

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDER OF THE TRIBUNAL

Dated: 4.7.2014

OA No.647/2011 with MA No.378/2011

Mr. S.Srivastava, Counsel for the applicant
Mr. M.K.Meena, Counsel for the respondents

Heard the learned counsel for parties.

Order Reserved.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

08/07/2014

Order pronounced today in the
open court by the aforesaid
Bench.


08/07/2014
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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 647/2011
WITH
MISC. APPLICATION NO. 378/2011

Order Reserved on: 04.07.2014

Date of Order: 8-7-2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Bhagwan Sahai S/o Lodia a/a 57 R/o Gram Rajpura, Post Jopada, Tehsil Dausa, District Dosa.
2. Namonarayan Meena S/o Bhagwan Lodia a/a 24 years R/o Gram Rajpura, Post Jopada, Tehsil Dausa, District Dausa.

...Applicants
Mr. S. Srivastava, counsel for applicants.

VERSUS

1. Union of India through General Manager, North Western Railway, HQ Office, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur, Power House Road, Jaipur.
3. Divisional Personnel Officer, Jaipur Division, Jaipur, North Western Railway, Power House Road, Jaipur.

...Respondents
Mr. M.K. Meena, counsel for respondents.

ORDER

The applicant filed this Original Application on 24.11.2011. However, subsequently this O.A. was amended on 26.02.2014 by the applicants. In the amended O.A., the applicants have sought for the following reliefs: -

"(A). This Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 20.04.10 (Annexure A-1) by which respondents have rejected the

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claim of the petitioner no. 2 for appointment on compassionate ground vice petitioner no. 1.

(B) Further respondents may be directed to consider the case of the petitioner no. 2 for compassionate appointment vice petitioner no. 1 and provide compassionate appointment.

(C) Any other relief which this Hon'ble Tribunal may deem fit and proper be passed in favour of the petitioners as per the facts and circumstances of the case.

(D) This Hon'ble Tribunal may be pleased to direct the respondents to treat the petitioner no. 1 medically "UNFIT" with effect from the date when he was actually due for periodical medical test keeping in view the date of earlier medical test held on 12.06.03 especially or at least relax the period of 13 days to treat the petitioner no. 1 within a age limit of 55 years for the purpose of enlarging benefit of the Circular dated 14.06.06 to grant appointment to the petitioner no. 2 on compassionate ground vice petitioner no. 1."

2. Brief facts of the case are that the applicant no. 1 while working as Gangman under PWI Bandikui was medically de-categorized vide medical certificate dated 14.07.2008 (Annexure A/2). The grievance of the applicants is that the respondents have deliberately delayed the periodical medical test of the applicant no. 1 and now the same has been taken as a ground for rejection of the claim of the applicant no. 2 for granting compassionate appointment vice his father. Had the periodical medical test was done in time then the applicant no. 1 could be declared as medically de-categorized well before attaining the age of 55 years. In fact as per medical manual of the Railway (IRMM), employees like applicant no. 1 (Gangman) in Railways are required to send for periodical medical test every alternative year after attaining the age of 45 years and after completion of 55 years of age, employee is to be directed for periodical medical test every year. Respondents have deliberately delayed

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the periodical medical test of the applicant no. 1 because earlier to the medical test held on 14.07.2008, applicant no. 1 was sent for periodical medical test on 12.06.21003 and in between, respondents did not send the applicant no. 1 for medical test which was expected in the year 2005 and then in the year 2007. In these circumstances, applicants should not be deprived of their right of getting benefit of the circular dated 14.06.2006 for the reason that applicants are not at fault for the delay occurred in holding periodical medical test.

3. The applicant no. 1 could not be provided as an alternative job after being medically de-categorized. Therefore, the applicant no. 1 submitted an application on 19.02.2009 (Annexure A/4) for voluntary retirement (due to medical unfitness) based on the circular dated 14.06.2006 (Annexure A/5) issued by the Railway Board in this regard.

4. In response to the application of the applicant no. 1 for voluntary retirement, the respondents have accepted the same and passed the order dated 22.04.2009 (Annexure A/6) thereby accepted the retirement of the applicant no. 1 with immediate effect.

5. Subsequently, the applicant no. 1 and 2 submitted an application to the respondents for providing compassionate appointment. The applicant no. 2 has requisite qualification having passed 10th standard and as such could be considered for appointment on compassionate grounds.

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6. The grievance of the applicant is that the respondents have not extended the benefit of the circular dated 14.06.2006 issued by the Railway Board which provides for giving appointment on compassionate grounds.

7. The applicant no. 1 was earlier medically examined on 12.06.2003 and according to the Railway Board's circular; he was due for medical examination after 5 years. Thus, his medical examination should have been conducted in the month of June, 2008 but the respondents conducted his medical examination on 14th July, 2008 i.e. after 14 days of his attaining the age of 55 years for which the applicant no. 1 cannot be held responsible.

8. Learned counsel for the applicants submitted that in the case of **Sanwatia vs. UOI & Ors.** (OA No. 539/1997) & other connected matter vide order dated 26.09.2002, this Bench of the Tribunal had given the benefit of delay occurred on the part of the respondents. In this case also, the delay for medical examination of the applicant is on the part of the respondents. Therefore, the applicants may be given the benefit and he may be treated as medically de-categorized before attaining the age of 55 years and consequently the application of the applicant no. 2 may be considered for appointment on compassionate grounds.

