

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the **10th Day of September, 2018**)**Hon'ble Mr. Justice Bharat Bhushan-J.M.****Original Application No. 330/01108/2014**

(U/S 19, Administrative Tribunal Act, 1985)

1. Anwar Jahan, wife of Sri Nirankar Singh.
2. Nirankar Singh, s/o Onkar Singh, Tech. -IIIrd, Under SSE/CRS/NCR/ALD.
R/O House No. 190/135 B, Belly Gaon, P/O- Kachehari,
District-Allahabad Pin Code No. 211002 (Uttar Pradesh).

..... Applicant**By Advocate: Shri R.K. Dubey.**

Versus

1. Union of India through Administrating and Managing (General Manager) of North Central Railway (N.C.R.) General Manager, Subedarganj, Allahabad.
2. Divisional Railway Manager (D.R.M.), North Central Railway (N.C.R.), Allahabad.
3. Senior Divisional Karmik Officer (N.C.R.), North Central Railway, Allahabad.

.....Respondents**By Advocate: Shri Sanjay Kumar Ray.****ORDER**

Applicants Anwar Jahan and her husband Nirankar Singh have jointly filed this Original Application (O.A.) Under Section 19 of Central Administrative Tribunal, Act

(C.A.T. Act). for compassionate appointment of Smt. Anwar Jahan on account of medical incapacity allegedly sustained by Nirankar Singh.

2. Applicant No. 2 Nirankar Singh was admittedly working in Railways on the post of Tech- IIIrd (SSE/CRS/NCR/ALD) under the North Central Railway (N.C.R.) Allahabad. Apparently, he developed serious medical problem in his eyes and became invalidated in medical category. The applicant No. 2, therefore, sought compassionate appointment to his wife namely Anwar Jahan. However, the Railway department did not take any action in this regard. Therefore, he sought decision of his representation through Original Application No. 330/00062/2014 (Anwar Jahan and another Vs. U.O.I. & Ors). On 06.02.2014 Divisional Railway Manager (D.R.M.) Respondent No. 2 rejected the request of applicant. Feeling aggrieved by the order dated 06.02.2014, the applicants have instituted the present OA.

3. The respondents have filed their counter reply as well as supplementary counter reply wherein they have denied the claim of applicants, saying that Ex-employee applicant Nirankar Singh retired on 31.05.2013 on

attaining the age of superannuation i.e. 60 years as per Railway Rules. The respondents have drawn the attention of this Tribunal towards prevailing Rules for such compassionate appointment. They have argued that the request of applicants does not fall within the provision of such rules, therefore, the compassionate appointment cannot be granted.

4. The applicants have also filed rejoinder affidavit reiterating their claims.

5. Heard Shri R.K. Dubey, Advocate for the applicant and Shri S.K. Ray, Advocate for the respondents.

6. It is a strange case where an Ex-employee is asking for compassionate appointment of his spouse (wife) even after completing the entire period of his service. Admittedly, the Ex-employee Nirankar Singh (Applicant No. 2) is still surviving.

7. The claim of applicant is primarily based on a scheme of Railways reflected in ***RBE No. 8/2000 No. E (NG) II/95/RC-1/94 dated 18.1.2000 (Para 3)*** available on record as Annexure A-3, which provides that where an employee has been medically invalidated/de-categorized and where the administration cannot find a

suitable alternative post for such an employee he is to be kept on supernumerary post in the Grade in which he was working on as regular basis till such time suitable post is identified or till his retirement whichever is earlier. The scheme further entails that where an employee is totally incapacitated and is not in a position to continue on any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate appointment to eligible ward may be considered. The relevant Circular is reproduced as below:-

“ RBE No. 8/2000

No. E(NG)II/95/RC-1/94 dated 18/01/00

Subject:- Appointment on compassionate grounds in cases of medical invalidation decategorisation.

(Supplementary Circular No. 39 to Master Circular No. 16)

Kindly refer to the instructions contained in Board's letters No. E(NG)III/78/RC-1/1 dated 7.4.1983. 3.9.1983 as well as Board's letter of even number dated 22.9.1995 (RBE 107/1995) on the above mentioned subject.

2. Pursuant to the notification of “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,” instructions were issued vide Board's letter No. E(NG)I/96/RE-3/9(2) dated 29.04.1999 (RBE 89/1999) laying down interalia that, in cases where an employee has been medically invalidated decategorised and where the administration cannot find a suitable alternative post for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time a suitable post can be identified or till his retirement, whichever is

earlier. As these instructions provided for continuation in service of a medically invalidated decategorised employee, there would be no occasion for an employee to be retired from service on medical ground. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

3. The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered.

4. In these cases of medical decategorisation i.e. those cases in which an employee becomes medically unfit for the post held are present but is fit to perform the duties of an alternative suitable post in lower medical category. The request of appointment on compassionate ground to an eligible ward will not be admissible even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward further clarifications issued Vide No. E(NG)II/95/RC-1/94 dated 10.11.2000 (RBE 193/2000).

Cases of employee who had been totally incapacitated later the issue of Board's letter 29.04.1999 and prior to issue of Board's letter dated 18.1.2000, and had been allowed to retire vide Railway Board's letter No. E(NG)II/95/RC-1/94 dated 11.04.2001 (RBE 72/2001).

GM given powers to consider cases of medically decategorised employees fit in lower medical categories, retired voluntarily between 29.4.99 and 18.1.2000 (both days inclusive) vide Railway Board's Letter No. E(NT)-II/2000/RC-1/Genl. 17 dated 6.3.2002 (RBE31/2002)."

8. A bare perusal of aforesaid Circular would reveal that object of this scheme is to provide solace to medically invalidated employee. The scheme entails that

if employee become invalidated then suitable alternative post for such employee may be identified so that he may continue to work in the department despite his medical invalidation. In case this is not possible then the employee is kept on supernumerary post in the same Grade in which he was working on the regular basis till such time a suitable post can be identified or his retirement whichever is earlier. It is true that Para No. 3 of this Circular also provides for consideration of request for appointment on compassionate ground to an eligible ward as well. But for such consideration it is necessary for employee to seek voluntary retirement on the ground of medically invalidated/de-categorization. Admittedly, Nirankar Singh did not choose to retire voluntarily on his being medically de-categorized. In any case the primary object of this scheme was to provide suitable work to the medically de-categorized employee.

9. In the present case the applicant Nirankar Singh completed his entire length of his service and retired on 31.05.2013 on completion of his service. The present O.A. was filed in the year 2014. Applicant Ex-employee Nirankar Singh cannot such any compassionate appointment for wife after retiring peacefully on

31.05.2013 on completion of full service. This Original Application, in fact, became infructuous at the time of institution itself.

10. It is pertinent to mention that the Para No. 4 of Circular also talks about eligibility criteria as well. There is nothing on record to demonstrate that spouse of applicant is eligible for any compassionate appointment. This Tribunal is convinced that the question of eligibility itself is not required to be considered as there was nothing left after the normal retirement of Ex-employee of Nirankar Singh. In view of the above, the O.A. is not sustainable and the same is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(Justice Bharat Bhushan)
Member (J)

/SS/