

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

Original Application No.021/001124/2017

Date of CAV: 14.08.2018

Date of Order: 16.08.2018

Between:

S. Srinivasa Rao, S/o. Yadagiri,
Aged 56 years, Occ: Loco Pilot (Mail/Express)
(Medically de-categorised)
O/o. The Chief Crew Controller,
South Central Railway, Kacheguda Depot,
Hyderabad Division, Kacheguda, Hyderabad -500027. .

... Applicant.

And

1. Union of India, Rep. by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. KRKV Prasad, Advocate
Counsel for the Respondents	...	Mr. M. Venkateswarlu, SC for Railways.

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{ As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This OA is filed by the applicant to permit him to retire voluntarily on the grounds of medical unfitness by quashing the order of the respondents No.

SCR//P-HYB/240/ELR/6/VR dated 08.11.2017 by applying the norms specified under Special Voluntary Retirement Scheme.

2. The applicant while working as Mail Loco Pilot was declared medically unfit vide certificate dated 25.06.2016, as he was suffering from a heart problem.

3. The applicant further states that the respondents created a special supernumerary post in the category of Loco Pilot (Mail/ Express) as rules prohibit a medically unfit employee to work against the original post.

4. The applicant sought voluntary retirement vide his letter dated 10.08.2017 under the Special Voluntary Retirement Scheme on the grounds that the respondents have not accommodated him in any alternative post even after one year on medical de-categorization.

5. The applicant is aggrieved by the 3rd respondent reply vide letter dated 08.11.2017 stating that the applicant has never attended the screening test for providing alternative employment in spite of calling for screening and therefore, the applicant is not eligible for an alternative post. Consequently, the stipulation made in SC No. 150/2004 would not apply to the applicant and hence, his request for Special Voluntary Retirement Scheme is rejected.

6. The applicant thereon made an appeal on 23.11.2017 to the 3rd respondent appending proof that the applicant was never subjected to screening during the one year period that lapsed after he was medically found unfit.

7. The respondents argue in their reply that the applicant was found medically unfit for A-1 category and was classified under medical classification

C-1 vide CMS/HYB Certificate No. 156 dated 24.06.2016. As per the prevalent norm, special supernumerary post was created with effect from 24.06.2016 in view of the medical decategorization of the applicant. To this extent, they agree with the applicant's contention.

8. The respondents further state that the applicant was called for screening to offer alternative appointment under medical decategorization on 12.07.2017, but the same was postponed. Subsequently, he was again called on 09.08.2017 for screening, but he could not attend since he was under sick list. Thereafter, screening scheduled on 26.10.2017 and 27.10.2017 was postponed. Meanwhile, the applicant submitted his application for voluntary retirement under special voluntary retirement scheme on 10.08.2017.

9. The applicant filed this OA on 15.12.2017 and this Tribunal passed an interim order on 19.12.2017 directing the respondents not to insist upon the applicant to appear for screening. The respondents' plea is that since this Tribunal granted the above interim order not to insist upon the applicant to appear for the screening, the pre-condition as laid down in RBE No. 172/2004 is not being fulfilled. Had the applicant attended the screening held after 19.12.2017, there would have been scope to provide appropriate alternative appointment befitting his medical, educational qualifications, pay, age, etc.

10. Heard the learned counsels appearing on both sides.

11. Learned counsel for the applicant drew the attention of the Tribunal to the para 5 of the Special Voluntary Retirement Scheme enunciated in Serial Circular

No. 150/2004 dated 24.08.2004, filed as Annexure A-6 to the OA, which states as under:

“The permanent Group C and D Railways employees can exercise the option for SVRS, within three months, after a period of one year from the date he/ she has been declared surplus (medically decategorized or otherwise) and placed in a supernumerary post.”

12. The applicant was medically decategorized on 24.06.2016 and placed in a supernumerary post on 24.06.2016. The applicant sought retirement on 10.08.2017 under the provisions of Special Voluntary Retirement Scheme as stated above. The applicant has also made a representation to the 3rd respondent vide his letter dated 23.11.2017 informing that he was medically decategorized on 24.06.2016 and that for the screening, his appearance or otherwise was as under, despite the interim relief given by this Tribunal in this OA:

- i) On 24.06.2016, the applicant was medically de-categorised vide CMS/HYB Lr. No. (AEMG) No. 156;
- ii) On 29.11.2016, a screening was held (vide Sr. DPO Lr. of 24/1116) – for which he was not called;
- iii) On 18.01.2017 his name was not included vide SDPO Lr. of 3.1.2017;
- iv) On 12.01.2017, he was called for Screening, but postponed;
- v) On 09.08.2017, he could not attend screening as he was under sick list;
- vi) On 26.10.2017, the applicant attended the Screening, but was postponed;
- vii) On 27.10.2017, the applicant attended the screening, but was indefinitely postponed.

Therefore, the applicant's claim is that he has not been called for screening for deciding alternative appointment within one year on his being medically decategorized.

13. Based on the documentary evidence and the submissions of the counsels, it is seen that the applicant has fulfilled the condition of applying voluntary retirement under special voluntary retirement scheme in time and therefore, was eligible to be considered. The respondents stating that the applicant did not appear for screening has not been rebutted because they themselves admitted that certain screenings were postponed and in one case he was on the sick list. Therefore, their contention that the applicant did not appear for screening is not valid. The respondents also admit that the CPO of the Railway/ Production unit has to certify non-availability of avenue of alternative employment, which would constitute the pre-condition for acceptance of the Special Voluntary Retirement application of the applicant. The CPO is a part of the respondents organization and for his non certifying about non-availability of alternative employment, the applicant's request cannot be denied. Therefore, the request of the applicant has to be necessarily considered in view of the facts let in by the documentary evidence and the submissions of the counsels.

14. OA is thus allowed. The impugned order of the respondents No. SCR//P-HYB/240/ELR/6/VR dated 08.11.2017 is set aside. The respondents are directed to permit the applicant to retire as per the provisions of the Special Voluntary Retirement Scheme vide Railway Board Circular No. SC. No. 150/2004, with all the consequential benefits that flow in by allowing him to retire under the said Scheme from the date he is eligible, within 45 days from the date of receipt of this order.

15. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 16th day of August, 2018

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