

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4295 OF 2016

New Delhi, this the 31st day of January, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Harish Tandon,
Aged 25 years,
s/o late Shyamlal Tandon,
R/o H.No.46, Ward No.5, Hakikat Nagar,
Near Arya Samaj Mandir Railway Road,
Jind,
Haryana 126102

..... Applicant

(By Advocates: Mr.Salman Khurshid, Senior Advocate, and Miss.Kamana Singh, Miss. Nooreen Sama, Miss. Mithali Chauhan and Ms.Shubhi Sharma, Advocates)

Vs.

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi 110001
2. Divisional Railway Manager,
State Entry Road,
Paharganj,
New Delhi 110055

..... Respondents

(By Advocate: Mr.S.M.Arif)

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ORDER

This Original Application was filed by the applicant on 21.12.2016 praying for quashing of the letter dated 1.9.2016 (Annexure A-1), whereby respondent no.2 refused to consider the applicant's request for

providing him compassionate appointment to a post, because of his father-Shri Shyam Lal having taken voluntary retirement from Railway service with effect from 27.11.2006, and in the absence of any provision for compassionate appointment in a case where the ex-Railway servant has taken voluntary retirement.

2. Resisting the O.A. the respondents have filed a counter reply.
3. No rejoinder reply has been filed by the applicant refuting the stand taken by the respondents.
4. I have carefully perused the records and have heard Mr.Salman Khurshid, learned Senior Advocate for the applicant, and Mr.S.M.Arif, learned counsel for the respondents.
5. Brief facts of the case, which are not disputed by either side, are as follows:
 - 5.1 The applicant's father, Shri Shyam Lal was a Railway servant. He had initially joined the Railway service as a Junior Clerk on 26.6.1973 and earned promotions to higher posts in the hierarchy. While he was holding the post of Office Superintendent-I, the applicant's father, vide his application dated 20.5.2005 (Annexure R-1), gave notice of three months to voluntarily retire from Railway service due to his 'ailing health' and requested the competent authority to allow him to retire from service voluntarily with effect from 31.8.2005. Before any decision on his application dated 20.5.2005 (Annexure R-1) could be taken by the competent authority, the applicant's father, vide his letter dated 28.6.2005

(Annexure R-2), sought to withdraw his application dated 20.5.2005 (Annexure R-1) for the reasons that he was feeling better and he wanted to serve the Railway up to the normal date of his retirement, i.e., 31.8.2007; his date of birth being 15.8.1947. Before any decision on his application dated 28.6.2005 (Annexure R-2) could be taken by the competent authority, the applicant's father, vide his letter/application dated 1.6.2006 (Annexure R-3), again requested the competent authority to allow him to voluntarily retire from Railway service as he was not in a position to serve the Railway 'due to ill health'. Accordingly, the competent authority, vide letter dated 27.11.2006, accepted the request of the applicant's father for voluntary retirement, and the applicant's father voluntarily retired from Railway service with effect from 27.11.2006 when he had only nine months and four days of service left; his date of birth being 15.8.1947.

5.2 While so, the applicant made online complaints to the President's Secretariat and the Prime Minister's Office in April and July 2016 and sought issuance of appropriate direction to the Northern Railway for providing him compassionate appointment as his father took retirement from Railway service on medical grounds. The applicant's complaint was forwarded to the Northern Railway by the Prime Minister's Office. Respondent no.2, vide letter dated 1.9.2016 (Annexure A-1), informed the applicant that his father has taken voluntary retirement from Railway service w.e.f. 27.11.2006. There is no provision of compassionate ground appointment in cases where the ex-employees have taken voluntary

retirement from Railway service and, hence, his request for appointment on compassionate ground cannot be considered as per extant rules.

