



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, CALCUTTA

O.A. 350/00923/2014

Order dated: 11. 7. 2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Karan Roy,  
Son of Balaram Roy,  
Aged about 20 years,  
Residing at C/O Pradip Roy,  
Railway Quarters No. 9932/A,  
Taltola Colony,  
P.O. Alipurduar JN,  
District - Jalpaiguri, West Bengal.

2. Sri Balaram Roy,  
Ex-Sr. APL/SSE/LOCO/APDJ  
Residing as C/O Pradip Roy,  
Railway Quarters No. 932/A,  
Taltola Colony,  
P.O. Alipurduar JN,  
District - Jalpaiguri, West Bengal.

..... Applicants.

Versus

1. The Union of India,  
Through General Manager,  
N.F. Railway, Guahati.

2. The Divisional Railway Manager,  
N.F. Railway, Alipurduar Junction,  
Dist. - Jalpaiguri - 736 123.

3. The Senior Divisional Personnel Officer,  
N.F. Railway, Alipurduar Junction,  
District - Jalpaiguri - 736 123.

..... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. P. Prasad, Counsel

### ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The case of the applicant in a nutshell is as under:-

"The applicant No.2 was driver who served in the Railway accident "Free Service". At the time of medical decategorization was medically decategorised on 7.8.08 he was 50 years old. He was asked to appear before the screening committee in connection with his appointment against alternative post. No post of the same category was offered to the applicant as the applicant read upto class V. No supernumerary was also created to accommodate him. The applicant therefore had no other alternative but to pray for him voluntary retirement. He preferred a representation before the Divisional Railway Manager clearly stating inter alia that he applied for voluntary retirement on 10.07.2009, as he was Medical decategorised and no post of same category was offered to him. The prayer for voluntary retirement was accepted on 31.01.2010 after a gap of 6 months. Prior to that he had already preferred an application before the authority concerned stating inter alia that his son had cleared Madhyamik Examination in 2011 and attained majority on 09.12.2012 and that at the time of retirement he was 52 years old therefore his son be considered for suitable for appointment. But his prayer was rejected on 3.6.2014 on the ground that he had taken voluntary retirement on personal ground and therefore rules did not permit any such consideration."

Aggrieved whereby the present O.A. has been filed seeking the following reliefs:

"8.(i) Letter No. WB/A/18/Group-D/Regn/KR/1721 dated 20.10.2013 issued by Divisional Personnel Officer cannot be tenable in the eye of law and as such the same may be quashed.

(ii) An Office order dated 03.06.2014 issued by Divisional Railway Manager (P) cannot be tenable in the eye of law and as such the same may be quashed.

(iii) Leave may be granted to file this original application jointly under Rule 4(5)(a) of the CAT procedure Rule 1987."

3. In their reply the respondents have emphatically admitted the following:

"Shri Balaram Roy while working in the capacity of Sr. ALP under SSE/Loco/Alipurduar Junction was declared medically unfit in A/1 and fit in C/1 and below with effect from 07.08.2008 vide Divisional Medical Officer, Alipurduar Junction's letter No. H/219/1 (PME) dated 10.09.2008.

Thereafter he was utilized at SSE/Loco/Alipurduar Junction's office on his same pay and scale. He appeared before Screening Committee for absorption of alternative post, but he could not be absorbed in the alternative post due to less qualification and fitness of medical category.

Thereafter he preferred an appeal on 10.07.2009 seeking voluntary retirement on and from 31.01.2010 on the ground of family trouble such as sickness of his wife and hampering of children education and that he was not in position to work peacefully.

Accordingly, the V.R. of Shri Balaram Roy was accepted with effect from 31.01.2010 purely on personal ground and not on medical ground.

Under such circumstances his prayer for appointment on compassionate ground in favour of his son was not found permissible under extant rule and the case was rejected by the competent authority."

4. The facts that emerged from pleadings of the parties and materials on record were as under:

1) The applicant was medically decategorised <sup>on</sup> a 10.9.08 but allowed to retire voluntarily on 28.1.2010.

