

Central Administrative Tribunal Lucknow Bench
Lucknow.

O.A. No. 403/2006.

This, the 8th day of June 2007.

Hon'ble Mr. A. K. Singh, Member(A)

Raj Mani Gupta aged about 57 years S/o Late Sri Buddhai Gupta R/o Near Northern Railway Cabin New Colony Goasaiganj District Faizabad.

...Applicant.

By Advocate Sri Dharmendra Awasthi.

Versus

1. Union of India through the Secretary Ministry of Railways, New Delhi.
2. The Chief General Manager Northern Railway Baroda House, New Delhi.
3. The Divisional Railway Manager Northern Railway Lucknow.
4. Senior Divisional Medical Officer Northern Railway Faizabad.

...Respondents.

By Advocate Sri V. K. Khare.

Order (Oral)

By Hon'ble Mr. A. K. Singh, Member (A)

1. The O.A. bearing No. 403/2006 has been filed by applicant Sri Raj Mani Gupta(of the address given in the O.A.) against the action of respondents to retire him from service under medical disability scheme and also ignoring the claim of his son for appointment on compassionate grounds.
2. Brief facts of the case are that the applicant is working on the post of Head Parcel Clerk/Chocking Supervisor in the office of respondents at Faizabad. During the course of his service, he lost his eyesight and was accordingly admitted in

the Railway Hospital. Despite prolong treatment, he could not recover from this ailment and was declared medically decategorised and declared unfit for the post of Head Parcel Clerk/Chocking Supervisor as per the report of Chief Medical Officer Faizabad. In the aforesaid report C.M.O. clearly indicated that the applicant's case fell in the category of a blind person. In pursuance of this report a medical board was constituted to take a decision in the matter. Medical board too vide their report dated 18.3.2000, decided that in view of the present ophthalmic findings prognosis of the disease and residual Visual acuity, recommended that the applicant should be given a job where a visually handicapped person can work. In view of the abovementioned findings and recommendations of the Board, the applicant represented before the authorities, to allow him to retire under medical decategorised category in view of complete loss of his eye sight due to which he was unable to work in the office. The Divisional Railway Manager, Lucknow was virtual agreement with the applicant, and he also recommended vide his letter dated 16.11.2005 that another medical examination of the applicant be conducted on the basis of the observations of the medical board. In the aforesaid letter dated 16.11.2005, the D.R.M. Lucknow, had further stated that the employee was being sent for medical examination, as there was no post against which the services of a visually handicapped person can be utilized. The applicant was thus, placed in a very helpless situation. Respondents also did not process his request of voluntary

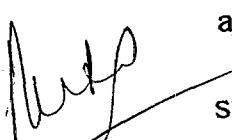
retirement from service. As the applicant was much below the eligible age limit of 57 years, his son's case could have been considered for employment on compassionate grounds specially when he had made a request to that effect. The Railway Board's circular letter No. E-33/0/1/111/Policy/C.G. Dated /03/02 under P.S. No. 12404/02 provides for appointment of a dependent member like son etc on compassionate grounds in case of a totally incapacitated person who sought voluntary retirement, on that basis, and was within the age limit of 57 years. The applicant therefore, requests for appointment of his son on compassionate grounds on the basis of the above mentioned circular of the Railway Board.

3. Sri V. K. Khare, counsel for respondents opposes the O.A. on the ground that Railway Board has not so far even issued necessary orders for decategorisation of the applicant on the basis of the report of the screening committee as well as of the medical board vide their order dated 18.3.2000. In view of this, the case of compassionate appointment of applicant's son can not be considered at this stage. The respondents have nothing to say in regard to request made by the applicant for voluntary retirement. He also submits that in view of these facts, the O.A., in question, is devoid of any merits and therefore deserves to be dismissed.



4. The applicant as well as respondents were heard in person today i.e. on 8.6.2007. Sri Dharmendra Awasthi Advocate appeared on behalf of the applicant and Sri V. K. Khare Advocate appeared on behalf of the respondents. At the time of personal hearing both sides reiterated their arguments, as above.
5. I have given my anxious considerations to the submissions made by the learned counsels on both sides and have also perused the record of the case. It is on record that the applicant, while working on the post of Head Parcel /Chocking Supervisor in the office of respondents at Faizabad, lost his eye sight and was accordingly admitted in Railway Hospital Faizabad, and was treated for restoration of his eyesight but in vain. The Chief Medical Officer, Faizabad in his report indicated that the case of the applicant fell in the category of a blind person. The case was also further referred to a medical board. The Medical Board vide their report dated 18.3.2000 recommended that "in view of present ophthalmic findings, prognosis of the disease and residual visual acuity, he should be given job where a visually handicapped person can work". The report of the Medical Board is annexed as Annexure-2 to this O.A. Subsequently, the Divisional Railway Manager, Lucknow vide his letter dated 16.11.2005 again sent the applicant for medical examination. The Medical Board recommended that applicant should be given job where a visually handicapped person can work. The D.R.M. Lucknow in his

