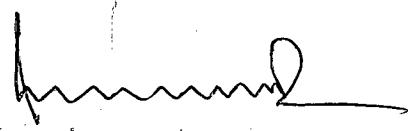
6. I have heard learned Advocate Shri.M.P.Varkey for the applicant and learned Advocate Shri.K.M.Anthru for the respondents. In my considered view the interpretation of the provisions contained in Annexure A-2 letter dated 14.6.2006 of the Railway Board given by the respondents is not correct. The earlier position of the Railways was that only employees who was totally incapacitated and was not in a position to continue in any post was entitled to seek compassionate ground appointment to his ward provided he seeks voluntary retirement from service. By the subsequent Annexure A-2 order dated 14.6.2006 the said facility was extended to the partially medically decategorised persons also provided they have got 5 years of service left for superannuation. From the aforesaid decision of the Railway Board the purpose of granting compassionate ground appointment to the wards of the medically decategorised persons is quite obvious. When a person is totally incapacitated to render any service to the Railways it was beneficial both to such medically decategorised employees as well as to the Railways to accept his voluntary retirement and provide an employment to his eligible ward in a Group 'D' post so that the Railways could get the service for the expenditure incurred by them on the medically incapacitated employee. For the same reason the said facility of



compassionate ground appointment was extended to partially medically decategorised person also but the condition imposed was that such a person should have at least 5 years of service left for retirement. In lieu of that service the Railways will appoint dependent ward/spouse on compassionate ground. In this case the applicant has enjoyed full service benefits and superannuated from service. Therefore, the very purpose of offering compassionate ground appointment to the wards/spouse in terms of the Railway Board letter dated 14.6.2006 is defeated.

7. In view of the above position, I do not find any merit in the contention of the applicant that his son should be given compassionate ground appointment irrespective of the fact that he has superannuated from service. Accordingly, this OA is dismissed. There shall be no order as to costs.

(Dated this the 4th day of February 2010)



GEORGE PARACKEN
JUDICIAL MEMBER

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