

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

O.A. No.300 /2005

THIS THE 28th DAY of OCTOBER, 2005

HON'BLE SHRI S.P. ARYA MEMBER (A)

1. Jai Jai Ram Tiwari aged about 62 years S/o Sri Bhagwandin Tiwari R/o 97/22 Block-10 Govind Nagar, Kanpur.

2. Rajesh Kumar Tiwari Aged about 22 years S/o Sri Jai Jai Ram Tiwari R/o 97/22 Block-10 Govind Nagar, Kanpur.

Applicants

By Advocate Shri D.S. Yadav.

Versus

1. Union of India through Ministry of Railway North Eastern Railway, New Delhi.

2. The Divisional Railway Manager North Eastern Railway, Lucknow.

3. The Senior Station Master, (Station Adhikshak) North Eastern Railway, Gorakhpur.

Respondents.

By Advocate Shri V.P. Rai for Shri Arvind Kumar.

Order (Oral)

By Hon'ble Shri S.P. Arya Member (A)

1. The applicant No. 1 a Railway Employee retired on invalid pension w.e.f. 13.10.99 well before the date of attaining the age of superannuation. The applicant No. 1 made a representation for the appointment of his son/dependant (Applicant No. 2) on compassionate

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grounds which was rejected on the grounds that it fell beyond the purview of consideration. The applicants by this O.A. seek for setting aside the order of 15.2.2002 rejecting the representation for compassionate appointment of the applicant No. 2.

2. I have heard the learned counsel for the parties and perused the pleadings.

3. The counsel for the applicant has relied on the RBE 72/2001 issued on 11.4.2001 which accords benefit of compassionate appointment to the dependents of railway employee who was invalidated and permitted to retire after 29.4.99 and before 18.1.2000. It is not disputed that the applicant was retired on invalid pension on 13.10.99, the date which was between the two dates given in the above referred circular.

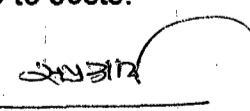
4. Respondents on the other hand relied on the case of Bhawani Prasad Sonkar Vs. Union of India and Others Writ Petition No. 1178 (SB) of 2003 where Division Bench of the Hon'ble High Court, in the writ petition filed against the orders in O.A. 196/2002 dismissing the O.A., was dismissed. It would be clear on perusal of the two judgments that the eligibility of the compassionate appointment was judged on the basis of Railway board letter dated 29.11.2001 and the nature of incapacitation was not disclosed. The present case is quite different from the case of Bhawani Prasad Sonkar. Here in the present case, the applicant was found fit for category 'C-2" post and on appeal he was found unfit for any post. The applicant was retired on invalid pension. It would be worthwhile to peruse Rule 55 of Railway Servants (Pension)Rules, 1993 providing for invalid pension for the Railway Servants retiring on account of any bodily or mental infirmity which permanently incapacitates him for the service. The permanent incapacitation was

based on duly constituted medical authority .He was retired from service as provided in Rule 62 of the aforesaid Rules as he was permanently incapacitated . The retirement on invalid pension was on the recommendation of standing committee. In this view of the matter, the plea of the respondents that the applicant failed to establish on record that he has offered for a job of C-2 category becomes meaningless. Since the applicant retired between the period as given in the Railway Board's circular dated 11.4.2001 , his ward/dependent should be given benefit of compassionate appointment.

5. The order dated 15.2.2002 which is impugned in this application is no order as it does not speak of anything. It does not disclose why the competent authority has found the representation not worth consideration . This being a non speaking and disclosing no reasons or grounds deserves to be quashed.

6. In view of the above discussions, the order dated 15.2.2002 is quashed and set aside. Respondent No. 2 is directed to consider the claim of applicant No. 2 for compassionate appointment with a view to accord the benefit as extended by Railway Board Circular 72/01 of 11.4.2001 within a period of three months.

7. In the result, the O.A. is allowed without any order as to costs.


(S.P.Arya)

Member (A)