

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 447/91

199

T.A. NO: -----

DATE OF DECISION 15-10-1991

Purushottam Pandurang Jadhav

Petitioner

Mr. S. P. Kulkarni

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. S. C. Dhavan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. A.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

[Signature]
(A.Y. PRIOLKAR)
Member(A)

mbm*

MD

(05)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.447/91

Purushottam Pandurang Jadhav,
Wani Plot in front of M.S.E.B.
Sub-Station,
Near House of Barde Guruji Agalgaon Road,
Barsi,
Dist.Solapur 413 401. .. Applicant

vs.

1. Union of India
through
Secretary,
Railway Board,
Ministry of Railway,
Rail Bhavan,
New Delhi - 110 001.
2. The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. The Divisional Railway Manager,
Solapur Division,
Solapur - 413 001. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.S.P.Kulkarni,
Advocate for the
Applicant.
2. Mr.S.C.Dhavan,
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per M.Y.Priolkar, Member(A))

Date:15-10-1991

The applicant's father in this case retired as a Goods Driver of the Central Railway after he was medically decategorised on 15-6-1988. As per railway rules he was offered an alternative post of Shedman but the applicant's father preferred retirement on the ground that the alternative post which was offered to him was in the lower scale of pay. Thereafter he sought appointment of the applicant on compassionate ground saying that he(the father) was the only earning member in the family and his earning will be considerably reduced after his retirement. It is also stated that the applicant's request for appointment on compassionate

ground was considered by a three member committee constituted by the Divisional Railway Manager and after the applicant was screened, a proposal was sent to the General Manager, Central Railway for formal sanction for his appointment on compassionate ground as a Khalasi in the Carriage & Wagon Department. The General Manager had however rejected his application for appointment on compassionate ground.

2. The applicant's contention is that according to the Railway Board's order on this subject dtd. 7-4-1983 an employee who is decategorised on medical grounds has the option to retire from his post if he is not offered an alternative post on the same emoluments. According to him, it is also incumbent on the Railways to consider for appointment the son/kin of an employee on compassionate grounds when such employees are medically decategorised and they refuse alternative appointments which are not on the same emoluments. It is also his contention that his request has not been entertained by the competent authority who according to him is the DRM and it was not necessary that his application had to be forwarded to the General Manager for his approval.

3. The respondents in their written reply have opposed the application ^{on} the ground that according to Rule 1301 the alternative employment to be offered to incapacitated persons should be of a suitable nature and on reasonable emoluments, having regard to the emoluments previously drawn by the railway servant. Rule 1309(iii) states that an alternative appointment will be considered as suitable if the emoluments of the same are at a

level not more than about 25 per cent below his previous emoluments. It is also provided therein that in the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The Rule also states that the figure of 25 per cent is in the nature of a guide and not a rigid rule. It is also seen from Rule 1313 which deals with fixation of pay on absorption in an alternative post that the pay of the decategorised railway servant will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorisation and that for running staff the fixation will be based on basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The rules also provide that for compassionate appointment of dependants of railway employees who have crossed 55 years, the competent authority for grant of compassionate appointment is the General Manager.

4. Evidently, the General Manager who is vested with the power for appointment on compassionate ground for the dependants of railway employees beyond the age of 55 years has exercised his discretion in this case and refused to grant compassionate appointment to the applicant, whose father was already over 57 years old. Respondents have also stated that a Member of Parliament had also intervened on behalf of the applicant and that even on reconsideration, the General Manager did not consider it fit to accept the applicant's prayer for compassionate appointment.

5. The applicant's grievance is that his father was not offered an alternative job on the same emoluments and that some other employees' relations had been employed

on compassionate ground in similar circumstances.

Since the applicant's father was offered alternative employment in accordance with the guidelines of the Railway Board on the subject, and the instructions regarding fixation of pay also provided that his pay, though in a lower scale, would have been protected even covering the running allowance to some extent, we are of the view that the applicant's father was not justified in refusing the alternative employment offered to him before retirement even if there was some loss of emoluments and then asking for compassionate appointment for his son. As regards the charge of discrimination on the basis of some other employees' children being employed in similar circumstances, the respondents have stated that some of those employees had not crossed the age of 55 years according to the record. In any case it was the General Manager who had decided each such case on merits. The applicant's father had already crossed the age of 57 years at the time of retirement and it appears to us that the General Manager's decision to refuse the appointment of the applicant on compassionate ground cannot be considered as arbitrary or discriminatory. In our view, this is not a fit case for interference by the Tribunal in the discretionary powers of the General Manager. We do not, therefore, see any merit in this application which is accordingly rejected at the admission stage itself with no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

(19)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.17/92
in
O.A.447/91

Purushottam Pandurang Jadhav,
Wani Plot in front of M.S.E.B.
Sub-Station,
Near house of Barde Guruji Agalgaon Road,
Barsi,
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vs.

1. Union of India
through
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2. The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. The Divisional Railway Manager,
Solapur Division,
Solapur - 413 001. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

TRIBUNAL'S ORDER ON REVIEW PETITION
BY CIRCULATION:
(Per M.Y.Priolkar, Member(A))

Date: 3-2-1992

This Review Petition (R.P.No.17/92) has been filed by the original applicant in O.A. No.447/91 for reviewing our judgment dated 15-10-1991 in that case on the ground that his O.A. has been rejected by us although his contention that the impugned order of the competent authority was discriminatory and violative of the principles of natural justice was not denied by the respondents and certain relevant orders of the Railway Board not produced by the respondents have come to the notice of the applicant subsequent to our judgment. According to the review petitioner, the letters of the Railway Board dated 28-2-1985 and 12-12-1990 which he has now produced lay down that

proposals for compassionate appointment should be carefully scrutinised so that the discretionary power vested in the competent authority can be exercised judiciously.

2. In our judgment, we have taken note of the charge of discrimination made by the petitioner and for the reasons given in the judgment, stated that in our view the General Manager's decision to refuse the appointment of the applicant on compassionate grounds cannot be considered as arbitrary or discriminatory. We have also given a finding that since the applicant's father was offered alternative employment in accordance with the guidelines of the Railway Board on the subject and the instructions regarding fixation of pay also provided that his pay, though in a lower scale, would have been protected even covering the running allowance to some extent, we were of the view that the applicant's father was not justified in refusing the alternative employment offered to him before retirement even if there was some loss of emoluments and then asking for compassionate appointment to his son. We have tacitly thus accepted that the General Manager has used his discretion judiciously. Subsequent Railway Board's circulars that competent authorities should exercise their discretionary powers judiciously would thus not make any difference to our observation in the judgment under review. There is no ~~any~~ error apparent from record and we do not find any sufficient reason to warrant a review of our judgment on the grounds cogent in the review petition, which is accordingly rejected.


(M.Y. PRIOLKAR)
Member (A)

MD


(U.C. SRIVASTAVA)
Vice-Chairman