6. It is the grievance of the applicant that his father, while in service, suffered from serious ailments and underwent treatment in Railway hospitals and other hospitals. The repeated requests made by his father to the Railway authorities to set up a Medical Board under Chapter V of the Indian Railways Medical Manual to assess his medical fitness and declare him medically unfit for any job went unanswered. Therefore, his father was compelled to apply for voluntary retirement as a last resort. At the time of voluntary retirement of the applicant's father, the family consisted of his father, mother and four sons including the applicant. After voluntary retirement, his parents also continued to suffer from serious ailments and were under treatment at various hospitals/nursing homes. His father passed away in the year 2008 due to heart attack when his eldest brother was 20 years old, and he was 15 years old. His mother passed away in the year 2011 also due to heart attack. His two elder brothers are presently doing some puny jobs. He is a 100% physically handicapped person. In the absence of any fixed source of income, he and his three brothers are living on hand to mouth. The Railway authorities did not pay any heed to the repeated requests made by him for providing him appointment on compassionate ground. Therefore, he made online complaints/applications requesting the President's Secretariat and the Prime Minister's Office in 2016 to intervene in the matter and to issue appropriate direction to the Railway authorities for

providing him appointment to a post on compassionate ground. Relying on various circulars issued by the Railway Board, the applicant has submitted that he is entitled to compassionate appointment, and that the respondent-Railway authorities have acted arbitrarily and illegally in refusing to consider his request for providing him appointment to a post on compassionate ground.

7. The respondents have taken the stand that employees, who are declared medically unfit for all categories by the Medical Board constituted for examining the medical fitness of Railway employees, are retired from service and requests for compassionate appointment of their wards are considered by the Railway, subject to their fulfilling certain conditions laid down by the Railway Board. The applicant's father has taken voluntary retirement from Railway service, and, therefore, the request of the applicant for providing him appointment to a post on compassionate ground cannot be considered under the extant rules and instructions issued by the Railway Board.

8. In the above context, Mr.Salman Khurshid, learned Senior Advocate for the applicant, submitted that admittedly the applicant's father opted to take voluntary retirement and was retired on medical grounds. As per the instructions issued by the Railway Board, the applicant, being a 100% physically handicapped person and wholly dependent on his father at the time of his retirement on medical grounds, is entitled to be considered for appointment on compassionate ground. In this connection, Mr.Salman

Khurshid, learned Senior Advocate, drew the attention of the Tribunal to paragraph 3 of the Railway Board's circulars dated 30.4.1979, 18.1.2000 and 14.6.2006 as well as paragraph 1 of the Railway Board's circular dated 8.7.2014 (ibid), copies of which have been filed along with the O.A. In support of the case of the applicant, Mr.Salman Khurshid, learned Senior Advocate also invited the attention of the Tribunal to paragraph 27 of the judgment of the Hon'ble Supreme Court in **V.Sivamurthy Vs. State of Andhra Pradesh and others**, (2008) 13 SCC 730.

8.1 In **V.Sivamurthy Vs. State of Andhra Pradesh and others** (supra), the Hon'ble Supreme Court decided the appeals filed against the judgment dated 12.10.2001 of a Full Bench of the Andhra Pradesh High Court holding that there can be no appointment on compassionate grounds in cases other than death of a Government servant in harness, and that any scheme for compassionate appointment on medical invalidation of a Government servant is unconstitutional being violative of Article 16 of the Constitution of India. The scheme and orders regarding compassionate appointment issued by the Government of Andhra Pradesh were the subject-matter of the writ petitions before the Hon'ble High Court of Andhra Pradesh and of the appeals before the Hon'ble Supreme Court of India. On the contentions raised, the following questions arose for consideration by the Hon'ble Supreme Court:

“(i) Whether compassionate appointment of sons/daughters/spouses of government servants who retire on medical invalidation is unconstitutional and invalid?

(ii) Whether the High Court could have considered and decided an issue which was not the subject-matter of the writ petitions, particularly when neither party had raised it or canvassed it?

(iii) Whether the Government was justified in issuing clarificatory order dated 25.6.1999 that the left over period of five years should be reckoned from the date of issue of order of retirement on medical invalidation, is unreasonable and arbitrary?"

While deciding question nos.(ii) and (iii) in favour of the respondents, and question no.(i) in favour of the appellant, the Hon'ble Supreme Court, in paragraph 27 of the judgment, held thus:

“When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact far more than the consequences of death-in-harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness, etc.”

