

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 18.08.2003

OA No.563/2002

Naresh s/o Shri Sannoo (retired senior Pointsman, Kota Division, Kota), aged about 25 years r/o Behind retired railway employees colony, Shyamgarh, District Mandsor, Kota Division.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.

.. Respondents

Mr. P.V.Calla - counsel for the applicant.

Mr. Shailesh Prakash - counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. M.L.Chaudhary:

The father of the applicant, who was railway employee, was medically declassified. No alternative appointment was offered to him and he was retired on medical ground on 12.10.95. The applicant submitted application for appointment on compassionate grounds, which was rejected vide order dated 7.2.97 by the divisional authorities without assigning any reason. This order was challenged by the applicant by filing OA No.168/02 alongwith MA No.142/02 for condonation of delay. This Tribunal allowed the OA and MA at the admission stage without issuing notices to the respondents and directing the applicant to submit a fresh application for

appointment on compassionate grounds through Divisional Railway Manager within one month from the date of the order and on receipt of the said representation, the respondent No.1, the General Manager, Western Railway, shall take a decision on this representation by passing a reasoned and speaking order within two months thereafter. It was further observed that the decision so taken shall be communicated to the applicant within a period of two weeks thereafter. It may be pertinent to mention here that the father of the applicant was given personal hearing by the Divisional Railway Manager on 16.9.02 regarding appointment of the applicant on compassionate grounds and the said decision was conveyed to the father of the applicant namely Shri Sannoo vide letter dated 17.9.02 (Ann.A1). It is this order which is under challenge before this Tribunal and the applicant has prayed that this order may kindly be quashed and set-aside and appropriate order or direction be issued to the respondents to accord appointment to the applicant on a suitable post on compassionate grounds.

2.1 The ground of challenge taken by the applicant is that this Tribunal while deciding OA No.168/02 has specifically directed the General Manager, Western Railway to decide the representation of the applicant by a reasoned and speaking order and the decision taken by the respondent No.1. i.e. the General Manager has not been supplied. Thus, the order of the Tribunal has not been complied with.

3. In response to the notices issued to the respondents, the respondents have filed reply. Alongwith the reply affidavit, the respondents have also annexed

letter dated 12.12.02 signed on behalf of the Divisional Railway Manager and addressed to the applicant thereby enclosing a copy of the decision taken by the General Manager in pursuance to the directions issued by this Tribunal in OA No.168/02 whereby the representation of the applicant was rejected with reasoned and speaking order. The reasons given for not considering the case of the applicant for compassionate appointment are that the age of the father of the applicant at the time of retirement was 57 years and 9 months. Therefore, he would have normally retired just after 3 months. He has rendered more than 34 years of service and was in therefore receipt of full pensionary benefits. Further reasons given in the order is that the family consists of himself, his wife and 3 sons. The ex-employee has requested for appointment on compassionate ground in favour of Shri Naresh, third son, who is more than 25 years old. He has studied upto 5th standard only. Shri Naresh, the applicant, is not eligible for appointment in Group 'D' service as he does not possess the minimum qualification of 8th standard pass required for appointment in Railways service. It is also observed that otherwise also, the financial situation of the family is not such which warrant a job on compassionate ground. Shri Sanno had retired at the age of 57 years and 9 months, after rendering 34 years, 3 months and 23 days of service. He was granted full/maximum pensionary benefits. Had he retired even after three months on his superannuation, he would have received the same benefits from the railway administration and as per law laid down by the Supreme Court, the compassionate appointment is to be offered only in cases where the family has to tide over the sudden crisis, arising due to

4

loss of the sole bread winner so as to save the family from financial destitution. Thus, taking into account all the factors into consideration and factual position of the case, there are no compelling circumstances deserving compassion in the case and the representation was rejected.

