

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD**

**Original Application No. 454/2013**

**Date of C.A.V. : 27.11.2017**

**Date of Order : 04.04.2018**

**Between :**

P.Ch.Venkateswarlu,  
S/o China Nazar, Aged about 59 years,  
Occ : Loco Pilot (SHG.Gr.I),  
O/o CCC/BZA, South Central Railway,  
Vijayawada Division.

... Applicant

**And**

1. The Union of India, rep. by its  
General Manager, South Central Railway,  
Rail Nilayam, III Floor, Secunderabad – 500 071.
2. The Divisional Railway Manager,  
South Central Railway, Vijayawada Division,
3. The Senior Divisional Personnel Officer,  
South Central Railway, Vijayawada Division.

... Respondents

Counsel for the Applicant	...	Mr. K.Sudhakar Reddy, Advocate
Counsel for the Respondents	...	Mrs.A.P.Lakshmi, S.C. For Rlys.

**CORAM:**

<b><i>Hon'ble Mr.Justice R.Kantha Rao</i></b>	<b><i>...</i></b>	<b><i>Member (Judl.)</i></b>
<b><i>Hon'ble Mrs.Minnie Mathew</i></b>	<b><i>...</i></b>	<b><i>Member (Admn.)</i></b>

## **ORDER**

***{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }***

The OA is filed to set aside the rejection order dated 19.10.2012 issued by the second respondent whereby and where under the request of the applicant for compassionate appointment of his son after his getting medically decategorised on the ground that it is illegal, arbitrary and violative of articles 14, 16, 21 and 311 (1) of the Constitution of India and to direct the respondents to consider the case of the applicant's son on compassionate grounds in view of his medical decategorization.

2. The applicant while working as a Shunter in the Railways was subjected to medical examination in the year 1999 and was medically decategorized on 13.10.1999 and was absorbed in the alternative grade of Caretaker in the lower grade in scale of Rs.3050-4590. According to the applicant he was forced to accept the said post. He submits that on his medical decategorization, he should be absorbed in the alternative post in the equivalent grade. He quoted some instances where medically decategorized employees were absorbed in the posts of equivalent grade. According to him as per the Railway Board's instructions contained in the letter dated 29.04.1999 those employees who are disabled / incapacitated for further service in the post they are holding but declared fit in lower medical category, will be placed in the supernumerary post in the grade in which they were working at the time when they were

medically declared unfit pending location of suitable alternative post having same pay scale and service benefits.

3. Setting forth the said grievance the applicant submitted representations dated 14.12.2005 and 16.01.2006 to the respondents and it is said that the respondents addressed a letter dated 08.02.2008 assuring him that they would examine his request and they directed him to attend screening test on 12.06.2008. Subsequently he was called to attend the screening test on 05.07.2011.

4. The applicant submits that the respondents failed to identify any alternative post even after screening him twice. He submitted a letter dated 07.07.2011 expressing his willingness to voluntarily retire from the post and sought for appointment of his son P.Venkat Rao in terms of PBSC No.92/2005. The applicant's request for voluntary retirement was accepted on 24.10.2011.

5. Nextly he submits that he was asked to produce the certificates and other documents relating to the particulars and qualifications of his son to examine his case for compassionate appointment. The respondents however by impugned order dated 19.10.2012 rejected the request of the applicant for compassionate appointment to his son on account of his medical decategorization.

They stated in the impugned order that the applicant was absorbed in the alternative post almost 11 years back and then took voluntary retirement. Therefore according to the respondents as he joined in the alternative post in partial medical decategorization and worked in the said post for 06 years, his son is not eligible for compassionate appointment. It is under these circumstances, he filed the present OA seeking the aforementioned relief.

6. The respondents in their reply statement contended inter alia as follows :

At the out set the OA is barred by limitation as the cause of action arose way back in 1999 when the applicant was medically decategorized and the developments of his case will not give fresh lease of life. Further the OA is liable for dismissal on the grounds of principles of acquiescence and estoppel. The applicant while working as a Shunter in the pay scale of Rs.4000-6000 was medically decategorized on 13.10.1999 for the post he was holding and was absorbed in the alternative post of Caretaker in Mechanical/loco department in the lower grade of Rs.3050-4590. He accepted and joined in the lower grade post and continued in the post of Caretaker for about 06 years. Later he submitted an appeal to the administration to provide alternative post in equivalent grade. The administration has examined his appeal and initiated action to provide alternative post in equivalent grade. As the administration could not find suitable alternative post as per his medical fitness, he was kept on supernumerary post and his

services were utilized as Caretaker in scale of Rs.4000-6000. Later he opted for voluntary retirement and the same was accepted w.e.f. 01.11.2011.

