

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.16/12

...*Thursday*..... this the *21st* day of March 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

E.P.Aboo,
S/o.Pakkai,
Senior Trackman (SNP)/Alwaye,
Utilised in Station Superintendent's Office, Ernakulam Town.
Idavanaparambil, Thuruthu, Aluva – 683 101. ...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. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Thiruvananthapuram – 695 014.
3. Chief Medical Superintendent,
Southern Railway, Trivandrum Division,
Thiruvananthapuram – 695 014. ...Respondents


(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 19th March 2013 this Tribunal
on *21st* March 2013 delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, initially appointed as a Casual Labourer Khalasi in Trivandrum Division in 1982, was regularized as Gangman in 1993. Provisions exist for periodical medical examination to ascertain the medical standard of the railway employees to work in a particular post. In the case of the applicant such medical examination took place and the medical authorities, vide Annexure A-1 letter dated 16.10.2003 held that the



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applicant is found fit for classification B1 by visual standard but unfit to work as Trackman by physical standard. He was decategorized and fit for sedantary job only. Accordingly, by memorandum dated 28.1.2004 (Annexure A-2) the applicant was adjusted against supernumerary post (pending alternative appointment).


2. Vide Annexure A-4 dated 14.6.2006, compassionate ground appointment to the wife/wards/dependants of partially medically decategorized staff who seeks voluntary retirement may be given subject to the following provisions :-

(a) The appointment will be given only in the eligible Group 'D' categories. 'Eligible' would mean that in case Group 'D' recruitment is banned for any particular category, the same would also apply for the compassionate ground appointments.

(b) Such an appointment should only be given in case of employees who are declared partially decategorized at a time when they have atleast 5 years or more service left.

(c) CMD of the Railways should keep a watch over the trend of decategorization so that the present figure do not get inflated. CMD should also get 10% partially decategorized case re-examined by another Medical Board not belonging to Divisional Hospital which initially declared them unfit.

3. The applicant had applied, vide Annexure A-5 letter dated 18.10.2008, for voluntary retirement duly considering his son for an appointment in the Railways. This letter had not been attended to. Sometime in October, 2009, the applicant was directed to subject himself to re-medical examination and on such examination vide Annexure A-6 the authorities were informed by the Medical Branch that the applicant was found fit for sedantary job only and unfit to work as Gangman.



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4. The applicant, as recently as April, 2011, fell ill and underwent two Coronary Artery Bypass Graft vide Annexure A-8.

5. Vide Annexure A-7 order dated 12.1.2011 the respondents had rejected his request for voluntary retirement of the applicant cum compassionate appointment for his ward stating that the applicant had been declared fit for B1 by visual standard but unfit to work as Trackman by physical standard and fit for sedantary job only. His original medical classification of B1 remains the same and as such he has not been decategorized to a lower classification. Hence, this O.A challenging Annexure A-7 and claiming the following reliefs :-

1. Declare that the Annexure A-7 is unjust, illegal, and without jurisdiction and quash the same.

2. Declare that the applicant is eligible for voluntary retirement and his son eligible to be considered for compassionate appointment in terms of Annexure A-4 order and direct the respondents accordingly.

3. Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

6. Respondents have contested the O.A. According to them, the applicant's medical category still remains at B1 and, therefore, he is not eligible for seeking compassionate appointment.


7. The applicant has filed his rejoinder stating that he is governed by Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He has also relied upon another case of S.K.M.Haider Vs. Union of India and others (2011) 4

SCC 700.




8. At the time of argument counsel for the applicant submitted that once the applicant had been declared unfit to work in a particular post on account of certain disabilities, his categorization gets altered from B1 (both physical as well as visual standards) to B1 (visual standard only). This is a kind of partial decategorization contemplated in para 4 of Annexure A-4. As such, this case should be considered as he had applied well in advance and the Department had delayed the same by rejecting his claim after two years. The applicant also referred to para 509 of Indian Railway Medical Manual, 1971 (Edition) which provides for medical examination of (a) general physical examination and (b) vision test. In regard to physical examination, the applicant has brought to the notice of the Tribunal provisions of para 511 (3) (a) which relates to condition of heart and lungs. As to the decision of the Apex Court relied upon by him he has made available a copy of the judgment of the Apex Court which deals with different categories in respect of vision – (i) vision tests required in the interest of public safety, (ii) vision tests required in the interest of the employee himself or his fellow workers or both and (iii) vision tests required in the interest of administration only. The applicant submitted that even not fulfilling any of the above standard would mean decategorization.

9. Counsel for the respondents submitted that if the medical categorization of the applicant as on date is seen, it continues to be in B1 and there being no depletion to the medical standard (B1) the applicant cannot enjoy the benefits of Annexure A-4 order.



