

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW**

This the **23rd** day of **May**, 2012

Present :

Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.182 of 2009

1. Moti Lal aged about adult, S/o Late Shri Chaturi.
2. Suresh Kumar Verma, aged about 38 years, S/o Shri Moti Lal.

...Applicant.

By Advocate : Shri Praveen Kumar

Versus

Union of India, through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

...Respondents.

By Advocate : Shri B.B. Tripathi

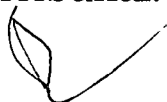
ORDER

By virtue of this OA the following relief(s) are prayed for :

- (i) ***To quash the impugned order dated 11.2.2009, which is Annexed as Annexure No.A-1 to this OA with all consequential benefits.***
- (ii) ***To consider the case of the applicant No.2 on compassionate ground on a suitable post in the light of instructions contained in Printed Serial No.11109/95 with all consequential benefits.***
- (iii) ***Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.***
- (iv) ***Cost of the present case.***



2. The facts as stated in the OA are that the applicant No.1 was appointed on the post of Coach Attendant in the Grade of Rs.2600-4000/-. On 28.7.1998, he fell down from running train due to which he underwent medical treatment. After exhaustive medical treatment he could not be cured to be fit for duty and was subjected to the medical examination by the Medical Board in the year 1999. The Medical Board declared the applicant No.1 unfit for all categories except some below categories. He submitted an application dated 14.7.1999 requesting that since he has been declared unfit for all categories, he may be allowed to retire voluntarily and his son i.e. applicant No.2 might be given appointment on compassionate ground in view of the Railway Board's instructions contained in printed serial No.11109/95. Copy of application is shown at Annexure-A-2. Thereafter, the authorities issued a letter dated 31.08.99/2.9.1999 by which the request of the applicant No.1 was accepted and he was allowed to retire with immediate effect strictly in accordance with the Circular No.11109/95 (Annexure-A-3). No mention about the compassionate appointment of his son (applicant No.2) was made in this letter. So, applicant No.1 submitted another representation dated 10.9.1999 (Annexure-A-4) but no decision was taken. So another representation was given to respondent No.1. But surprisingly, respondent No.1 issued a letter dated 4.9.2003, without taking any cognizance of the submission made by the applicant, in gross violation of P.S. No.11109/95. Hence another representation/appeal dated 3.9.2006 was moved (Annexure-A-5). The representation for the compassionate appointment to his son was rejected by order dated 7.11.2006. Thereafter, the applicant No.1 preferred an OA No.505/07 challenging the rejection order before the Tribunal. The Hon'ble Tribunal by



its order dated 8.8.2008 set aside the rejection order dated 7.11.2006 accepting the plea taken by the applicant that the impugned order was cryptic and non-speaking in nature. The respondent No.1 was directed to pass a speaking and reasoned order keeping in view the provisions of Rules and instructions of the Railway Board on the subject of compassionate appointment in such cases. The impugned order dated 11.2.2009 in the instant OA is the order passed by the respondent No.1 in compliance of the order of the Tribunal on the representation of the applicant dated 3.9.2008 as per the direction of the Tribunal. It is averred in the OA that discriminatory treatment has been meted out to the applicant as against the similarly situated employees. In this respect instance of Shri Lal Bahadur S/o Shri Ram Sevak Ex. Gangman (Annexure -A-7) in addition to 04 other cases as per Annexure-A-8 are given. These 04 cases are :-

- (i) Beni Madav
- (ii) Shyam Jug
- (iii) M.K. Ahmad
- (iv) S.M. Hussain

In these cases wards of medically de-categorized persons were given appointment on compassionate ground.

3. As per P.S. No.11109/95, if an employee is declared medically unfit for a particular job he is not supposed to be offered an alternative job before choosing to seek voluntary retirement with the prayer of one ward of the family being considered for compassionate appointment. Para 3 of this P.S. No.11109/95 is specially relied upon, which reads as under :-

“After careful consideration of the matter Board have decided that in partial modification of Board’s



letter No.E(NG)III/78/RC-1/1 dated 13.9.83, in the case of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him and chooses to retire and makes a request for such appointment.”

P.S. No.11109/95 is the basis for disposal of the case of voluntary retirement of the applicant No.1 vide order dated 31.8./2.9.1999 by which the application of the petitioner dated 14.7.1999 was accepted.

4. Counter reply has been filed on behalf of the respondents. In para 4 of the counter reply, it is stated that in the opinion of the Medical Board, the applicant No.1 was found unfit for the post of Coach Attendant and he was recommended to be given an alternative job, where walking is not required as per Railway Board's letter dated 26.6.1999. In para 5 of the counter reply, it is stated that the applicant did not opt for an alternative job and instead requested for appointment on compassionate ground for his ward. At that point of time i.e. 31.8.2000, he was left with one year two months and twenty five days of service to his credit before retirement. When the case was decided against the applicant No.2, the applicant filed the OA No.505/07. The present impugned order is passed as per direction given by the Tribunal in this OA. The impugned order has been justified, in the counter reply, on the basis of subsequent instructions issued by Railway Board vide letter dated 29.4.1999 (PS 11816) through which “the persons with Disabilities (Equal Opportunities, Protection of Right and full Participation) Act 1995” has been made applicable in Railways w.e.f. 29.4.1999 and as per Rule 1301 made under this Act, the applicant No.1 should have opted for an alternative employment and not the

compassionate appointment. But he did not take recourse to that action hence the case has been rejected vide impugned order after due consideration by respondent No.1. The respondents have also relied upon the following judgments in support of the impugned order :-

