

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:19/2001

DATE OF DECISION:11.7.2001

Shri Vithal Krishna Jadhav

Applicant.

Shri R.D. Deharia

Advocate for
Applicant.

Versus

Union of India and others

Respondents.

Shri R.R. Shetty for Shri R.K. Shetty.

Advocate for
Respondents

CORAM

Hon'ble Smt. Shanta Shastry, Member(A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.

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(Shanta Shastry)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:19/2001

WEDNESDAY the 11th day of JULY 2001

CORAM: Hon'ble Smt. Shanta Shastry, Member(A)

Vithal Krishna Jadhav
At Marathewadi P.O. Nagansur
Tal. Akkalkot -Dist. Solapur(MS) ...Applicant

By Advocate Shri R.D. Deharia.

V/s

1. Union of India through
The Secretary,
Railway Board,
Ministry of Railways
Rail Bhavan, New Delhi.
2. The General Manager,
Central Railway CST
Mumbai.
3. The Divisional Railway Manager
Divisional Office, Central
Railway, Solapur.
4. Medical Director
Central Railway Hospital
Byculla, Mumbai.
5. The Chief Medical
Superintendent
Central Railway Hospital
Solapur. ...Respondents.

By Advocate Shri R.R.Shetty for Shri R.K. Shetty.

ORDER(ORAL)

{Per Smt. Shanta Shastry, Member(A)}

Heard counsel for both sides. Shri Deharia counsel for the applicant submits rejoinder which is taken on record. Since with the rejoinder the pleadings are complete, the matter has been heard finally.

2. The applicant, son of late Shri Krishna Narsoo who was working as Keyman, D.T.M., Central Railway, Solapur under Senior Section Engineer (P.Way) North, Solapur, applied for compassionate appointment as his father was declared medically un-fit for all classes on 26.2.1999. The respondents have rejected the request of the applicant for compassionate appointment on the ground that in case the Railway servant is declared unfit for all posts in terms of para 512(ii) of the Medical Manual and is retired from Railway service, compassionate appointment to the ward of such a Railway Servant would not be admissible. Aggrieved by this the applicant has approached the Tribunal to direct the respondents to consider the applicant for appointment to suitable category on compassionate ground and also to strike down the Railway Board's order dated 24.6.1987 being discriminatory under the Rules of equity.

3. It was the contention of the applicant that his father was declared unfit for all posts without properly establishing that he was suffering from Malingering. According to the applicant in terms of the Master Circular of the Railway Board on the subject of compassionate appointment it permits appointment of wards of Railway Employees who become crippled while in service or develop serious ailment like heart disease, cancer etc or are otherwise medically declassified for the job they are holding and no alternative job of the same emoluments can be offered to them. The applicant's father had lost eye sight of both the eyes. He was under treatment and operations had been performed on him.

The applicant has also alleged that this is due to the negligence and carelessness of the respondent. The applicant also challenged the declaration of the respondents that his father was declared medically unfit. Further his father was declared unfit by the Railway Board at the age of 52 years. Therefore also the applicant ought to have been considered for compassionate appointment. In the rejoinder filed by the applicant he further elaborated on the treatment given to his father. Since the matter was serious according to him the Medical Board should have recorded their findings, which should have formed the basis for initiating any action against his father including discontinuing his services. The respondents failed to produce any such findings or details of any action initiated against the applicant's father. The applicant's father was simply declared medically unfit. The learned counsel for the applicant therefore submits that the applicant should be given compassionate appointment as the respondents have not established malingering in the case of applicant's father.

4. The learned counsel for the respondents submits that the applicant has no case as the wards of Railway servant who have been medically declared unfit as malingering are not entitled to compassionate appointment. This conscious decision was taken by the Railway Board vide their letter dated 24.6.1987 on the subject of compassionate appointment to the ward of Railway employees retired on medical grounds. The learned counsel for the respondents also contends that the applicant cannot challenge the declaring of his father as medically unfit as malingering for

diminished vision now. The father of the applicant was alive for 14 months after having been declared unfit. Applicant's father never challenged the order. Therefore the applicant cannot now take up the case. The applicant has also no *latus standi* as he is not a Government servant to challenge the policy of the Railway Board dated 24.6.1987. Applicant's father could have challenged it. The same was not done therefore the request of the applicant to produce the finding of the Medical Board etc. is not tenable.

5. I have heard the counsel for both sides and carefully considered the matter. In my considered view it is the policy of the respondents not to provide compassionate appointment to wards of Railway Servants who have been declared unfit for all class in terms of para 512 (ii) of the Medical Manual. Further as rightly pointed out by the learned counsel for the respondents, the applicant cannot now challenge the declaration of unfit for all posts of his late father when his father had not challenged the same during his life time. The applicant's demand is to give him compassionate appointment and that is not possible in view of the policy of the Railway Board. I do not see any reason to interfere with the Railway Board's decision and therefore am unable to grant any relief.

6. In the result the OA~~is~~ is dismissed. No costs.

Shanta ⁹
(Smt. Shanta Shastry)
Member(A)