

OA.No.170/00039/2017/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO. 170/00039/2017

DATED THIS THE 02nd DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. Abdul Gafoor (since died)
S/o late Geelam Murtaza
Aged about 60 years
Staff Car Driver(Retired)
South Western Railway
R/a No.75, Chickbazaar Road
Taskar Town
Shivajinagar
Bangalore-560 051.

2. Shaik Mazhar Subbani
S/o Abdul Gafoor
Aged 34 years
R/a No.75, Chickbazaar Road
Taskar Town
Shivajinagar
Bangalore-560 051.

... Applicants

(By Advocate Shri B.S.Venkatesh Kumar)

Vs.

1. Union of India
Represented by General Manager
South Western Railway
Headquarters Office
Gadag Road
Hubli-580 020.

2. The Senior Divisional Personnel Officer
South Western Railway
Bangalore Division
Bangalore-560 023.

3. The Divisional Railway Manager
South Western Railway
Bangalore Division
Bangalore-560 023.

... Respondents

(By Advocate Shri J.Bhaskar Reddy)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The applicant has filed the present OA seeking the following relief:

- a. *Quash and set aside impugned communications No.B/P.268/CGA/2016/AG dated 1.3.2016 (Annexure A8) and No.B/P.268/CGA/2016/AG dated 8.8.2016 (Annexure A11) passed by second respondent as unjust, arbitrary, illegal and unsustainable.*
- b. *Issue a consequential direction to the respondents to consider the application of the applicant for giving an appointment to his son Shaik Mazhar Subbani and appoint him on compassionate grounds in view of extreme hardship being faced by the family.*

2. It is submitted that the applicant(since deceased) worked as Staff Car Driver and had put in about 30 years of service. During the course of his service, he suffered from several health ailments and was undergoing treatment in Railway hospital from December 2012 onwards. The respondents directed the applicant to attend special medical examination vide Memo dated 1.7.2014. Following the medical examination, the Senior Divisional Medical Officer, Railway Hospital, Bangalore forwarded the medical certificate to the 2nd respondent on 3.3.2015 saying that the applicant was declared unfit in all classes(Annexure-A1). The applicant was also discharged from sick list. Thereafter the applicant submitted two letters on 25.3.2015 to the 2nd respondent (Annexure-A2 & A3) seeking voluntary retirement on medical grounds w.e.f. 4.3.2015 and requesting for appointment of his son on compassionate ground. However, the request of the applicant for voluntary retirement

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3. The applicant further referred to the Railway Board communication dtd.16.11.1984 saying that in case the railway servant is medically incapacitated and retires from service, son or daughter is eligible for appointment on compassionate ground. Therefore, rejection of his request for compassionate ground appointment of his son is unjustified.
4. The respondents in their reply statement have corroborated the fact that the applicant who was working as Staff Car Driver was in sick list from 2012 up to 3.3.2015 and vide medical certificate dtd.3.3.2015, he was medically decategorised in all categories

and hence he was accommodated in a special supernumerary post. He did not attend the office from 4.3.2015 onwards and was marked absent. His initial application for voluntary retirement with the condition to offer compassionate ground appointment to his son was not accepted since conditional voluntary retirement is not entertained. Thereafter when the applicant submitted an application for voluntary retirement on health grounds and without any condition the same was accepted. The applicant was due for retirement on superannuation on 29.2.2016.

5. The respondents further submitted that when the applicant found unfit in all categories, he was kept under special supernumerary post as per the instructions contained in Railway Board's letter dtd.29.4.1999. Further, the Railway Administration cannot retire a medically incapacitated employee automatically. However if the employee himself opts for retirement, he may be allowed to do so. However, the said voluntary retirement cannot entitle for compassionate ground appointment for his son. It is quite clear from the applicant's voluntary retirement application that the applicant tried to get a back door entry in to the government service for his son, a fact which has been condemned by this Tribunal in various orders. They also mentioned that this Tribunal in a similar case in OA.No.1308/2014(Annexure-R1) dismissed the OA. The Hon'ble High Court of Karnataka in WP.No.37241/2016(S-CAT) in its order dtd.6.12.2016 held that no Government servant has any vested right for compassionate

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appointment. Therefore, the contention made by the applicant in
the OA does not merit any consideration.

6. The applicant has filed a rejoinder which has practically reiterated the submission made in the OA.
7. We have heard the Learned Counsel for both sides who have highlighted the submissions made by them in the OA and in the reply statement respectively and which have been enumerated in the preceding paras.
8. We have carefully considered the facts of the case and submissions made by either side. It is clearly evident from the fact that the applicant towards the end of his service career had suffered from illness and was hospitalized in 2012. He was declared medically unfit in all categories in March 2015 i.e. nearly a year before his regular retirement on superannuation. He initially applied for voluntary retirement with the request for appointment to his son on compassionate ground. This was rightly rejected by the respondents as voluntary retirement cannot be conditional or automatically entitle a person for appointment of his son on compassionate ground. Subsequently, when the applicant applied for voluntary retirement on health ground and without stipulating any conditions, the same was accepted in October 2015 i.e. four months prior to his retirement. In a similar case in OA.No.1308/2014, we had clearly held that seeking voluntary

retirement just before the normal date of retirement with an intention to secure appointment for his son cannot be justified. This is an attempt to secure a back door entry to service and therefore cannot be encouraged. In the present case also when the application for voluntary retirement was accepted in October 2015, the applicant had only four months of service left. Therefore that cannot be a ground for securing compassionate ground appointment to his son as it would tantamount to appointment to a government service through a back door method.

9. Therefore, considering the entire facts of the case, we hold that the contention made by the applicant in the OA has absolutely no merit and hence the OA being devoid of merit stands dismissed. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.170/00039/2017

- Annexure-A1: Copy of Sr.DMO letter with medical certificate
Annexure-A2: Copy of application for VR dtd.25.3.2015
Annexure-A3: Copy of application dtd.25.3.2015 for appointment of the son of applicant on compassionate grounds
Annexure-A4: Copies of pay slips from March 15 to Aug 2015
Annexure-A5: Copy of application for voluntary retirement

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Annexure-A6: Copy of OO No.929/10/2015/VI/PG dtd:15.10.2015
Annexure-A7: Copy of letter relieving the applicant on VR dt.19.10.15
Annexure-A8: Copy of impugned communication dtd:1.3.2016
Annexure-A9: Copy of representation dtd.14.3.2016
Annexure-A10: Copy of appeal dtd:20.6.2016
Annexure-A11: Copy of impugned order dtd:8.8.2016
Annexure-A12: Copy of appeal dtd.21.11.2016
Annexure-A13: Copy of Railway Board letter dtd.16.11.1984

Annexures with reply statement:

Annexure-R1: Copy of the order of CAT/Bengaluru in OA.No.1308/2014

Annexures with MA.No.500/2017 filed by the applicant:

Annexure-MA1: Copy of death certificate of Abdul Gafoor(1st Applicant)

Annexures with rejoinder:

-NIL-
