

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.839/03

Bilaspur, this the 9th day of Sept., 2004.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Om Prakash Lowanshi
S/o Late Shri Hazari Lal
R/o Pyasa-Nagar
Jujharpur Road, Ward No.2
Old Itarsi
Dist. Hoshangabad (MP) ...Applicant

(By advocate Shri L.S.Rajput)

Versus

1. Union of India through
General Manager
West Central Railway
Near Railway Station
"Indira Market"
Jabalpur.
2. Divisional Railway Manager
West Central Railway
Habibganj, Bhopal. ...Respondents

(By advocate Shri S.K.Jain)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) Direct the respondents to produce entire original record pertaining to the present case of the applicant for perusal of the Tribunal.
- (ii) To quash the impugned orders dated 15.2.02 (Annexure A1) & dated 19.9.03 (Annexure A2) and direct the respondents to offer regular appointment to the applicant on compassionate ground on any suitable post.

2. The brief facts of the case are that the father of the applicant Shri Hazari Lal was a permanent railway employee of the respondents who was working as Mech. Signal Maintainer Gr.I. He was declared medically unfit for all categories and was finally settled on 2.5.2000 from railway service. He was under sick leave from 19.7.99. Applicant's father was a case of complete paralysis. Applicant's father had a large family including widowed mother, three daughters and two sons. only the eldest daughter was married. All others were unmarried

(Signature)

and unemployed. The applicant's father approached respondent No.2 for appointment of the applicant in railway service on compassionate ground as per extant rules. He was told to wait till the applicant could pass at least VIII standard examination. The applicant was also asked to send an application for compassionate appointment. As per the advice of respondent No.2, the applicant appeared in the Madhya Pradesh Open School (High School Certificate Examination 2000-01) and after passing the said examination the applicant sent a reminder application on 23.3.2002 for compassionate appointment with family details and qualification certificate but vide order dated 15.5.02 (Annexure A1) his application was not considered on the ground that on the date of medical decategorization of applicant's father, the applicant was not having VIII standard qualification. In response to the above reply, applicant's father submitted another application in favour of the applicant. Meanwhile the applicant's father expired on 24.7.02. Finally the request of the applicant was turned down by the impugned order dated 19.9.03 (Annexure A2) on another different ground that the competent authority had rejected the prayer of the applicant simply because on the date of decategorization of the father of the applicant, he (father) was at the age of 57 years, 9 months and one day. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the applicant's father ^{retired} ~~retired~~ at the age of ~~58~~ ⁵⁹ years and in 57 years the applicant's father was serving. Hence his service remained for more than 2 years. The respondents have wrongly calculated the remaining period of the service of applicant's father on the basis of his retirement at



58 years. In case of medical decategorization, compassionate appointment can be legally considered and further argued that as per Railway Board Circular No.89/99 and supplementary Circular No.39 to Master Circular No.16 (R.B.E. No.8/2000 dated 18.1.2000, appointment on compassionate grounds in cases of medical invalidation/decategorization is permitted. He has drawn our attention to 2003(3) ATJ 346 Bombay High Court judgement and argued that the applicant has passed high school examination, ~~and~~ under many liabilities but the respondents have not considered the case in a proper way while the applicant is entitled to employment on compassionate grounds.

4. In reply, learned counsel for respondents argued that according to Railway Board's letter dated 28.2.86, such type of appointment cannot be considered and the applicant's father was found medically unfit at the age of 57 years 9 months and one day and retired with the maximum qualifying service for retiral benefits and that the applicant has not passed even VIII standard when he initially sent his application for appointment on compassionate grounds. Sufficient amount has been given to the applicant by way DCRG, PF, GIS and leave salary. Hence the applicant's family is not in a financial crisis. Appointment on compassionate grounds is not a matter of right. Hence the OA is liable to be dismissed.

5. After hearing learned counsel for both sides and careful perusal of the records, we find that in view of the Railway Board's circulars, appointment on compassionate grounds can be considered in case of medical invalidation/decategorization. We have seen the judgement of the Bombay High Court as cited by the applicant. The left over period of applicant's father's retirement was not 2 months and 29 days but it was 2 years, 2 months and 29 days as according to Government order of 1998, the age of the government employee was extended from 58 years to 60 years. Applicant's

father was serving in 1999 also. Hence he was to be retired at the age of 60 years. The applicant has passed 10th standard and his father expired due to long illness and has left two unmarried daughters and one younger brother all of them are unemployed including the applicant.

4. Considering the facts and circumstances of the case, we are of the view that the impugned orders dated 15.2.02 (Annexure A1) and 19.9.03 (Annexure A2) are not in accordance with law. Hence both these orders are quashed and set aside and the applicant is directed to submit a fresh representation within a period of one month from today giving the particulars in detail and supported by relevant documents regarding his qualification etc. and if he complies with this requirement, then the respondents are directed to consider his application within a period of three months from the date of receipt of the representation, according to rules. No Costs.

(Madan Mohan)
Judicial Member

aa.


(M.P.Singh)
vice Chairman

पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....
य तितिपि अबोहितः—

(1) संवित, उच्च व्यायालाय वार प्रसोरितिशन, जबलपुर
 (2) आवेदक श्री/मीरामी/कु. के काउंसल L S Raipur
 (3) प्रस्तुति श्री/मीरामी/कु. धं काउंसल
 (4) व्यापारी, को., जबलपुर व्यापारी
 सचिना एवं आवश्यक धार्दामी हेतु S/o Jain

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