2) The Railway Board's order operating in the field as on 10.9.08 envisage the following:

"Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

3) The provisions of Board's order mandates the following:

" R.B.E. No. 78/2006

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

[No. E(NG)II/95/RC-1/94, dated 14.6.2006]

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 a employee has been medically invalidated/decategorised where the administration can not find alternative post 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 indentified 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/(2), dated 29.4.1999 (Bahri's 89/99. p 88) 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 18.1.2000 (Bahri's 8/2000, p.4) 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 choose to retire voluntarily [para 3 of Board's letter of even number dated 18.1.2000 (Bahri's 8/2000l. p. 4)].

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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/dependents 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 at a time when they have at least 5 years or more service left.

(c) CMD of the Railway 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 de-categorised cases re-examined by another Medical Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically de-categorised 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/R-1/94, dated 18.1.2000; 10.11.2000 (Bahri's 193/2000, p. 197) and No. E(NG)II/2000/RC-I/Genl./17, dated 6.3.2002 (Bahri's 31/2002, p. 47) and 26.5.2004 (Bahri's 106/2004, p. 162) 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 and 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 (Bahri's 144/2000, p. 159) refers.]

What emerged from the above are the following:

(1) A railway employee medically boarded out, has to be adjusted against a suitable post or posted against a supernumerary post so long a suitable alternative appointment is not indentified for him or till his retirement. So

that there is no occasion for retirement on medical ground, and therefore no consideration of compassionate appointment in favour of his ward would arise.

(2) The Boards orders have been issued pursuant to statutory and mandatory provision of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 that bind the Railways equally.

(3) If such a medically boarded out employee choses to retire without asking for employee<sup>ment</sup> assistance in favour of his eligible ward, he has to be expressly permitted as such in terms of Board's letter dt. 18.1.2000.

(4) By virtue of para 5 of the RBE supra all not cases of such employees covered under Board's letter have also been expressly and inarguably brought under the ambit of the RBE "unless the cases were finalized under Board's letter dt. 18.1.2000 etc."

5. In the aforesaid backdrop it the following could be noticed:

(1) In the present case the employee was medically boarded out on 10.9.08 but permitted to retire voluntarily on 28.1.2010 i.e. long thereafter. The retirement notice did not specifically indicate that the retirement was being allowed in terms of Board's letter dated 18.1.2000 i.e. specifically debarring employment assistance for a ward. Here it would be useful to quote the maxims:

(i) *UNIUS EST EXCLUSION ALTERIUS* - meaning whatever has not been included has by implication been excluded.

(ii) *EXPRESSUM FACT CESSARE TACITUM* - meaning when there is express mention of certain things, then anything not mentioned is excluded.

(2) The RBE 78/2006 made it imperative for the respondents to find out suitable alternative employment but they failed to act on time in terms of the RBE. They, therefore consciously and deliberately violated the mandatory provision of the 1995 Act. Lack of educational qualification of the employee could not be an excuse for such violation.

(3) After patiently waiting for more than 10 months without any alternative adjustment, the applicant sought for voluntary retirement in July, 2009.

(4) While allowing voluntary retirement on 28.1.2010 the authorities never expressed their desire to grant such retirement in terms of Board's order dated 18.1.2000 i.e. never expressly disallowed employment assistance in favour of his son or permitted him to voluntarily retire with an express stipulation that he cannot seek employment assistance for his son. Therefore he was neither expressly nor impliedly debarred from asking employment for his son and the case was therefore never finalized under Board's letter dated 18.1.2000.

(5) In view of such, there was no impediment to consider the case in terms of para 5 of the RBE quoted supra.

6. In such view of the matter the respondents are directed to consider the application for employment assistance in favour of his eligible ward, in the light of RBE 78/2006 particularly para 5 thereof, and pass appropriate order within 3 months from the date of communication of this order.

The O.A. is accordingly disposed of. No costs.

*10.1.2010*  
(Bidisha Banerjee)  
Judicial Member

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