1. ***Umesh Kumar Nagpal Vs. State of Haryana - 1994 (4) SCC 138.***
2. ***Satya Narain Shah Vs. Union of India - AIR 1982 page 63.***
3. ***Gagula Dasrath Rama Rao Vs. State of Andhra Pradesh - AIR 1962 SC 564.***
4. ***Yogendra Pal Singh Vs. Union of India - AIR 1987 SC 1015.***
5. ***Bhagirath Vs. Union of India - 1997 (8) SCC 85.***
6. ***Sanjay Kumar Vs. State of Bihar - AIR 2000 SC page 2782.***
7. ***Life Insurance Corporation of India Vs. Mrs. Asha Ram Chandra Ambedkar -JT 1994 (2) SC 83.***

5. Rejoinder affidavit has also been filed on behalf of the applicant.

6. I have heard both the learned counsels and perused the documents on the file filed by both the parties. The copy of PS 11109/95 is submitted at the time of arguments by the applicant's counsel because the same was not available with the OA. In support of the averments infavour of the case of the applicant, learned counsel for the applicant has placed reliance on the order of the C.A.T. Bench, Lucknow in OA No.631/02 decided on 20.5.2005. I have also perused the impugned order passed by respondent No.1 dated 11.2.2009. The case of the applicant as argued by learned counsel for the applicant, is that the application for voluntary retirement as per his application dated 14/16-7-1999 was disposed of by order

dated 31.8./2.9.1999 on the basis of PS 11109/95. Through an application dated 14/16-7-1999, the applicant No.1, on being medically de-categorized and being medically declared unfit, requested for voluntary retirement as well as seeking appointment on compassionate ground for his son Suresh Kumar Verma (applicant No.2 in this OA). This application as it is, was accepted by the respondents under PS No.11109/95 but in the impugned order dated 11.2.2009, it has been perceived that the case of the applicant is covered under PS 11816 which is enforced w.e.f. 29.4.1999. Obviously, these are the subsequent instructions issued by the Railway Board whereas the case of the applicant was dealt with PS 11109/95. The learned counsel for the applicant has contended that once the case of the applicant No.1 was dealt with under PS 11109/95 then how it could be reopened and PS 11816 can be made applicable which is said to be subsequent. If, while dealing the case of the applicant, as per PS 11109/95, the respondents did not identify an alternative job for him but instead the applicant was allowed to retire, he is all within his right to seek compassionate appointment for an eligible ward of the family. Learned counsel for the applicant has also contended that the cases/judgments cited by the respondents' counsel are not relevant in this case because they pertain to situations where the Railway servant/Govt. servant die in harness.

7. I have given thoughtful consideration to the pleadings of the parties and their arguments in support of their respective cases and have gone through the judgments relied upon by the applicant's counsel in the case of K.D. Sodhi and Another Vs. the G.M. Northern Railway, New Delhi and ors. in OA No.631/02 decided on 20.5.2005 is



squarely based on the similar fact and circumstances. Once the case of the applicant for voluntary retirement with the request of compassionate appointment to the son of applicant No.1 was dealt with under PS 11109/95 and the application to that extent was accepted by the respondents, it is not justified to reject the same on the presumption that PS 11816 is applicable and not PS 11109/95. It is apparent that PS 11816 was made applicable w.e.f. 29.4.1999 when the case of the applicant for voluntary retirement was decided by order dated 31.8./2.9.1999. As per Rule 1309 referred to in the impugned order, the applicant should have been given alternative appointment with the same pay scale and service benefit if the respondents had considered the case as per this Rule. In that situation some more period to put in during service before the age of superannuation i.e. 31.8.2000 but this action was not taken by the respondents. But in invoking this Rule as per PS 11816 in the impugned order the respondents have tried to reopen the case of the applicant to his detriment because the date of superannuation had already taken place by way of voluntary retirement having been accepted by the respondents invoking PS 11109/95. The applicant should not be made to suffer because of the fault on the part of the respondents. The point that the applicant No.2 is being discriminated and not being allowed the benefit/relief like the similarly placed persons (names given in the OA) has also not been controverted by the counsel for the respondents by counter facts. Thus the impugned order is certainly not legally sustainable.

8. In view of the above facts, circumstances and arguments of both the counsels I tend to agree with the contention of the applicant's counsel. The case of the



applicant having been once settled under PS 11109/95 can not be reopened for the same being dealt with under PS 11816. The impugned order is thus unsustainable in the eye of law. The OA is allowed. The impugned order dated 11.2.2009 is quashed and set aside. The respondents are directed to consider the case of the applicant No.2 for appointment on compassionate ground in view of the medical de-categorization of applicant No.1 within a period of three months from the date of receipt of certified copy of this order. No costs.



Member-A

RKM/