

(RESERVED ON 05.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 09th day of July 2018.

ORIGINAL APPLICATION NO. 330/633/2018

HON'BLE MR JUSTICE VISHNU CHANDRA GUPTA, MEMBER (J).
HON'BLE MR GOKUL CHANDRA PATI, MEMBER (A).

B.K. Srivastava, (aged about 61 years), S/o Late H.P. Srivastava, R/o Village Tundali, Near Jain Mandir Tundla, Post-Tundla, Firozabad.

.....Applicant.

VERSUS

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad-211001.
2. Divisional Railway Manager, Allahabad Division, North Central Railway, Nawab usuf Road, Civil Lines, Allahabad (U.P.).
3. Senior Divisional Operations Manager, Allahabad Division, North Central Railway, Nawab Usuf Road, Civil Lines, Allahabad (U.P.).

..... Respondents

Advocates for the Applicant : Shri J K Shishodia
Shri B P Singh Dhakray

Advocate for the Respondents : Shri S M Mishra

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(a) This Hon’ble Tribunal may be pleased to quash both the impugned orders (i) Order dated 11.08.2017 (Annexure A-13) & (ii) Order dated 17.08.2017 (Annexure A-14) both issued by DRM (Personal), Northern Railway, Allahabad being violative of principles of natural justice & also violate of Article 14 & 21 of the Constitution of India.

(b) After quashing of both the impugned orders dated 11.08.2017 & 17.08.2017 (as prayed above), this Hon’ble Tribunal may be

pleased to declare the "DATE OF RETIREMENT" of the applicant, which may be either 11.08.2017 or 17.08.2017, due to 100% visually. Handicapped applying the principles of natural justice.

- (c) *This Hon'ble Tribunal may be pleased to direct the respondents to decide the pending representations dated 25.08.2017 (Annexure No. A-15) & dated 25/26-2-2018 (Annexure No. A-17) qua consideration upon Applicant's retirement at the earliest as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (d) *This Hon'ble Tribunal may be pleased to award the cost of litigation in favour of the applicant.*
- (e) *This Hon'ble Tribunal may be pleased to pass consequential and suitable order or orders in favour of the Applicant, to which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

2. This OA was heard at the admission stage. The facts of the case are not disputed. The applicant was appointed as Trains Clerk in the Railways and after about 37 years of service, he became visually handicapped. After the examination by the doctor, the applicant was diagnosed with an incurable disease of the eye and was later diagnosed as 100% visually handicapped. It is stated in the OA that the payment of the salary of the applicant was stopped w.e.f., 01.04.2014 till his date of retirement because the applicant had permanently gone for medical leave and he has not been officially declared retired. The applicant had filed OA No. 159 of 2015 before this Tribunal and vide order dated 22.05.2015 (Annexure A-9), this Tribunal directed the respondents to place the case of the applicant before the Medical Board for determination of his medical de-categorization or otherwise based upon available medical reports within two months. The applicant being 100% visually handicapped submitted a representation dated 16.07.2015 (Annexure No. A-10) to the respondents seeking voluntary retirement after 39 years of service and appointment for his son on compassionate grounds as per the guidelines of the Railway Board. But no decision on it was taken by the respondents.

3. The case of the applicant was placed before the Medical Board, which issued a health certificate dated 28.07.2017 to the applicant showing him as 100% blind. Later, the respondents vide the impugned order dated 17.08.2017 informed the applicant that after result of five Member Screening Committee that the applicant was adjusted in a post

with the Grade Pay of Rs. 4200/- per month as against the normal entitlement of the applicant for the Grade Pay of Rs. 4600 which he was already drawing. Thereafter, the applicant submitted another representation dated 25/26.02.2018 (Annexure No.A-17) to the respondents mentioning his grievances relating to the compassionate appointment of his son. But no response has been received from the respondents on his representation. It is stated in the OA that the applicant became 100% visually handicapped discharging his duties since 39 years in the Movement Control Office/ Train Movement, hence, the non-payment of salary since 01.04.2014 till the date of retirement is arbitrary. It is also stated the action of the respondents degrading his pay scale from Rs. 4600/- per month to Rs. 4200/- per month for no valid reasons is also arbitrary and illegal.