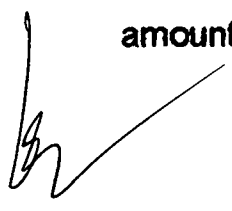
10. Arguments were heard and documents perused. When a person is decategorized in respect of medical standard, he may not be able to function in a post where he was posted but has to be accommodated elsewhere suiting his medical standard. If there is no such post available, supernumerary post has to be created to accommodate him. In the case of Gangman and others who are in the open line and are considered as running staff, medical categorization takes into account both public safety as well as individual's safety. The applicant has been found fit at B1 on the basis of his vision whereas on account of physical inability, he has been rendered unfit to do the job of a Gangman and has been appointed against a supernumerary post since 2003. The respondents have not chosen to secure an alternative employment other than keeping him in supernumerary post and the applicant continues in the same post till today.

11. According to the counsel for the applicant, the applicant's shifting from the post of Gangman on account of his health condition amounts to decategorization only and the same is covered under the term partial decategorization in accordance with Annexure A-4. As such, the provisions of the said Annexure A-4 fully applied to his case. Counsel further argued that the applicant had applied for voluntary retirement as well as compassionate appointment for his son vide Annexure A-5 representation. On the date of his application, he was well beyond 5 years of his retirement, which is one of the conditions. The Department has only delayed it for two years to negative the claim of the applicant. As such, the application of the applicant should be considered and the reliefs he sought for vide para 8 of the O.A may be granted.



12. Counsel for the respondents, on the other hand, submitted that there is no decategorization of the applicant and he continues to be in B1 category only.

13. Though the applicant had applied for voluntary retirement in 2008 which was just a few days over the minimum 5 years time he had not chosen to request the respondents to consider his case and continued to enjoy the pay and allowances in the supernumerary post till today. His contention vide ground 5 (c) that the delay appears to be deliberate to spoil the chances of the applicant and his son cannot be accepted in toto. While the respondents are expected to respond to any such representation, equally it is the duty of the applicant to follow up his representation and approach the Tribunal in case his representation was not responded to within six months. Section 20 (2) of the Administrative Tribunals Act, 1985 provides for such contingencies. Though the respondents contended that the applicant has not been decategorized, once the applicant has been removed from the post he was holding earlier (Gangman) and posted to supernumerary post on the basis of medical decategorization, provision of para 4 of Annexure A-4 springs into play. Thus, the applicant is entitled to be considered for voluntary retirement and in his place in accordance with Annexure A-4 the applicant's son should be considered for compassionate appointment. Had the application of the applicant been considered and he was permitted to voluntarily retire and in his case son been employed, in all expectation, the applicant's pension and the son's monthly salary may be equal to the amount of salary drawn by the applicant during the past few years. As



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such, no loss would be accrued to the respondents even if the applicant is permitted to retire now and his son considered for compassionate appointment.

14. Accordingly, the O.A is allowed. Annexure A-7 order is quashed and set aside. It is declared that the applicant is entitled to be considered for voluntary retirement and for compassionate appointment of his son. The respondents are directed to consider the same accordingly and pass suitable orders within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 21st day of March 2013)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No. 126 of 2013
in Original Application No. 16 of 2012

Thursday, this the 19th day of November, 2013

CORAM:

Hon'ble Mr. Justice A.K. Basheer, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

E.P. Aboo, aged 59 years, S/o. Pakkai,
 Senior Trackman, (SNP)/Alwaye, Utilised
 in Station Superintendent's Office, Ernakulam Town,
 residing at Idavanaparambil, Thuruthu,
 Aluva – 683 101.

..... **Petitioner**

(By Advocate – Mr. M.P. Varkey)

V e r s u s

1. Shri Rakesh Misra, The General Manager,
 Southern Railway, Headquarters Office,
 Park Town, Chennai-3.
2. Shri Kannan, The Senior Divisional Personnel
 Officer, Southern Railway, Trivandrum Division,
 Trivandrum-14.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 19.12.2013, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice A.K. Basheer, Judicial Member-

When this Contempt Petition came up for consideration on November 29, 2013 we had passed the following order:-

“Learned counsel for respondents submits that the Administration has already accepted the request for voluntary retirement of the petitioner and that it has also been decided to consider the request for giving compassionate appointment to his son. Accordingly, the son has been

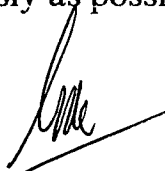


sent or medical examination. The report is awaited.


Call on 19.12.2013.”

2. Today when the case is taken up, learned counsel for the respondents submits that the petitioner's son has been found medically fit and that the order of appointment will be issued immediately. The above submission is recorded.

3. The contempt petition is closed. It shall be ensured by the respondents that order of appointment is issued to the son of the petitioner as expeditiously as possible at any rate within one month from today.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

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