

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 391/2013

WEDNESDAY, this the 3rd day of February 2016

CORAM:

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

P.Hamsa, Retired P Man, I/SNP/ERS,
P.F.No.03472243, S.NO: J/T.980,
Ernakulam Junction, Now residing at
Puthirickal House, Near Thekkparambu,
Elamkunnapuzha, Vyppin, Ernakulam,
Kerala. Applicant

(By Advocate Mr. C.A.Majeed)

versus

1. The General Manager, Southern Railway,
Chennai -3
2. The Divisional Railway Manager, Southern Railway,
Trivandrum Division, Trivandrum -14.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum -14
4. The Senior Divisional Medical Officer,
Southern Railway, Ernakulam Junction,
Ernakulam -682016. Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 07.01.2016, this Tribunal
on 03-02-2016...delivered the following:

O R D E R

Per MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is a retired Pointsman who was medically de-categorised vide
Annexure A/14 Memo dt 30.03.2007 w.e.f. 14.12.2006. He states that as he



was short of 45 days of the left over service required for consideration for voluntary retirement and compassionate appointment of his ward on the ground of his medical de-categorization, he had approached this Tribunal earlier with OA No. 454/2011 praying for correction of his date of birth. According to him his date of birth was wrongly recorded in the Railway records as 15.10.1951 whereas as per the school admission register his date of birth is 01.01.1952. As the railways rejected his request for correction of the date of birth he approached this Tribunal for declaration that the respondents are liable to correct the date of birth and for a direction to give him all consequential benefits. In that case, this Tribunal vide Annexure A/1 order dt. 27.7.12 held:

..... Therefore, I do not find any need for judicial interference, for change of date of birth at this juncture when the applicant is no longer in service. However, the purpose for which he was trying to get his date of birth altered is crystal clear. He is short by 6 months of the requisite 5 years of service, to get the case of his son considered for appointment under compassionate grounds.

9. In view of the peculiar facts and circumstances of the case, the first respondent is directed to consider relaxation of six months in the requisite five years of service to consider his son's case for appointment under compassionate ground appointment scheme for such medically de-categorized personnel. This Tribunal in a Full Bench decision held that medical de-categorization can be granted from the date the employee became medically incapable of performing his normal duties due to accident or other illness. The respondents can examine his case from that angle to postpone his date of medical de-categorization, in the alternative in which case relaxation of six months service to fulfill the eligibility condition of five years service left may not be necessary. The relief sought for by the applicant is being moulded accordingly.

10. In the result, the applicant is directed to submit a representation showing the date he fell ill, which resulted in his medical de-categorization and request for the latter from that date or if it is not a viable option, request for six months relaxation in service in the requisite five years service. The respondents are directed to consider his representation, take an appropriate decision and intimate the applicant within a time line of three months. No costs."

According to the directions contained in Annexure A/1 the applicant made Annexure A/2 representation which was disposed of by Annexure A/3 rejecting that representation. Annexure A/3 communication dt. 31.10.12 reads:



"The Hon'ble Central Administrative Tribunal, Ernakulam Bench by their order dated 27.07.2012 directed the First Respondent (General Manager, Southern Railway) to consider relaxation of 6 months in the requisite 5 years of service to consider your son for appointment under compassionate grounds scheme for medically decategorised personnel or to consider to postpone the date of your medical decategorisation.

Accordingly, the General Manager has considered your representation dated 06.09.2012 and passed a reasoned speaking order as given below:-

"In compliance with the orders of the Tribunal, I have carefully considered the representation of Shri Hamsa dated 06.09.2012. It is noticed that in all the official records his Date of Birth has been maintained as 15.10.1951 only right from the date of his initial appointment in Railways on 14.06.1973. Therefore, as per policy the belated request of the Applicant for alteration of Date of Birth after 36 years of service was not agreed to vide DPO/TVC's letter No. V/P.579/II/Tfc/MD/SNP/P.H dated 17.08.2009 and he retired on superannuation on 31.10.2011.

