

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 861/89
TR.A.NO.

199

DATE OF DECISION 28.4.1994

Shri M.R.Kali & ANr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ✓

MEMBER


(M.S.DESHPANDE)

VICE CHAIRMAN

mbm:

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

CAMP ; NAGPUR

OA.NO. 861/89

Shri Manohar Ramchandra Kali & Anr. ... Applicants

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande

Appearance

Shri D.B.Walthare
Advocate
for the Applicants

Shri A.B.Choudhari
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 28.4.1994

(PER: M.S.Deshpande, Vice Chairman)

Two reliefs have been sought by this application. The first is that the original first applicant who is ~~a~~^{the} father of the second applicant should be deemed to have retired not with effect from 30.9.1983 (Annexure-1) but from earlier date when his physical infirmity could have been detected and the authorities ~~be~~ ^{had} diligent to send him for medical examination and consequently for compassionate appointment to the second applicant.

2. The original applicant No. 1 who died on 5.6.1993 during the pendency of these proceedings, was working as a Sorting Postman. He was retired by the order dated 30.9.1983 w.e.f. 28.9.1983. The applicant made an application for compassionate appointment to the second applicant in October, 1983 and that was rejected on 9.11.1983 as the applicant No. 2 would not have been eligible for appointment as he had already attained the age of 55 years and would have been ineligible in view of the instructions

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in this regard which were issued on 30.3.1983 and came to be circulated on 3.5.1983. The respondents' contention is that the applicant had been retired properly w.e.f. 28.9.1983 and his retirement could not have been from the date from which the physical infirmity could have been noticed but from the actual date. With regard to the second applicant's claim for compassionate appointment, it is urged that his elder brother Prakash Kali is already employed in the postal department and under the rules no compassionate appointment can be granted to the applicant.

3. Turning to the first point, it is apparent from order dated 30.9.1983 that the first applicant was placed under retirement as per report received from the Civil Surgeon, Nagpur from the date of declaring incapacitated for further service w.e.f. 28.9.1983. According to Shri Walthare, learned counsel for the applicant, the applicant would be entitled to the benefit of Rule 2(2) of the Central Civil Services (Medical Examination) Rules, 1957. But that Rule only says that :

"On the basis of the opinion expressed by the examining medical authority and subject to the provisions of sub-rule (3), the competent authority may require the Government servant to proceed on leave or, if he is already on leave to continue to remain on leave or may retire him from service if he is a permanent Government servant, or may terminate his services if he is a quasi-permanent Government servant."

This rule does not anywhere say that the retirement of the Government servant should be effective from a particular date, but only enables the competent authority to retire the Government servant. In the present case, the retirement was made effective from the date of certificate which was issued on 28.9.1983. No other rule was pointed out to me which would have enabled the Applicant No. 1 to claim retirement from an earlier date. No relief therefore can be granted to the applicants in this respect.

4. With regard to the second point, there is no dispute about the fact that the applicant's elder brother Prakash Kali was employed in the Postal department. There is no mention anywhere in the original application that Prakash Kali was residing separately from the rest of the family and that he could not have rendered any help or assistance to the family. Shri A.B.Chaudhari, learned counsel for the respondents urged that the applicant has suppressed the appointment of Prakash Kali but Shri Walthare urged that there was no suppression in this respect because Annexure-32 which was filed in the application referred to the applicant's elder brother who was in Government service. The subject was Employment in relaxation of normal rules. The learned counsel for the applicant could not point out any material from the record on the basis of which it can be urged that Prakash was residing separately from the rest of the family. Rule 1 (a) of the Rules of Compassionate appointment provides that provisions would be applicable :

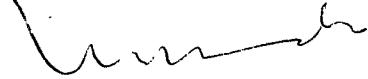
"To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family."

Since Prakash was an earning member in the family, no compassionate appointment was granted as sought to Applicant No. 2. Shri Walthare referred to the instructions by which the position was clarified by the respondents in their letter dated 1.3.1984. After considering the representations, three categories were formulated. The applicant admitted that he does not fall under categories (i)&(iii) of para 3 of Office Memorandum dated 1.3.1984. According to Shri Walthare, the second applicant's case would be covered by category (ii) which includes:

"(ii) Those who retired on medical grounds after attaining the age of 55 years on or after 18.3.82, but before the revised orders had been circulated by the Ministry concerned to their sub-Ministry formations."

There is no dispute about the fact that the applicant retired on or after 18.3.1982 after attaining the age of 55 years. There cannot be any dispute about the position that his retirement came after the instructions were circulated on 3.5.1983 by the order dated 30.3.1983. The applicant cannot therefore fall within the category 3 (ii). According to Shri Walthare, as stated in the last portion of this communication, there was no objection for reviewing the decisions already taken in the above mentioned cases. However, if the applicant could not have fallen under any of these cases, the case would not have been opened to review.

5. Considering all this position, I find that Applicant No. 2 was not entitled to compassionate appointment. The application is dismissed with no order as to costs.


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.