Accordingly, the Hon'ble Supreme Court allowed the appeals, set aside the impugned judgment of the Hon'ble High Court, and upheld the validity of the compassionate appointment scheme (contained in the GOs dated 30.7.1980, 4.7.1985 and 9.6.1998 as clarified by Memo dated 25.6.1999) providing that the period of five years of “left over service” should be reckoned from the date of issue of the order of retirement on medical

invalidation and not from the date of application for retirement on medical invalidation.

9. *Per contra*, it was submitted by Mr.S.M.Arif, learned counsel appearing for the respondents, that the applicant's father having taken voluntary retirement from Railway service, none of the Railway Board's circulars cited by the applicant is applicable to the applicant's case, and the O.A. is devoid of any merit and liable to be dismissed.

10. For the purpose of deciding the controversy raised in the present O.A., it would be apposite to notice the following circulars issued by the Railway Board from time to time on the subject of appointment on compassionate grounds of a family member of an ex-Railway servant, to which the attention of the Tribunal was drawn by Mr.Salman Khurshid, Senior Advocate:

10.1 Railway Board's circular No.E(NG)III/78/RC-1/1, dated 30.4.1979:

“In supersession of all previous instructions on the subject, the Ministry of Railways have decided that cases for appointment on compassionate grounds should be dealt with keeping the following instructions in view:

- (1) Dependent relatives of those Railway employees who lose their lives in the course of duty or get so crippled that they cannot do any work (this also in the course of duty) e.g. loco and traffic running staff in charge of trains involved in accidents should be compensated for the loss of their support by offering them appointment. The definition of dependent for this purpose will be the same as for Pass Rules. Where no such dependent with necessary qualifications for employment is available, appointment may be offered under the personal orders of

the GM, to a nephew or another relative who can be expected to function as the bread-winner of the family.

- (2) Appointments on compassionate grounds can also be made in the case of staff who dies in harness but in such cases it should be restricted to a son/daughter/widow of the employees. Where the widow cannot take up employment and the sons/daughters are minor, the case may be kept pending till the first son/daughter becomes a major i.e. attains the age of 18. Such cases should be kept pending only for 5 years after which the claim will lapse. However, in cases coming under priority (4) (i) below, if an 'appointment could not be made within five years due to the son/ daughter being minor, the GM may personally authorise relaxation of the 5 years limit in deserving cases.
- (3) The appointments on compassionate grounds may also be offered in cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc. or otherwise become medically decategorised for the job they are holding. If no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment if such an employee opts to retire.
- (4) The following should be order of priority to be followed while offering appointment on compassionate grounds:
 - (i) Dependents of employees who die or are permanently crippled in the course of duty;
 - (ii) Dependents of employees who die in harness as a result of Railway accidents when off duty; and
 - (iii) Dependents of employees who die in service or are medically incapacitated.
- (5) When offering appointment on compassionate grounds to a widow, son or daughter, it need not be checked up whether another son/daughter is already working. But there should in no case be more than one appointment against one death/medical incapacitation, e.g., it should not be permitted that after one appointment is made, later the family wants that another son/ daughter be employed in lieu or in addition.

- (6) A time limit of one month should be observed within which appointments should be given in priority (i) cases and three months for cases relating to priority (ii) and (iii) laid down in para (4) above subject to a position being available.
- (7) To accommodate illiterate widows of the deceased Railway employees, posts of waiting room bearers may be exclusively reserved for them.
- (8) For the purpose of compassionate appointments, upper age limit may be freely relaxed on the merits of the cases. However, educational qualification required for the post to be offered should not in any case be relaxed. Wherever the GM feels such a relaxation is absolutely necessary such cases should be referred to the Ministry of Railways.
- (9) The power to make appointments on compassionate grounds is to be exercised only in recruitment grades. No appointment should be made in an intermediate grade i.e. one which is filled purely by promotion.”
- (10) As the’ minimum educational qualifications are to be insisted upon in each and every case, there is no need to hold a written test and/or interview to assess the suitability of the candidate proposed to be appointed on compassionate grounds.
- (11) The candidates who are to be offered appointments may be appointed on submission of character certificates from two Gazetted Officers.
- (12) In the cases of appointment of Group C posts the powers may be exercised by the CPOs in consultation with the Head of Department concerned. In the case of Group D posts the powers to make such appointments should be delegated to the Divisional Superintendents/Divisional Railway Managers. Statistics of such appointments offered or denied should be maintained by the Headquarter’s office.
- (13) In case any other deviation from the above instructions is considered necessary in any particular case, the same

should be obtained from the Ministry of Railways before any offer of appointment is made.