In his representation he has stated that he actually fell ill on 04.01.2006 and admitted to a Private Hospital and discharged from there on 16.01.2006. He has also stated that he was in bed rest for 8 months and reported for duty after which he was medically decategorised w.e.f. 14.12.2006. Therefore he has requested to reckon the date of medical decategorisation as 04.01.2006 instead of 14.12.2006 in the light of the decision of the Full Bench referred to by the Tribunal.

It is mentioned that there is no provision in rules to advance the date of medical decategorisation. It is also mentioned that action has already been initiated to appeal against the decision of the Full Bench in O.A.No. 929/2010.

As per the instructions contained in Railway Board's letter dated 14.06.2006, wards of medically decategorised employees can be given appointment on compassionate grounds in Group 'D' service, subject to the condition that the employees have atleast 5 years or more service left at the time of medical decategorisation. There is no provision to relax the prescribed 5 years condition.

The Applicant was medically decategorised w.e.f. 14.12.2006 and he retired on superannuation on 31.10.2011. As such, he did not have 5 years of residual service left at the time of medical decategorisation. Therefore he is not eligible to avail the benefit of compassionate appointment in favour of his son".

Being aggrieved by Annexure A/3 and rejection of his claim for correction of date of birth and voluntary retirement vide Annexure A/16 the applicant has now approached this Tribunal seeking relief as under :

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- i) Order calling for the records leading to Annexures A-1 to A-19 and set aside Annexure A-3 & A 16 finding that the same is illegal and arbitrary and issued against the true spirit of the directions contained A-I order;
- ii) Order directing the respondents to grant appointment to the applicant's son under the compassionate appointment scheme available to medically de-categorized personnel;
- iii) Order or direction as prayed for by the applicant in due course which shall be just and proper.

2. Respondents resist the OA contending that the relief sought in Annexure A/19 is not maintainable as the same has already been challenged and decided in Annexure A/1 order of this Tribunal and hence it is hit by the principle of *res judicata*. It is contended by the respondents that there is no outright direction in the order of this Tribunal to relax six months period seeking appointment under the scheme. According to respondents as per Annexure A/13 directions dt. 14.06.2006 of the Railway Board a medically de-categorised employee is entitled to appointment on compassionate grounds to his ward only if the employee has atleast 5 years or more service left at the time when he is declared medically de-categorised. Respondents contend that since the applicant has been de-categorized only w.e.f. 14.12.2006, going by the the date of birth as per Railway records he does not have 5 years left over service before his actual retirement. With regard to the above quoted observation of this Tribunal in Annexure A/1 in the light of Full Bench decision of this Tribunal that an employee can be considered as medically de-categorised from the date he became medically incapable of performing his normal duties due to accident or other illness, respondents contend that the aforesaid decision of the full Bench in OA 929/10 has been appealed before the High Court of Court of Kerala. Therefore according to respondents, the applicant cannot invoke the order of OA 929/10 in

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his favour.

3. It was contended by the Railways that the order in OA 929/10 has been appealed before the High Court of Kerala and that the High Court has stayed the operation of that order. During the arguments Mr. Asif K.H., learned counsel for the applicant submitted that no record of the aforesaid proceedings before the High Court is available but as per his information the aforesaid challenge of the order in OA 929/10 has been dismissed by the High Court. Both sides have not produced any record to show final result of the challenge of the order in OA 929/10 before the High Court. As has been held in *Roshan Jagadish Lal Duggal and others v. The Punjab State Electricity Board, Patiala and others*; 1984 (2) SLR 731 the mere fact that the High Court has stayed the operation of the order in the order has not become non-est. In the aforesaid case it was held that the admission of appeal against High Court's order and suspension of its operation during the pendency does not have effect of rendering it non-est till the disposal of the appeal. Here neither side has pointed out the fate of the challenge of the order in OA 929/2010 before the High Court. True, if the High Court had interfered and set aside the order of the Tribunal in that case the applicant in this could not place reliance on the same.

