

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 1st day of February, 2006

ORIGINAL APPLICATION NO. 61/2005

CORAM :

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)
HON'BLE MR.A.K.BHATT, MEMBER (A)

Jagdish Narain Meena
S/o Shri Ghazi Ram,
R/o Village & Post Kishorepura,
Tehsil & Distt. Jaipur.

By Advocate : Shri Nand Kishore

... Applicant

Versus

1. Union of India
Through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
New Delhi.

By Advocate : Shri T.P.Sharma

... Respondents

ORDER (ORAL)

The applicant has filed this OA thereby
praying for the following relief :

"In view of the facts and grounds
mentioned in this OA Hon'ble Tribunal may
kindly be called for the entire record
concerning to the case and after
examination of the same, the respondents'
letter No.725/E/9/4002/P-3 dated
18.3.2002 (A/2) may be declared invalid,
non exit and quashed. They may, further
be directed to treat the applicant on
duty and arrange payment of salary
alongwith interest @ 12% on the arrears
of pay due, from the dated 28.3.2002."

2. Brief facts of the case are that the applicant while working on the post of Cleaner was declared medically unfit by the Medical Board. Pursuant to the recommendations made by the Medical Board, the respondents vide letter dated 27.2.2002 (Ann.A/4), intimated the applicant to submit application thereby praying for retirement on medical ground and also for appointment on compassionate ground of one of his family member. Pursuant to such proposal made by the respondents, the applicant on the same date requested the authority to retire him from service on medical ground and to give appointment to his wife, Smt.Santosh, on compassionate grounds. Accordingly, the request of the applicant was accepted and he was retired on medical grounds vide order dated 20.3.2002 (Ann.A/2). The grievance of the applicant in this OA is that the respondents could not have retired him from service in view of the provisions contained in Section-2 and 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 and in case the applicant was not suitable for the post he was holding, he could have been shifted to some other post with same pay scale and service benefits and if it was not possible to adjust him against any post, he could be kept on supernumerary post until a suitable post was available or he attains superannuation, whichever is earlier. For that purpose, the applicant has also relied upon the decision of the Apex Court in the case of **Kunal Singh v. Union of India & Anr.**, 2003 (3) ATJ 174, at Ann.A/3. It is on these

basis that the applicant has challenged the order dated 18.3.2002 (Ann.A/2), whereby the applicant was retired from service on medical ground.

3. Notice of this OA was given to the respondents, who have filed their reply. In para 4(vi) of the reply-affidavit the respondents have made the following averments:

"That the contents of the Para 4(vi) of the OA are not admitted as stated by the applicant. It is respectfully submitted that the applicant was appointed in Railway service on 29.11.82 as substitute. He was retired from service on medical ground from 20.3.2002 at his own request. His qualifying service for the eligibility of pensionary benefit has now been counted as 10 years, 10 months, 14 days, after deducting period of leave without pay 8 years, 1 month, 18 days due to his absence from duty during his entire service. However, the other relief sought by the applicant for considering the case of Smt. Santosh, wife of the applicant for compassionate ground appointment is under consideration as per extant rules."

4. We have heard the learned counsel for the parties. The learned counsel for the applicant submits that he will be satisfied if the follow up action is taken by the respondents in accordance with the stand taken in the reply-affidavit, which has been reproduced above, without insisting for quashing the impugned order (Ann.A/2). We have given thoughtful consideration to the submissions made by the learned counsel for the applicant. Admittedly, the applicant was retired from service on medical grounds w.e.f. 20.3.2002 vide impugned order dated 18.3.2002

(Ann.A/1) at his own request, which request was based on the basis of the offer made by the respondents. It is not thus open for the respondents to resile from the offer made by them, whereby the offer was extended to the applicant to seek retirement on medical ground and for that purpose appointment will be given to one of his family members. Even the respondents in their reply have stated that the case of the wife of the applicant for compassionate appointment is under consideration. Since the applicant has retired on medical grounds w.e.f. 20.3.2002 and practically four years period has already elapsed and no appointment on compassionate ground has been made to the wife of the applicant, we are of the view that it will be in the interest of justice if the direction is given to the respondents to process the matter in the light of stand taken by them in para 4(vi) of the reply-affidavit, as reproduced above, and process the case of the applicant for pension as well as for granting compassionate appointment to the wife of the applicant within a period of three months from today.

5. With the above observations, the OA stands disposed of at the stage of admission itself. No costs.



(A.K.BHATT)
MEMBER (A)



(M.L.CHAUHAN)
MEMBER (J)