

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 365 OF 2006

[Patna, this ~~Thursday~~, the 16th Day of July, 2009]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

1. Md. Islam, son of Noormohamad, Ex-Driver A, under office of C.T.T.I., E.C.Railway, Narkatiaganj.
2. Aftab Ansari, son of Md. Islam I, Ex-passenger Driver Hardasia Chank, Narkatiaganj, Distt – West Champaran [Bihar].

.....APPLICANTS.

By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

1. The Union of India through the Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, E.C.Railway, Hazipur.
3. The Divisional Railway Manager, E.C. Railway, Samastipur.
4. The D.R.M.[P], E.C.Railway, Samastipur.
5. Divisional Commercial Manager, E. C. Railway, Samastipur.

.....RESPONDENTS.

By Advocate :- Shri A.K.Choudhary, ASC.

O R D E R

Justice Anwar Ahmad, M[J] :- This is an OA filed by Md. Islam along with his son, Aftab Ansari, for declaring the order dated 17.10.2005 [Annexure-A/5], rejecting the petition/representation of the applicants for appointment on compassionate grounds, as non est and for setting aside the same. The further prayer is that the respondents be directed to consider and offer suitable appointment to the applicant no.2 [Aftab Ansari] on compassionate grounds with all consequential benefits.



2. The case of the applicants is that the applicant no.1 [Md. Islam] was a Driver in the category 'A' in E.C.Railway, Samastipur Division. He was declared medically unfit vide Annexure-A/I but fit in category C/I with DV classes by the Divisional Medical Officer, E.C.Railway, Samastipur. He was not offered any alternative job and he was released from the service w.e.f. 05.07.1988 by the decision of the Standing Committee approved by Sr. DME, Samastipur. It is stated that as per the rules the respondents were bound to provide alternative appointment to a medically decategorised staff in the same category until alternative appointment is made to continue on the same post. It is stated that when an employee is decategorised, his ward/dependent is to be given suitable appointment. It is stated that the applicant no.1 made a representation for appointment of his second son [Aftab Ansari] on the ground of his being decategorised and retired from the service but his representation was not considered by the respondents. The applicants filed one OA 749 of 2004 in which the Tribunal vide its order dated 20.10.2004 [Annexure-A/4] directed the respondents to pass a reasoned and speaking order in the light of submissions made and the Railway Board's circulars. Thereafter the respondents considered the case of the applicants and rejected the prayer by order dated 17.10.2005 [Annexure-A/5]. Being aggrieved and dis-satisfied with the order of rejection passed by the respondents [Annexure-A/5], the applicants filed the instant OA.

The learned counsel for the applicants further submits that the applicant no.1, Md. Islam, has got two sons and one daughter and the first son is employed in Railway since he was in service. He submits that the first son



of the applicant no.1 is living separately with his family and in such circumstance, the case of second son is fit to be considered for compassionate appointment and in support of his contention he referred to decisions reported in 2003 [1] ATJ 492 [Ashok Kumar Vs. State of Haryana] and 1996[33] ATC 583 [G.B.Yerwa (Mrs.) and Another Vs. Union of India & Ors.]. He further submits that the Lucknow Bench of this Tribunal considered case similar to the present case and granted the relief vide Annexure-A/3. He, therefore, submits that the present OA be allowed and the relief be granted.

3. The learned Addl. Standing Counsel for the respondents on the other hand submits that on the direction of the Tribunal in OA 749 of 2004 the respondents considered the case of the applicants for appointment on compassionate grounds and vide order dated 17.10.2005 [Annexure-A/5] rejected the prayer. He further submits that employment on compassionate grounds is granted in the case of death of an employee during his service period but in the present case, the employee [applicant no.1] is alive and hence, the provision of compassionate appointment is not applicable in this case.

4. The learned counsel for the applicants in reply submitted that of course applicants are not seeking appointment on compassionate grounds on the death of the employee but the same is being sought on the ground of decategorisation of applicant no.1 and consequential retirement from service. He submits that the contention of the learned counsel for the respondents is not sustainable.

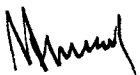
5. From perusal of the order passed by the Lucknow Bench of the Tribunal in OA 383 of 1998 [Annexure-3] it appears that the Bench

considered the provisions of compassionate appointment in case of medically decategorisation of an employee, relevant part of which is reproduced below :-

“1. In terms of the instructions contained in para 1[iv] of Ministry of Railways letter of even number dated 07.04.1983, appointments on compassionate grounds may be offered where a Railway employee becomes medically decategorised for the job he is holding and no alternative job with the same emoluments can be offered to him.

2. “During discussions in the meetings of the Departmental council of the JCM held on 28th and 29th June, 1982, and 29th and 30th July, 1983, the staff side demanded that even in those cases where on being medically decategorised, a railway employee is offered no alternative job of the same emoluments, his son or daughter should be offered employment on compassionate grounds if the employee himself opts to retire voluntarily.”

3. “After careful consideration of the matter, it has been decided that in cases where a railway employee is offered alternative employment on the same emoluments but it is not accepted by the employee and he chooses to retire from service, compassionate appointment of an eligible ward of the employee if so requested by him, can be considered at the discretion of the competent authority provided that if the employee has less than three years of service before superannuation i.e. he is past the age of 55 years at the time the decision is taken, the personal approval of the General Manager has to be obtained before the offer of appointment on compassionate grounds is made.”

 The referred Railway Board circular dated 07.04.1983 has been also examined. This Railway Board circular consolidates all the previous circulars on the subject of appointment on compassionate grounds. Four circumstances in which compassionate appointments

may be made are given in para [1] of the circular. The sub-para [iv] is relevant and is reproduced below :-

[iv] "When Railway employees become crippled while, in service or develop serious ailments like heart diseases, cancer, etc. or otherwise medically decategorised for the job they are holding and no alternative job of the same emoluments can be offered to them."

The applicants case falls in para 1[iv] as the applicant no.2 was "otherwise medically decategorised."

In view of the above provisions I am of the view that the case of the applicant deserves consideration.

6. In the result, the impugned order dated 17.10.20005 [Annexure-A/5] is quashed and set-aside and the respondents are directed to consider the appointment of applicant no.2 on compassionate grounds on decategorisation of applicant no.1 and his consequential retirement from service in the light of above provisions of the Railway within a period of three months from the date of receipt/production of a copy of this order. No costs.


[Anwar Ahmad]/M[J]

skj