

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.819 of 2016  
Cuttack this the 6<sup>th</sup> day of March, 2018

CORAM:  
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Bikash Tirkey, aged about 34 years, S/o. late Bimal Tirkey of  
Vill-Dudukabahal, PO-Garvana, Dist-Sundargarh

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy  
M.K.Rath  
N.Panda

-VERSUS-

Union of India represented through:

1. The General manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. The Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division, At/PO-Chakradharpur, Dist-Singhbhum(Jharkhand).
3. The Sr.Divisional Personnel Officer, South Eastern Railway, Chakradharpur Railway Division, At/PO-Chakradharpur, Dist-Singhbhum(Jharkhand).
4. The Chief Medical Superintendent, South Eastern Railway, Chakradharpur, Dist-Singhbhum (Jharkhand).

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER  
DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of a deceased employee of S.E. Railways and had applied for compassionate appointment. He has filed this O.A. aggrieved by the denial of compassionate appointment to him vide impugned order dated 21.7.2015(A/7).

2. The applicant's father Bimal Tirkey was working as Head Booking Clerk under the Station Manager, S.E.Railways, Rourkela and died in harness on 19.1.2009 leaving behind his widow, one married daughter and three sons of whom the applicant is the eldest. Upon the death of his father, the applicant made an application to the Senior Divisional Personnel Officer (Res.No.3) to provide him employment on compassionate ground. Respondent No.3 made an offer of appointment in Group-D category to the applicant vide letter dated 18/19.1.2010(A/2). The applicant was however declared unfit in Category-A2 and below by the Senior Divisional Medical Officer (P) under the S.E. Railways, Chakradharpur. The applicant got himself examined by the Ispat General Hospital, Steel Authority of India Limited (SAIL) Rourkela where the Doctor certified him as medically fit after examination and found him in normal health. The applicant preferred an appeal before the Chief Medical Superintendent, S.E. Railways, Chakradharpur requesting for reexamination. The appeal was forwarded to the Chief Medical Superintendent on 3.8.2010 by the Senior Divisional Personnel Officer (A/4). The applicant was examined by a Medical Board at Central Hospital/GRC on 20.5.2015 and was declared unfit in A-2 & below medical category for appointment on Group-D post. He was informed by the Assistant Personnel Officer on behalf of Sr.Divisional Personnel Officer(Res.No.3) of the S.E. Railways on 21.7.2015

that he has been declared unfit in A-2 and below category by the Medical Board at Central Hospital/GRC on 20.5.2015. The applicant has challenged this letter dated 21.7.2015 and has prayed for the following reliefs:

- i) To pass appropriate orders quashing the impugned order vide letter dated 21.7.2015 in Annexure-A/7.
- ii) To pass appropriate orders directing the Respondents-authorities to consider the case of the applicant for his appointment in any post on compassionate ground.
- iii) To pass such further order/orders as maybe deemed just and proper in the facts and circumstances of the case and allow this OA with cost.

3. The applicant has based his prayer mainly on the ground that although he was certified medically fit by the Doctors at Ispat General Hospital, SAIL, Rourkela, the Medical Board of the Railways has declared him unfit which is illegal and an arbitrary act contrary to sound principles of law. The Respondents have intentionally and deliberately harassed him by declaring him medically unfit for appointment in Group-D post. Although he was offered an appointment vide letter dated 18/19.1.2010, he has been declared unfit by the Medical Board after a gap of five years which reveals *mala fide* intention of the respondents. The applicant's family is in indigent condition due to the death of the sole breadwinner and therefore, he should be given an appointment on compassionate grounds.

4. The Respondents in their counter reply filed on 5.7.2017 have challenged the claim of the applicant. They have cited the

order of this Tribunal in O.A.No.224 of 2014 disposed of on 9.6.2017 (Sakuntala Sahoo & another vs. Union of India & Ors.) wherein it has been held that compassionate appointment is not a normal method of recruitment and the scheme does not confer any right on any applicant. It is a special scheme formulated by the Department to help a family in distress where the employee dies in harness. The applicant does not come within the definition of dependent and all other wards of the ex-employee are able to maintain their own family independently. There is no need to extend compassionate appointment to the applicant. Moreover, since the Medical Board has declared him unfit in A-2 and below medical category, he could not be given an appointment on compassionate ground. The immediate hardships of the family has been overcome since the death of the Railway employee occurred in 2009 and there is no need to consider the applicant at this late stage for compassionate appointment. The Medical Board had expressed the opinion that the applicant is having defective colour vision and history of generalized tonic clonic convulsion. Hence the Medical Board had declared him unfit for appointment as Group-D in the medical category-A2 (Aye Two) and below.

5. In the rejoinder filed by the applicant on 31.8.2017, it has been submitted that the applicant is not claiming employment as a matter of right and he is only praying for consideration.

After taking into consideration the indigent condition of the family and other relevant criteria, respondents had issued an offer of appointment in Group-D category to him vide letter dated 18/19.1.2010. The applicant has been declared medically unfit by the Medical Board although the IGH at SAIL, Rourkela had declared him medically fit. The Medical Board delayed his case for more than five years which clearly reveals that no compassion has been shown to him after the death of the sole breadwinner who was a railway employee.

6. The matter was finally argued on 7.2.2018 and both the learned counsels were heard. Necessary documents, clarification as to whether the applicant is fit for any other employment under a lower medical standard was given by the railway authorities. After hearing the learned counsels from both the sides and perusing all the documents submitted by them, it is clear that the applicant's prayer for compassionate appointment was considered on merit and he was offered an appointment in Group-D category vide letter dated 18/19.1.2010 from the Senior Divisional Personnel Officer, Chakradharpur. The letter clearly states that he was offered a provisional appointment in PB-1 (Rs.5200-20200) with Grade Pay of Rs.1800/- in Group-D category. However, the offer of appointment was subject to medical clearance and he was required to pass medical examination in Aye Two(A-2 & below) medical category. The documents filed by both the sides reveal

that the applicant was finally referred to the Medical Board at Central Railway Hospital/GRC where he was examined and declared unfit under the Aye Two & below. The applicant's contention that the doctors of IGH, SAIL, Rourkela found him to be medically fit is not relevant or applicable in the present case since it is the railway authorities and the Medical Board of the Railways who have to finally declare him medically fit to be eligible for appointment in the Railways.

7. In the present O.A. the issue is not about the eligibility of the applicant for compassionate appointment, because that issue has already been settled by the offer of appointment issued by the railway authorities dated 18/19.1.2010. The only issue that remains is whether having been declared medically unfit by the Medical Board under Aye Two and below medical category, the applicant can still be given a compassionate appointment. It is not for this Tribunal to decide on the medical suitability of the applicant as the job is well left to the competent medical authorities designated for the purpose. I, therefore, do not consider this to be within the jurisdiction of this Tribunal to direct the Railways to give a compassionate appointment to the applicant overlooking the medical unfitness. However, considering that they had already offered an appointment on compassionate ground, if there is any post where the medical fitness as technically evaluated by the Medical Board is not relevant, the railways may consider the

applicant for posts, such as Khalasi, Waterman, Peon or MTS only if the rules so permit and if the medical unfitness as declared by the Medical Board is not an obstacle to such a course of action.

8. The O.A. is disposed of with the above observation. No costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

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