4. Heard learned counsel for the applicant. He submitted that the applicant in the course of his service became 100% visually handicapped as per the report of the AIIMS doctors. But he was not allowed his entitlement as a visually handicapped employee by the respondents and was not allowed to retire on medical ground. When no action was taken by the respondents for his medical de-categorization, the applicant filed the OA No. 159/2015, which was disposed of by this Tribunal with a direction to the respondents to place the case of the applicant before the Medical Board for determination of his medical de-categorization or otherwise. The applicant was examined by the Medical Board and confirmed his status as visually handicapped. It was submitted that based on the report of the Medical Board, the respondents have passed the impugned order adjusting him in a post with a Grade Pay of Rs. 4200 as against the applicant's Grade Pay of Rs. 4600. Learned counsel argued forcefully that the decision of the respondents to downgrade his post is illegal and it violates the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (referred in short as 'Act'). He further submitted that the applicant has not been paid any salary from the year 2014 till his retirement on 31.08.2017 and either salary for the period be paid or

the applicant be deemed to be retired on medical ground w.e.f. 1.04.2014 with consequential benefit of compassionate appointment to his son.

5. Learned counsel for the respondents submitted that the applicant's pay has not been reduced to the Grade Pay of Rs. 4200 as alleged. He filed a copy of the calculation sheet received from the respondents showing the last pay of the applicant as on his date of retirement i.e. on 31.08.2017 to be with Grade Pay of Rs.4600. He further submitted that the case of the applicant for medical de-categorization has been considered and it was decided to adjust him in an appropriate post, but the applicant refused to join.

6. We have carefully gone through the record and considered the submissions. The applicant is aggrieved by the impugned order dated 11.8.2017 (Annexure A-13) and order dated 17.8.2017 (Annexure A-14). The order dated 11.8.2017 states that in pursuance to the direction of the Tribunal, the applicant was examined by the Medical Board which found the applicant to be "visual handicapped" and based on the report of the Medical Board, it was decided by the competent authority to adjust the applicant in the post of Reservation Supervisor. The applicant was advised to contact the Personnel department for assignment of duty. The order dated 17.08.2017, the applicant was instructed to work as Reservation Supervisor (Grade Pay Rs. 4200). The applicant failed to join the duty on the post of Reservation Supervisor as per the decision of the respondents.

7. The applicant had filed the OA No. 159/2015 with a prayer to give direction to the respondents for constitution of the Medical Board to consider medical de-categorization of the applicant. The operative part of the order dated 22.05.2015 of this Tribunal (Annexure A-9) stated as under:-

"5. Having regard to the above, the respondents are directed to place the case of the applicant before the Medical Board for determination of his de-categorization or otherwise based upon available medical reports within a period of two months from the date of receipt of certified copy of this order."

In compliance of the above direction, the respondents placed the case of the applicant before the Medical Board and based on the report of the Medical Board about the medical condition of the applicant, the respondents have decided to post him as Reservation Supervisor, which was not complied by the applicant on the ground that he was adjusted in a post with Grade Pay less than his Grade Pay. However, as clarified by the counsel for the respondents, the Grade Pay of the applicant was never reduced by the applicant while he was posted as Reservation Supervisor. There is no such order passed by the authorities as the applicant has not furnished no evidence to show that his Grade Pay has been reduced after posting as Reservation Supervisor after examination of the applicant by the Medical Board. Hence, we are not able to accept such contention of the applicant.

8. We note that the applicant had filed a Contempt proceeding against the respondents alleging non-compliance of the order dated 22.05.2015 of this Tribunal. Vide order dated 15.2.2018 (Annexure A-16), this Tribunal dismissed the Contempt petition of the applicant with the following observations:-

"2.1 It is also submitted that the applicant was placed before the Medical Board and Medical Board has recommended the case of loss of vision in both yes and advised contract surgery but applicant has declined. As such the order of the Tribunal has been complied with.

.....
7. Learned counsel for applicant has reiterated the facts as stated in the Contempt Petition and submitted that respondents have malafidely lingered the case of the applicant for second medical examination of the Board and have passed the order only when the applicant was going to retire in the month of July, 2017 and offering the alternative employment to him is nothing but an eye wash to prevent the applicant from taking advantage of medical decategorisation like job to one of his ward. Counsel further submitted that job offered to him is neither practicable nor feasible to him.