4. According to respondents as per Annexure A/7 medical certificate issued by the Railway Medical authorities on 15.5.2006 applicant was recommended for light job for a period of two months and therefore the applicant cannot claim his medical de-categorization w.e.f. 04.01.2006. Respondents further contend that though he was sick and was undergoing treatment from 3.8.2006 to 13.8.2006, as per Annexure A/11 medical certificate he was found fit for duty on 14.8.2006. Respondents point out that even as per Annexure A/12 certificate issued by the



Senior Divisional Medical Officer the applicant is medically de-categorised only w.e.f. 14.2.2006. The Railways contend that this date of de-categorization cannot be given a retrospective effect to the date of his falling sick. Respondents pray for rejecting the OA.

5. A rejoinder was filed by the applicant producing copies of the Railway Board instructions dt 02.01.2004 and 11.9.2010 marked as Annexure A/20 and A/21 relating to Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff(LARSGESS) scheme.

6. An additional reply statement also was filed by the respondents reiterating their contentions in the reply statement and pointed out that Annexure A/20 and A/21 are not applicable to the applicant as he has already retired on superannuation and hence his claim for compassionate appointment on his medical de-categorization is not permissible.

7. Heard Advocate Mr. Asif K.H. representing Mr.C.A.Majeed and the learned counsel for the respondent Railway. Perused the record.

8. The short question to be considered in this case is whether the applicant is entitled to the benefit of the Full Bench decision of this Tribunal in OA 929/10 where it was held by this Tribunal that the date of falling sick and becoming medically incapable of performing his normal duties due to accident or other illness has to be considered as the date from which an employee has been medically de-categorized. It is pertinent to quote the relevant portion of the



order of the Full Bench decision of this Tribunal dt 31.1.2012 in OA 929/10. It reads:

"10. The next question is as to the date from which benefits under the Act shall become available to a person with disabilities. Necessarily, declaration by a competent Medical Authority, of any kind of disability, is posterior to a person's acquiring disabilities. Invariably, it is only after administering necessary medical treatment to the individual suffering from any kind of the specified disability, that the extent of disability that would remain permanently with the person would be ascertained. Generally, such a certificate would be effective from the date of issue of the certificate. However, if there be any other date/ period reflected in the medical certificate as to the date/ period from which the disabilities persist, obviously, it would be such a date/ period as so reflected that would be reckoned. Reference made to the Full Bench is answered accordingly."

9. The question of correction of his date of birth cannot be re-agitated in this case as the matter was already adjudicated in OA 454 /2011 of this Tribunal. Therefore the order passed by the Railways on his request for change of date of birth and consequential voluntary retirement cannot re-opened .

10. Annexure A/14 is the order issued by the Railways finally de-categorizing him and keeping him on supernumerary post. The latter act is an exercise in tune with the Railway Board instructions and in accordance with the provisions in Sec. 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995.

11. Applicant has produced some documents relating to the illness he was afflicted with which finally resulted to Annexure A/14 de-categorization. Annexure A/4 is the reference Railway Senior Divisional Medical Officer, Ernakulam has



made to Lakshmi Hospital, Ernakulam wherein the applicant underwent initial treatment for the provisional diagnosis "? Lt hemiparesis, DM HTN". MR study of his brain as revealed in Annexure A/5 (collectively) shows that applicant appears to be affected with "RIGHT CAPSULO-GANGLIONIC SUBACUTE HEMORRHAGE WITH EDEMA & FOCAL MASS EFFECT".

12. Annexure A/5 is the discharge summary issued by the Lakshmi Hospital. It is stated in A/5 that the applicant was taken to Railway Hospital Perambur. Annexure A/7 dt. 15.5.2006 issued by the Divisional Medical Officer recommends the authorities to provide light job to the applicant for a period of two months. Annexure A/8 is a fitness certificate dt. 16.5.2006 wherein it is stated that he is fit to attend to his duties on 22.5.2006. Annexure A/9 (collectively) is yet another railway medical record wherein it is stated as follows:

[the the applicant is] "prone for hypoglycemia / hyperglycemia with ... at any time & in view of stroke in Jan 2006 & risk of stroke at any time in future he is not fit for a job near moving vehicle. Hence his is not fit as pointsman. As has to be declassified. He has to be given a job not risking his safety / safety of the public".

