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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.228 of 1997

DATE OF ORDER:29th October, 1997

BETWEEN:

S.MUSALAIAH

.. APPLICANT

AND

1. Union of India rep. by the
Divisional Railway Manager,
South Central Raiway, Vijayawada,

2. The Sr.Divisional Personnel Officer,
S.C.Railway, Vijayawada.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.P.RATHAIH

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER(ADMN.))

Heard Mr.P.Rathaiah, learned counsel for the applicant and Mr.N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant in this OA while working as Special Grade Gangman drawing Rs.1160/- in the scale of pay of Rs.825-1200 under PWI, Pithapuram when subjected for periodical medical examination, was found fit for C1 and C2

Classes due to visual defect with effect from 5.12.95 by the Chief Medical Superintendent, Vijayawada. He was aged 55 years, 2 months and 4 days on that date. In view of the above medical fitness, he could not be continued as Special Grade Gangman and he was offered the alternative appointment. He had not accepted the alternative appointment and hence he was discharged from service with effect from 21.3.96. He was sanctioned pensionary benefits with added weightage of qualifying service. After his discharge from service, the applicant requested for appointment to his eldest son Shri S.Jayaraju on compassionate grounds. The case was critically examined in terms of the instructions contained in the letter No.P(SC) 268/Policy/V dated 8.9.92 (Annexure A at page 9 to the reply), ^{was an} as he is ex-employee medically decategorised after 55 years of age, his request was regretted by the impugned letter No.B/P.Con 564/79/96 dated 12.12.96 (Annexure A-10 at page 23 to the OA).

3. This OA is filed to set-aside the impugned letter No.B/P.Con 564/79/96 dated 12.12.96 (Annexure A-10 at page 23 to the OA) of R-2 by holding the same as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and for consequential direction to the respondents to consider the appointment of the applicant's son on compassionate grounds.

4. The respondents have filed reply. The main contentions of the respondents are as follows:-

(i) The applicant was found unfit to hold the semi-skilled post as Gangman. Hence he was decategorised

due to poor visual standard after the age of 55 years. Hence his case was considered in accordance with the instructions dated 8.9.92 and as per those instructions the applicant was not found eligible to get any compassionate ground appointment to his son;

(ii) The applicant was given pension and other retirement benefits. Hence the applicant is not in indigent circumstances to demand the compassionate ground appointment to his son;

(iii) The applicant has no burden of bringing up of unmarried daughters and other responsibilities due to his large family;

(iv) The applicant was given alternative appointment which he refused. Hence he cannot ask for compassionate ground appointment when he himself refused the alternative appointment.

5. In view of the above contentions, the respondents submit that the OA has to be dismissed as having no merit.

6. It is a fact that the applicant refused the alternative appointment. Having refused the alternative appointment, he cannot demand for compassionate ground appointment to his son. If he has been medically declassified in full for any of the jobs in Railways, then probably the applicant may have a case. But that is not so in this case. The applicant has served till he attained the age above 55 years. The circular dated 8.9.92 clearly

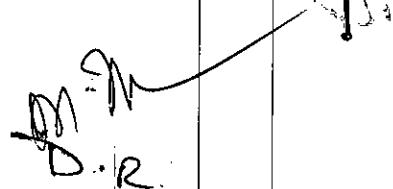
indicates the method to process the compassionate ground appointment if an employee is medically decategorised after the age of 55 years. The standards prescribed therein is very severe and if a medically decategorised employee does not fulfil those conditions, the Raiwlays cannot be forced to give compassionate ground appointment. Though it may be stated that the financial position of the applicant is not very good, that cannot be the only factor to give the compassionate ground appointment without considering the other attendant circumstances. In the reported case in 1994(26) ATC 580 (Auditor General of India v. G.Ananta Rajeswara Rao), the Apex Court had held that the Compassionate ground appointment can be given only in case where an employee dies in harness.

7. In view of the above, I have no hesitation in saying that the rejection of the request of the applicant for compassionate ground appointment to his son is without any reason. In that view, the OA is only liable to be dismissed. Accordingly it is dismissed. No order as to costs.



(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 29th October, 1997
Dictated in the open court.



vsn

OA.228/97

Copy to:-

1. The Divisional Railway Manager, South Central Railway, Vijayawada.
2. The Senior Divisional Personnel Officer, South Central Railway, Vijayawada.
3. One copy to Mr. P. Rathaiah, Advocate, CAT., Hyd.
4. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

srr

2/11/97
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

Dated: 29-10-97

ORDER/JUDGMENT

M.A/R.A/C.A.N.O.

in

O.A.NO. 228/97

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

केन्द्रीय प्रशासनिक अधिकार Central Administrative Tribunal प्रेषण/DESPATCH 6 NOV 1997 हैदराबाद न्यायपीठ HYDERABAD BENCH
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