- (14) For proper enforcement of priorities separate priority lists be maintained on each unit as per para 4, the date of priority being from the date of eligibility and all appointments be made strictly in this order. Where for any special reasons there is a case for overlooking the priority list, sanction of next higher authority (CPO for appointments to Group D posts and GM in case of appointments to Group C posts) must be obtained giving details for ignoring-the priority and the list of persons being overlooked. Such cases should be rare.

10.2 Railway Board's letter No.E(NG)/II/95/RC-1/94 dated 18.1.2000 (RBE No.8/2000):

“Sub: Appointment on compassionate grounds in cases of medical invalidation/decategorisation.

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Kindly refer to the instructions contained in Board's letters no.E(NG)III/78/RC-1/1 dated 7.4.83, 3.9.93 as well as Board's letter of even number dated 22.9.95 on the above mentioned subject.

Pursuant to the notification of “The persons with Disabilities (Equal Opportunities, protection of Rights and Full participation), Act, 1998”, instructions were issued vide Board's letter no.E(NG)I/96/RE-3/9(2) dated 29.4.99, laying down inter-alia 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 a 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 a 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.

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.

In the cases of medical decategorisation i.e., those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for 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.”

10.3 RBE No.78/2006: Railway Board's circular
No.E(NG)II/95/RC-1/94 dated 14.6.2006:

“Subject: Appointment on compassionate grounds of ward/spouse of medically de-categorized staff on the Railways.

Pursuant to the notification of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 instructions were issued by Ministry of Railways (Railway Board) laying down that in case where an employee has been medically invalidated/decategorised where the administration cannot find alternative posts 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 suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation of service of a medically invalidated/decategorised employee, there would be no occasion to the employee to be retired from service on medical grounds. Therefore, according to the

instructions, in such cases the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise (Board's letter No.E(NG)I/96/RE-3/9(2) dated 29.04.1999 refers).

2. Even if the employee chooses to retire voluntarily on his being declared medically decategorised, if he so desires he may be permitted but without extending the benefit of appointment on compassionate ground to a ward (para 4 of Board's letter of even number dated 18.01.2000 refers).

3. Board had earlier 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 if the said employee chooses to retire voluntarily (para 3 of Board's letter of even number dated 18.01.2000).

4. Pursuant to the demand raised by staff side the issue has been deliberated upon at length in the full Board Meeting and it has been decided that compassionate ground appointment to the wife/wards/dependants of partially medically de-categorised staff who seeks voluntary retirement may be given subject to the following provisions:

- (a) The appointment will be given only in the eligible Group 'D' categories. 'Eligible' would mean that in case Group 'D' recruitment is banned for any particular category, the same would also apply for the compassionate ground appointments.
- (b) Such an appointment should only be given in case of employees who are declared partially decategorised a time when they have at least 5 years or more service left.
- (c) CMD of the Railways should keep a watch over the trend of de-categorisation so that the present figure do not get inflated. CMD should also get 10% partially decategorised cases re-examined by another Medical Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically decategorised after issuance of Board's letter No.E(NG) II/95/RC-1/94 dated

18.1.2000 will also be covered under these instructions. However, such cases which have already been finalized in terms of Board's letters No. E(NG)II/95/RC-1/94 dated 18.1.2000, 10.11.2000 and E(NG)II/2000/RC-1/genl./17 dated 6.3.2002 & 26.5.2004 need not be re-opened.

6. While considering such requests for compassionate ground appointment the General Manager should satisfy himself on the basis of a balanced and objective assessment of the financial & other conditions of the family, that the grounds for compassionate ground appointment in each such case is justified. (Board's letter No.E(NG)II/98/RC-1/64 dated 28.7.2000 refers)"

10.4 Railway Board's letter No. E[NG]-II/2014/RC-1/SCR/5 dated

08.07.2014 [RBE No.70/2014:

"Sub: Appointment on compassionate grounds of family member of an ex-Railway servant.