3. The applicant was granted opportunity to file rejoinder. The learned counsel for the applicant made submission on 4.6.03 that he does not want to file rejoinder and the matter may be listed for hearing. Thereafter the matter was listed for hearing on number of occasions and finally the matter was taken up for hearing on 14.8.03.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicant submitted that the impugned order Ann. Al deserves to be quashed on the ground that the case of the applicant for compassionate appointment was rejected solely on the ground that only 3 months had been left for attaining the age of superannuation in the service of the father of the applicant, taking the age of retirement as 58 years whereas the father of the applicant being a Group 'D' employee was to retire on superannuation at the age of 60 years. Thus, the father of the applicant was left with 2 years and 3 months of service for retirement. Therefore, according to the learned counsel for the applicant, the application has been rejected on non-existent grounds without taking into consideration other relevant factors in order to arrive as to whether the family is suffering

from financial destitution. Though the submissions made by the learned counsel for the applicant appears to be attractive, but the same deserve out right rejection. The learned counsel for the applicant during the arguments has raised all together new contention which is not pleaded by him in this OA. The case set up in this OA was only to the extent that the General Manager, Western Railway has not passed orders in terms of directions issued by this Tribunal vide order dated 17.4.02 in OA No.168/02. Thus this new contention raised by the learned counsel for the applicant that the father of the applicant was left with 2 years and 3 months of service for retirement and not only 3 months as the retiring age of the father of the applicant being a Group 'D' employee was 60 years, cannot be accepted without affording opportunity to the respondents. That apart, as already stated above, the grievance of the applicant was only to the extent that no orders in terms of directions issued by this Tribunal vide order dated 17.4.02 in OA No.168/02 has been passed by the General Manager, Western Railway, which grievances does not survive now in view of the reasoned and speaking order passed by the General Manager as enclosed with copy of the letter dated 12.12.02 (Ann.EL). Further, it may be stated that the applicant has challenged the order dated 17.9.02 (Ann.AL) which is a communication addressed to the father of the applicant pursuant to his personal meeting with the Divisional Railway Manager, Kota. This is not an order which has been passed pursuant to the directions issued by the Tribunal vide order dated 17.4.02 in OA No. 168/02 whereby the General Manager was directed to pass a reasoned and speaking order within two months from the date of receipt of fresh representation of the applicant. In fact, as can be seen from the communication dated

16

12.12.02 (Ann.R1) addressed to the applicant, the General Manager has passed a reasoned and speaking order pursuant to the directions issued by this Tribunal in OA No.168/02 by giving detailed reasons. As such the applicant can be said to be aggrieved of this order and it is only this order which should be challenged by the applicant by filing OA and not the order which was conveyed to the father of the applicant pursuant to his personal meeting with the Divisional Railway Manager. The applicant has not chosen to challenge the order Ann.R1 which was passed pursuant to the directions issued by this Tribunal in OA No.168/02 on 17.4.02, which was also addressed to the applicant.

4.2 Section 14 of the Administrative Tribunals Act, 1985 (for short, the Act) provides that the Central Administrative Tribunal shall exercise all the jurisdiction, power and authority exercisable by all the court except the Supreme Court immediately before the appointed day in relation to matters set out in this Section. Sub-section (1) of Section 19 of the Act provides as under:

(1) Subject to the other provisions in this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance."

Section (3)(b) defines the word 'application' as an application made under Section 19.

4.3 Thus from the provisions as quoted above and more particularly Section 19 of the Act, it is clear that an application for redressal of 'his grievance' can be filed by 'a person aggrieved' of any order. The significance of the word 'his' and 'person aggrieved' appearing in later

part of Section 19 cannot be ignored. In order to bring the matter before the Tribunal an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal.

4.4 In the instant case, there is specific order passed by the respondent No.1, the General Manager, on the representation of the applicant pursuant to the order dated 17.4.02 passed in OA No.168/02 and as such this is the order within the meaning of Section 19, which can be challenged by the applicant for redressal of his grievance. The applicant has not chosen to challenge this order either by amending the OA or seeking liberty to withdraw this OA with a purpose to file a fresh OA thereby challenging the order passed by the General Manager pursuant to the directions issued by this Tribunal in OA No. 168/02 vide order dated 17.4.02. As such validity of this order cannot be gone into and examined in these proceedings. Accordingly, I am of the view that the order dated 17.9.02 addressed to the father of the applicant (Ann.A1) cannot be said to be the impugned order especially on the face of the order as conveyed to the applicant vide letter dated 12.12.02 (Ann.E1). Thus, the present application is not maintainable and the same is dismissed without expressing any findings on the merits. However, it is clarified that in case the applicant intends to challenge the order which was conveyed to him vide letter dated 12.12.02 (Ann.E1) thereby enclosing copy of the order passed by the General Manager, this order will not come in his way.

5. With the above observations, the OA is disposed

10

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of with no order as to costs.



(M.L.CHAUHAN)

Member (Judicial)