8. Learned counsel for respondents submitted that respondents have complied with the order passed by this Tribunal by which the Tribunal simply directed them to place the case of applicant before Medical Board for determination of his medical decategorisation and in pursuance of the same, respondents have placed the case of the applicant before the Medical Board who accepted the medical decategorisation of the applicant and as per policy, the applicant was offered an alternative job on the same pay scale and same pay grade. Thus, they have complied with the order passed by this Tribunal.

9. From perusal of pleadings, it transpires that there is some delay in complying the order passed by this Tribunal. However, the respondents have complied with the order passed by this Tribunal and passed the impugned order . As such, they have substantially

complied with the order passed by this Tribunal and there is no willful disobedience of the order by the respondents and respondent cannot be punished for contempt."

In view of above findings by this Tribunal, it cannot be said in this OA that the respondents have not taken a correct decision in respect of the applicant by giving him an alternative posting after examination by the Medical Board. It is not the case of the applicant that there has been violation of any rule by issue of the impugned order dated 11.8.2017 and dated 17.8.2017 giving alternative posting to the applicant.

9. It would appear from the averments of the applicant in para 5 of the OA that he is aggrieved because of the fact that the respondents did not order his retirement on medical ground prior to his normal date of retirement so that his son would have been eligible for compassionate appointment as per the existing guidelines of the Railway Board copy of which has been annexed at Annexure A-18 of the OA. The applicant has submitted a representation dated 25.2.2018 (Annexure A-17) in which he has submitted his claim for compassionate appointment of his son. It is also mentioned in the representation that he was not given any salary from 1.04.2014 as he had proceeded on medical leave. But no specific relief for his claim of salary for this period has been made in para 8 of the OA.

10. From the perusal of the reliefs prayed for in para 8 of the OA, it is clear that the applicant prays for his retirement prior to the date of his superannuation on 31.8.2017 and for consideration of his representation dated 25.8.2017 (Annexure A-15) and representation dated 25/26.2.2018 (Annexure A-17) by which the request for compassionate appointment of his son has been made.

11. We note that as per the judgment of Hon'ble Supreme Court in catena of cases, the compassionate appointment is not a matter of right. It is to be considered to mitigate immediate financial hardship of the family if the government servant dies in harness or becomes medically unfit to continue in his service as per the rules/scheme approved by Government. In this regard the decision of Hon'ble Supreme Court in the

case of ***Umesh Kumar Nagpal Vs. State of Haryana*** reported in ***JT 1994 (3) SC 525*** may be referred. In this case the Hon'ble Apex Court has held as under:-

“.....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.....”

In the case of State of *Chhattisgarh vs. Dhirjo Kumar Sengar* vs. (2009) 13 SCC 600, the Hon'ble Apex Court has been pleased to observe that the "Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance."

12. From above discussions, we are of the considered view that no case has been made out by the applicant to justify any interference with the impugned orders dated 11.8.2017 and 17.8.2017 regarding alternative posting given to the applicant after his examination by the Medical Board in compliance of the directions of this Tribunal. The applicant did not accept the alternative posting citing different reasons. Although he claims that no salary has been paid to him since 1.04.2014 as he was on sick leave, it is not known whether any application for sanction of medical leave has been submitted by the applicant as per the extant rules and there is no specific relief sought by the applicant in this regard. There is no case for violation of the provisions of the Act as alleged by learned counsel for the applicant as the salary or the Grade Pay of the applicant has not been reduced as clarified by the learned counsel for the respondents. From the material available on record, we are not convinced that the decision taken by the respondents on the issue of the applicant's medical de-categorization by the respondents has resulted in any discrimination of the applicant.

13. In the circumstances, we are unable to accept the prayers at sub-para A and B of para 8 of the OA, since we do not find adequate justification to interfere with the impugned orders dated 11.8.2017 and 17.8.2017. Hence, the OA is disposed of with a direction to the respondents to consider and dispose of the applicant's representations dated 25.8.2017 (Annexure A-15) and dated 25/26.2.2018 (Annexure A-17) in accordance with the extant rules and guidelines of the Government (in case these are still pending) and also to consider sanction of medical leave for the period from 1.04.2014 till applicant's retirement as per the rules within a period of three months from the date of receipt of a copy of this order.

14. The OA is accordingly disposed of as above. No costs.

(GOKUL CHANDRA PATI) (JUSTICE VISHNU CHANDRA GUPTA)
MEMBER-A MEMBER-J

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