7. The applicant sought compassionate appointment for his married son aged 28 years old. The competent authority examined his case and rejected the application of the applicant on the grounds i.e. when the applicant was provided with equivalent post, he did not protest and joined the lower grade post. However, he was extended the benefits of fixation of pay in the equivalent pay at a later date. Therefore, the competent authority observed that once he joins the alternative post, the question of extending the benefit of compassionate appointment on the ground of voluntary retirement is not possible.

8. It is further submitted that as per Railway Board's letter dated 29.04.1999 CPO/SC's Serial Circular No.138/1999 those employees who are disabled / incapacitated for further service in the post they are holding but declared fit in the lower medical category should be absorbed immediately in the suitable alternative post with equivalent grade. If such a railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post, he may be kept on supernumerary post in the grade in which he was working on regular basis before being declared medically unfit with same pay scale and service benefits and efforts to be made to locate suitable alternative employment immediately. Later Railway Board's letter dated 26.06.2002 CPO/SC's Serial

Circular No.122/2002 clarified in cases where for want of post in the equivalent cadre / grade such employees are engaged in productive work by deploying them in posts not carrying the same or equivalent scale of pay while they may work against such posts they should continue to be kept in supernumerary posts in the grades in which they were working on regular basis at the time of their medical decategorization till such time they are adjusted in the post carrying the same or equivalent scale of pay. Therefore, the respondents submit that as the applicant did not wait for the administrative action in absorbing him in equivalent post and as he submitted application for voluntary retirement, his voluntary retirement was acceded to w.e.f. 01.11.2011. But the applicant was granted all the fixation benefits in scale 4000-6000 with effect from the date of absorption as Caretaker in scale Rs.3050-4590 by proceedings dated 08.05.2012 and he was paid with all the arrears with effect from the date of his medical unfitness. The respondents contention is that once the applicant joins the alternative post, the question of taking voluntary retirement at a later date and seeking the benefit of compassionate appointment to his ward is not permissible. Contending as above, the respondents sought to dismiss the OA.

9. We have heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mrs.A.P.Lakshmi, learned standing counsel for the respondents.

10. The prayer in the OA is to quash and set aside the order dated 19.10.2012 issued by the second respondent rejecting the request of the applicant seeking compassionate appointment to his son and for consequential direction to the respondents to consider the case of the applicant for appointment on compassionate grounds in view of the medical decategorization of the applicant.

11. The present OA is not the case where soon after his medical decategorization the applicant applied for voluntary retirement making a request for compassionate appointment to his son. The applicant was declared medically unfit on 13.10.1999. He was immediately absorbed in the alternative post of Caretaker in Mechanical / Loco department in the lower grade. He accepted the post and continued in the said post for about 06 years. After sometime he opted for voluntary retirement and the same was accepted w.e.f. 01.11.2011. His request for compassionate appointment to his son was rejected on 19.10.20102. On his voluntary retirement the respondents calculated the emoluments of the equivalent grade and paid the entire fixation benefits to him with arrears with effect from the date of his medical dectaeORIZATION as stated by them in their reply affidavit.

12. Under law an employee cannot continue in the alternative post after medical decategorization and further cannot make a claim for compassionate appointment to his ward. If the applicant soon after his medical decategorization

opted for voluntary retirement and made a claim for compassionate appointment to his son the situation would have been different. The applicant made a belated claim of compassionate appointment 11 years after his medical decategorization. Having acquiesced for the alternative post the applicant is estopped from making further claim of compassionate appointment to his son. Therefore, the claim made by the applicant suffers from delay and laches on account of which he is not entitled for the relief prayed for.

13. The applicant relied on the order of this Tribunal dated 21.09.2016 in OA.672/2013. In the said orders, the Tribunal directed the respondents to absorb the applicant therein in the equivalent post as per the recommendation of Screening Committee having regard to the facts of the said case. In the instant case the applicant having worked in the alternative post made a claim for compassionate appointment to his married son. Therefore, the decision in the OA relied on by the applicant is not applicable to the facts of the present case.

14. For the foregoing reasons, we are of the view that the applicant is not entitled for the relief prayed for in the OA. The OA is therefore dismissed with no order as to costs.

**(MINNIE MATHEW)**  
**MEMBER (ADMN.)**

**(JUSTICE R.KANTHA RAO)**  
**MEMBER (JUDL.)**

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