As the field units are aware, dependant family members for the purpose of appointment on compassionate grounds means spouse or son [including adopted son] or daughter [including adopted daughter] or brother/sister in the case of unmarried Government servant, who is wholly dependant on the Government servant at the time of death in harness or retirement on medical grounds, as the case may be.

Further, in terms of para 2 of letter No. E[NG]III-78/RC1/1 dated 03.02.1981, General Managers can consider for employment of married daughters, if they satisfy themselves that the married daughter will be the bread-winner of the family of the Railway servant concerned. It has also been stipulated vide instructions issued under RBE No. 224/2001 dated 21.11.2001 that the cases of dependant divorced/widowed daughters should also be considered for such appointment as in the case of married daughters subject to the condition that former should have been wholly dependent on the ex-employee at the time of the death/medical invalidation of the latter.

Existence of a number of instructions as well as the issue of specific clause of 'dependency on the ex-Railway employee' have been engaging the attention of this office for some time. Accordingly, the matter has been reviewed by the Board and it has been decided that it should be left to the discretion of the

family concerned in case of death of ex-employee to request for job to either spouse or any child {whether son or daughter (unmarried/married/divorced/widowed)} subject to the condition that the concerned child will be the bread-winner of the family concerned. Further, for this purpose instructions issued by this Ministry vide letter issued under RBE No.22/2014 dated 04.03.2014 be read in the same spirit.

However, the dependent of an unmarried male/unmarried female Railway employee dying in harness/retiring on medical grounds, may be considered for compassionate appointment by the Railway at its own level, subject to the condition that the candidate proposed for appointment is shown as dependent on the ex-employee on the basis of documents such as inclusion/declaration of names in the pass or in Ration cards etc.. The condition of inclusion in the pass declaration or Ration cards etc. is only a facilitating factor, and not intended to be a restrictive one. In the absence of any such documentary proof, the factual position regarding the extent of the dependency may be got verified by deputing a Welfare Inspector to inquire into the circumstances. The relaxation of time limit permissible in the case of minor children of those employees who die in harness would also apply in the case of dependents of those who die as bachelor/spinster.

Accordingly para 2 of Board's instructions E(NG)III-78/RC1/1 dated 03.02.1981, letter No.E(NG)II/88/RC-1/Policy dated 04.9.1996, No. E(NG)II/88/RC-1/1 Policy dated 02.05.1997, No. E(NG)II/99/RC-1/SE-19 dated 05.8.1999, and E(NG)II/2001/RC-1/ER/5 dated 21.11.2001 stand superseded.

Past cases, already decided need not be reopened.”

11. In paragraph 3 of the Railway Board's circular dated 30.4.1979 (ibid), it has been stipulated that appointment on compassionate grounds may be offered in cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc., or otherwise become medically decategorized for the job they are holding, and that if no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment if such an employee opts to retire. In paragraph 3 of the Railway Board's circular

dated 18.1.2010(ibid), it has been stipulated that in a case where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he/she may be allowed to opt for retirement, and in such case, request for appointment on compassionate ground to an eligible ward may be considered. In paragraph 4 of the same circular dated 18.1.2000(ibid) it has also been stipulated that in the cases of medical decategorisation, i.e., those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for 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. Paragraph 3 of the Railway Board's circular dated 14.6.2006 (ibid) contains more or less the same instructions/decisions of the Railway Board as in paragraph 3 of its circular dated 18.1.2000(ibid), besides some other instructions which are not relevant for the purpose of deciding the controversy involved in the present proceedings. By the Railway Board's circular dated 8.7.2014(ibid), the instructions/decisions contained in paragraph 3 of both the circulars dated 30.4.1979(ibid) and 18.1.2000 (ibid) were not superseded. Thus, it is clear that at the relevant point of time, there were decisions/instructions of the Railway Board that