letter-dated 16.11.2005 to Railway Board again stated that there was no post against which the services of a visually handicapped person can be utilized. Accordingly, the applicant submitted his papers for voluntary retirement from service accompanied with the request for employment of his son on compassionate grounds as provided under Railway Board's circular letter No. No. E-33/0/1/111/Policay/C.G. Dated/03/02 under P.S. No. 12404/02.

6. I have also perused the recommendations of the screening committee, the report of the Medical Board, the letter of D.R.M. dated 16.11.2005 as well as the request made by the applicant for voluntary retirement from service which is also accompanied with a request for appointment of his son compassionate grounds of as provided in the aforementioned circular of the Railway Board. When he D.R.M., himself has certified in his letter dated 16.11.2005 that it was not possible to utilize the services of a visually handicapped person on any post, respondents should have allowed the applicant to retire from service. They could have also considered the case of appointment of his son on compassionate grounds as provided in the above mentioned circular of the Railway Board. There is thus, a total inaction on the part of the respondents on the request of the applicant but this inaction also exhibits a total lack of sympathy for its own medically decategorised employee .

The applicant thus cannot be made to suffer for the fault of railway administration.

7. In the case of Bhoop Vs. Matadin Bhardwaj[(1991)2SCC128] the Apex Court held that "a party cannot be made to suffer for no fault of his own." In the case of Rekha Mukherji Vs. Ashis Kumar Das[(2005) 3 SCC427, the Apex Court has further held, that "a party cannot take advantage of one's own mistake." These two principles enunciated by the apex court will no doubt from the touch stone of the present O.A. before this court.

8. Railway Board Circular letter No. E-33/0/1/111/Policy/C.G. Dated /03/02 under P.S. No. 12404/02 reads as under:

"1.2 It was subsequently clarified vide this Ministry's letter of same number dated 10.11.2000 in cases where a medically decategorised employee before issue of this Ministry's letter dated 29.4.99 had taken voluntary retirement and he had neither been absorbed in an alternative employment nor adjusted against a supernumerary post after the issue of this Ministry's letter dated 29.4.99.

1.3 The facility of allowing appointment on compassionate grounds of one ward may be extended vide this Ministry's letter of same No. 11.4.2001 the facility of appointment on compassionate ground was also extended to an eligible spouse/ward of totally incapacitated employees who were declared so after the issue of the Ministry's letter dated 29.4.99 and prior to



issue do this letter dated 18.1.2000 and were also allowed to retire."

9. Thus, on the basis of the above, I find that there is absolutely no justifiable grounds, whatsoever, on the part of the respondents in not allowing the applicant to retire from service prematurely as they themselves had come to the conclusion that his services can not be utilized anywhere under the Division. In this regard, the report dated 16.11.2005 of DRM Lucknow, can be referred to. Moreover, the above mentioned instructions of the Railway Board also clearly provides for appointment of one of the dependents of a declassified employee to the service of the employment on compassionate grounds. The applicant, thus cannot be denied the benefits under the abovementioned circular letter No. E.33/0/1/111/policy/C.G. dated 03/02 under P.S. No. 12404/02 to him under Article 14 and 16 of the constitution of India.

10. In view of the above, the O.A. succeeds,

To sum up,

(i) Policy circular under reference clearly provides for voluntary retirement of by an employee falling under medically declassified category.

(ii) That there is a clear provision under instruction of the Railway Board bearing No. E-33/0/1/111/Policy/C.G. Dated /03/02

under P.S. No. 12404/02 to allow voluntary retirement of a medically decategorised employee. It also provides for consideration of considering compassionate appointment of his son /daughter etc provided he or she was within the age limit of 57 years.

(iii) That this was a case, which deserves maximum consideration on the part of railways as the applicant had incurred this disability under their service of Indian Railways for several years.

11. On the basis of the above, the following orders/directions are issued to the respondents,

12. Respondent will consider the case of compulsory retirement of the applicant with reference to his previous requests in this regard and give him the benefit as admissible to him under the rules in respect of appointment of his son, taking into consideration the original date of his request for voluntary retirement. The entire exercise should be completed within two months from the date of receipt of a certified copy of this order.

13. In consequence, O.A. 403/2006 is allowed. No costs.

A. Singh
Member (A)

6/6/07