9. On the other hand, the respondents have filed their reply. In their reply, they have stated that the applicant has prayed for compassionate appointment on the basis of Railway Board's

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Circular dated 14.06.2006, the applicant by way of his representation dated 19.02.2009 has stated that due to his ill-health and family reasons he could not continue the services, therefore, he has prayed for voluntary retirement and the applicant has been retired from the service on the date he was medically de-categorized i.e. on 25.07.2008. As per the date of birth of the applicant i.e. 01.07.1953, the applicant attained the age of 55 years on the date of his medical de-categorization, therefore, as per the railway board circular dated 14.06.2006, the applicant is not entitled for compassionate appointment.

10. The respondents have also submitted that vide letter dated 31.07.2007, it has been clearly provided that if any employee is medically de-categorized after attaining the age of 55 years then the application for compassionate appointment will not be accepted.

11. The date of birth of the applicant no. 1 is 01.07.1953 and he was medically de-categorized on 25.07.2008, therefore, after medical de-categorization, the period of 04 years, 11 months and 05 days were left in the service of the applicant no. 1. Therefore, the applicants are not entitled for the benefit of circular dated 14.06.2006.

12. While submitting their reply to the amended O.A., the respondents have stated that the applicant no. 1 while submitting his application for voluntary retirement on 19.02.2009 (Annexure A/4) has not requested for providing

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compassionate appointment to any of his dependents. He simply requested for voluntary retirement on medical grounds and his request was accepted.

13. The respondents have also stated that the applicant has entered his wrong date of birth in the application dated 19.02.2009 (Annexure A/4) as 02.09.1954 whereas his correct date of birth is 01.07.1953. The applicant was wrongly retired treating his date of birth on the basis of his application.

14. The respondents have also raised an objection with regard to the maintainability of the present O.A. on the ground of limitation. The respondents have stated that though the applicant has moved an application for condonation of delay but the same has not been supported by the reasons, therefore, the present O.A. deserves to be dismissed on the ground of limitation alone. To support his averments, learned counsel for the respondents referred to the order of this Bench of the Tribunal dated 06th March, 2014 in the case of **Narottam Lal Meena vs. UOI & Ors.** (OA No. 291/00089/2014 with MA No. 291/00054/2014) where that O.A. was dismissed on the ground of being hopelessly time barred.

15. Learned counsel for the respondents also submitted that in the case of **Ram Prasad & Anr. Vs. UOI & Anr.** (OA No. 462/2009) vide order dated 02nd August, 2011, this Bench of the Tribunal has held that the applicant No. 1 sought voluntary retirement without waiting for the decision of the Screening

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Committee regarding alternative employment looking to his medical category, and if his case is considered in the light of the Railway Board's circulars issued from time to time as referred hereinabove, the applicant No. 2 is not entitled to get benefit of appointment on compassionate grounds and the OA deserves to be dismissed.

Learned counsel for the respondents further submitted that the facts of the present O.A. are similar to the facts of case of Ram Prasad & Anr. Vs. UOI & Anr. (supra), therefore, the present O.A. be dismissed with costs.

16. Heard learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the parties.

17. The respondents have raised an objection with regard to the limitation. I have perused the Misc. Application No. 378/2011 filed by the applicants praying for condonation of delay in filing the present Original Application. In para 1 of this Misc. Application, it has been stated that because of ailing and poor financial condition of the family, the applicant could not approach the Tribunal in time and was pursuing the matter with the higher authorities and he had an hope to get his grievances redressed. On the perusal of the reasons recorded in the Misc. Application for condonation of delay in filing the Original Application, I am satisfied that for the reasons given by the applicants, the delay in filing the present O.A. can be condoned. Accordingly, the

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delay in filing the present O.A. is condoned. The Misc. Application No. 378/2011 is disposed of accordingly.

18. It is not disputed that the date of birth of the applicant no. 1 is 01st July, 1953 and thus, he attained the age of 55 years on 01st July, 2008. It is also not disputed that the applicant no. 1 was earlier medical examined on 12.06.2003 and thereafter he was due for medical examination after 5 years i.e. by 30th June, 2008. It was the responsibility of the respondents to send the applicant no. 1 for medical examination within time but the applicant was declared medically unfit on 14.07.2008 (Annexure A/2). For this delay of 14 days, the applicant no. 1 cannot be held responsible.

19. However, from the perusal of the application submitted by the applicant no. 1 dated 19.02.2009 (Annexure A/4), it appears that he applied for voluntary retirement due to bad health and family reasons. In this application, he has nowhere mentioned that he wants one of his dependents to be employed in his place. His application for providing appointment on compassionate grounds to his son i.e. applicant no. 2 is at Annexure A/7 which is not dated but certainly it is after the date of his retirement i.e. 22.04.2009 because this application mentions that he has since been retired on 22.04.2009. It was his duty that when he was applying for voluntary retirement, he should have at the same time requested for providing appointment on compassionate grounds to one of his dependents but he failed to do so. In the Office Order dated 16.01.2009 (Annexure A/3), which is with

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regard to the recommendations of the Screening Committee for providing alternative employment to the medical de-categorized employees; the name of the applicant no. 1 appears at Sl. No. 29. In the column of the recommendations, it has been stated that the applicant has requested for voluntary retirement, meaning thereby that he has not opted for alternative appointment on being medically de-categorized. Therefore, I am of the opinion that the applicants have failed to make out any case for interference by this Tribunal in the present O.A.

20. Since the applicants have failed to make out any case for granting relief in the present Original Application, the present Original Application being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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