appointment on compassionate grounds might be offered in a case where an employee while in service became crippled, developed serious ailments, like heart diseases, cancer, etc., or otherwise became medically decategorized for the job he was holding, and that if no alternative job with the same emoluments could be offered to him/her, one son/daughter would be eligible for compassionate appointment if such employee opted to retire from service. In a case where an employee was totally incapacitated and was not in a position to continue in any post because of his/her medical condition, he/she might be allowed to opt for retirement, and in such a case, request for appointment on compassionate ground to an eligible ward might be considered. In the cases of medical decategorisation, i.e., those cases in which an employee became medically unfit for the post held at present but was fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward would not be admissible, even if the employee chose to retire voluntarily on his/her being declared medically decategorised, and such an employee might then either be continued in a supernumerary post or allowed to retire voluntarily if he so desired but without extending the benefit of appointment on compassionate grounds to a ward. In view of these instructions contained in the Railway Board's circulars dated 30.4.1979 and 18.1.2000(ibid), it cannot be said that by its circular dated 8.7.2014(ibid), the Railway Board has decided that in cases where the Railway servants opt to retire due to their illness and are allowed to so retire, the requests made by

their dependants for providing them appointment on compassionate grounds may be considered by the Railway. Referring to its earlier circulars regarding the categories of dependants of Railway servants claiming compassionate appointment, the Railway Board, by its circular dated 8.7.2014 (ibid), has only issued the instruction that “the dependant of an unmarried/unmarried female Railway employee dying in harness/retiring on medical grounds may be considered for compassionate appointment”. The words “retirement on medical grounds” occurring in 1st paragraph, and the words “retiring on medical grounds” occurring in 4th paragraph of the Railway Board’s circular dated 8.7.2014(ibid), on which Mr.Salman Khurshid, learned Senior Advocate has laid much emphasis, have to be read and understood in the context of the instructions contained in the Railway Board’s circulars dated 30.4.1979 and 18.1.2000(ibid) which have been discussed above. In the instant case, admittedly, the applicant’s father was never examined by the Medical Board constituted under the relevant rules for the purpose of assessing medical fitness of a Railway servant either to continue in the post held by him/her or to continue in any other alternative/suitable post till the normal date of his/her retirement. The report of the prescribed Medical Board declaring a Railway servant as medically unfit/decategorised/incapacitated/invalidated to continue in the post held by him/her or in any other alternative/suitable post with same emoluments, the failure of the Railway to offer any alternative/suitable post with same emoluments to such Railway servant till the normal date of his/her

retirement from Railway service, and the consequent retirement of such Railway servant are *sine qua non* for consideration of a request made by the dependant of such Railway servant for providing appointment to a post on compassionate ground, subject to the fulfillment of the conditions stipulated in various instructions issued by the Railway Board. In his letters/notices dated 20.5.2005 (Annexure R-1) and dated 1.6.2006 (Annexure R-3), the applicant's father did not mention about his having ever approached the competent authority to get him examined by the prescribed Medical Board. Save and except some medical papers showing his father's treatment at the Railway Hospital and some other hospitals, the applicant has not placed before this Tribunal any material showing that his father had made repeated requests to the Railway authorities for examination by the prescribed Medical Board to assess his medical fitness, and that the Railway authorities had not paid any heed to such requests. This apart, the applicant cannot be allowed to raise the issue of medical unfitness, decategorization, incapacitation, and invalidation of his father and claim compassionate appointment after about ten years of his father's voluntary retirement from Railway service. In **LIC Vs. Asha Ramachandra Ambekar**, (1994) 2 SCC 718, the Hon'ble Supreme Court has stressed the need to examine the terms of the rules/scheme governing compassionate appointment and ensure that the claim satisfied the requirements before directing compassionate appointment. In **Food Corporation of India Vs. Ram Kesh Yadav**, 2007(9) SCC 531, it has been observed by the Hon'ble Supreme Court that

an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointment, nor can compassionate appointment be directed *de hors* the policy. In consideration of all the above, the impugned decision of the Railway authority cannot be said to be perverse, illegal and arbitrary.

12. The decision in **V.Sivamurthy Vs. State of Andhra Pradesh** (supra), being distinguishable on facts, does not come to the aid of the applicant in the present case.

13. In the light of above discussions, I have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A.is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

AN