13. Annexure A/10 medical certificate again states that applicant is fit for duty and he was recommended for light duty for further 3 months. Annexure A/11 medical crtificate dt 11.8.2006 again states that he is fit for duty on 14.8.2006. In Annexure A/12 medical certificate Senior Divisional Medical Officer has suggested applicant to be directed for the process of medical de-categorization. Finally vide Annexure A/14 respondents have de-categorized him w.e.f. 14.12.2006 stating that he is fit for sedentary job without medical classification. It is at that stage the applicant was kept on supernumerary post on the ground of medical de-categorization. A combined perusal of Annexure A/4 to A/12



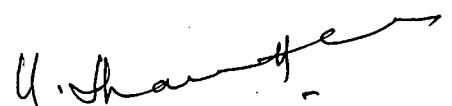
medical records it can be seen that applicant was afflicted with the illness which finally led to the Annexure A/14 medical de-categorization. Right from the day of discharge as per Annexure A/7 the applicant was recommended for only light jobs by the medical authorities. Only in Annexure A/9 it is made clear by Senior DMO that at any time he is prone to be affected with stroke and hence he is not fit for job near moving vehicle and therefore he has to be given a job not risking his safety \ safety of the public. Thereafter again he was given light jobs till his final medical de-categorization vide Annexure A/14. It can be seen that his medical de-categorization has a strong causal connection to the illness he was affected with from 04.01.2006, because the M.R. study conducted on his brain revealed a condition which is not congenial for permitting him to do the normal duty of Pointsman. The aforementioned record show that doctors from the very begining have been suggesting to give him only light job. Therefore it can be unhesitatingly stated that the illness of the applicant that led to the incapacity to perform his normal duty of pointsman began from 4.1.2006 . Thus going by the medical records of the applicant it is quite evident that he became incapable of doing the duty of pointsman w.e.f. 4.1.2006. The afore quoted decision of this Tribunal in OA 929/10 *a fortiori* butresses the fact the applicant became eligible to be medically de-categorized from 4-1-2006.

14. Respondent Railway contends that there is no provision for giving retrospective effect to the medical de-categorization. This Tribunal is of the view that such a contention reflects the insensitive mindset of the authority concerned who had no inclination for reading and understanding of medical records and the attending circumstances that lead to the issuance of Annexure A/14. It is clear from Annexure A/4 to A/12 that his medical incapacitation had already been manifested on 4.1.2006 itself resulting in his inability to do the normal duty of Pointsman. Therefore the railway doctors themselves advised only lighter job for

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him more than on one occasion. This again indicates that he was not fit for the medical category required of a Pointsman. Having been given lighter jobs till Annexure A/12 without taking any overt steps for medical de-categorization the Railway authorities have been trying to extract some work or the other from him by giving 'light job'. Only when the doctor reported in Annexure A/19 about the risk of the applicant being subjected to stroke at any time in future he was advised to be given a job not risking his safety \ safety of the public. It appears to be shockingly strange that in spite of these explicit medical records the Railways treated the applicant in a perfunctory manner and used the pedantic terminology of "actual medical de-categorization which took place only w.e.f. 14.12.2006". Applicant states that had he been treated as medically de-categorised with effect from 4-1-2006 he would have become eligible for the facility for his ward being considered for compassionate appointment as per Annexure A/13. This Tribunal finds that applicant is perfectly justified in claiming that he was medically de-categorized w.e.f. 4.1.2006 itself.

15. In the light of the above discussion, the respondents are directed to treat the applicant as medically de-categorized w.e.f. 04.01.2006. The relevant records in relation to the medical de-categorization of the applicant shall be corrected within two months from the date of receipt of a copy of this order and the applicant shall be given all consequential benefits including the consideration of his ward's request for appointment on compassionate grounds in terms of provisions of Annexure A/13 Railway Board letter. Ordered accordingly. The parties shall suffer their own costs.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER