



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O.A. NO. 350/01720/2016

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

Sri Kartick Modak,
Son of Late Rashbehari Modak,
Aged about 42 years,
By occupation – Nil,
Residing at – Village – Khudiram Pally,
Near Dak Bunglow,
P.O. Malbajar,
District – Jalpaiguri – 735 221.

..... Applicant.

-Versus-

1. Union of India,
Through the General Manager,
Northeast Frontier Railway,
Maligaon, Guwahati – 11,
Assam – 781 0111.
2. The Chief Personnel Officer,
Northeast Frontier Railway,
Maligaon, Guwahati – 11,
Assam – 781 011.
3. The Divisional Railway Manager,
Alipurduar Junction Division,
Northeast Frontier Railway,
Alipurduar,
Dist – Alipurduar – 736 123.
4. The Sr. Divisional Personnel Officer/
Cum – Divisional Personnel Officer Incharge,
Alipurduar Junction Division,
Alipurduar.
5. The Chairman,
Railway Board,
Bail Bhavan, M/o. Railways,
Rail Bhavan,
New Delhi -11,
Pin – 110 011.

..... Respondents.

For the applicant : Mr. K. Chakraborty, Counsel

For the respondents : Ms. N.S. Alam, Counsel

Heard on 28.06.2018

Order dated: 20 .07.2018

ORDER

Per Bidisha Banerjee, Judicial Member

This application 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 consent of both sides.

2. Aggrieved with rejection of his prayer for employment assistance, This application has been filed in order to seek the following reliefs:

"8.(a) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and/or withdraw the purported order dt. 28.9.2016 being Annexure – A10 hereto and not to give any effect to the same;

(b) Do issue further mandate upon the respondents their men and agents and each of them to forthwith accept the applicant's father's application for his voluntary retirement on All Category Unfit ground dt. 31.10.2006 being Annexure-A2 hereto treating the father of the applicant to have retired voluntarily w.e.f. 16.10.2006 in terms of the order dt. 18.10.2006 being Annexure-A1 hereto i.e., the date on which the Chief Medical Director of N.F. Railway accepted the recommendation of the Medical Board in respect of the applicant's father's All Category Unfit w.e.f. 16.10.2006 and then to offer an employment assistance to the applicant in Group-'C' post and/or to a post commensurate to his educational qualification forthwith without any further unnecessary delay;

(c) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with this lis before this Id Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicant;

(d) Grant cost of this proceeding in favour of the applicant.

(e) Pass such other or further order or orders, mandate or mandates, direction or directions as may appear to be fit and proper."

3. The order dated 28.09.16, impugned with present OA, reads as under:

"Sub: Compassionate ground appointment of Shri Kartik Modak, S/o. Lt. Rash Behari Modak, ex-GangMan under SSE/PW/MBZ.

Ref: Your letter dated 17.08.2016 (Copy enclosed)

In reference to above, it is stated that "your CGA case has been examined several times earlier by competent authority and not agreed to.

It is not possible to consider CGA in your favour as per railway rules and you are requested not to make further correspondence with this office in this regard."

Sd/-

(A. Ranjan)

Sr. Divisional Personnel Officer

N.F. Railway/ Alipurduar Junction."

It has been assailed on the ground that it is cryptic and non speaking one.

4. The admitted facts that emerge from the pleadings are as under:

The father of the applicant was declared unfit for all categories of posts in railways w.e.f. 16.10.06 vide certificate of CMS dated 18.10.06.

He prayed for VRS on 31.10.16 i.e. the day of his superannuation in terms of RBE 8/2000 which reads as under: (extracted verbatim hereinbelow for clarity)

"Subject: **Appointment on compassionate grounds in cases of medical invalidation decategorisation.**

xxx xxx xxx

2. Pursuant to the notification of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995." Instructions were issued vide Board's letter No. E(NG)1/96/RE-3/9(2) dated 29.4.99 (*Bahri's 89/99, p. 88*), laying down *inter-alia* that, in cases where an employee has been medically invalidated decategorised and where the Administration cannot find a suitable 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 a suitable post can be identified or till his retirement, whichever is earlier. As these instructions

provided for continuation in service of a medically invalidated decategorised employee, there would be no occasion for an employee to be retired from service on medical ground. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

3. The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been 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 ground to an eligible ward may be considered.

4. In the cases of medical decategorisation i.e. those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward."

His prayer was turned down since he made the request not earlier when he was declared medically fit, but subsequently on the day of his superannuation.

Since, no time limit restriction has been imposed vide the circular, regarding submission of request for such Voluntary Retirement, the applicant has claimed that the prayer ought to have been considered since it was made not after the superannuation, but before that.

5. Respondents have contested the claim on the ground that VRS ^{of} the date of superannuation to get the benefit of RBE 8/2000, was not legally permissible.

6. A decision of the Hon'ble High Court at Calcutta in WPCT 412 of 2012 has been cited, where in 'the petitioner No. 1 had applied for voluntary retirement only two months prior to her retirement on attaining the age of superannuation.

The Authorities observed that the petitioner No. 1 "was searching a loophole for

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her benefit in shape of appointment in railway service to her son, Rajiv Moitra (second applicant)".

It was observed that her prayer for voluntary retirement was refused because of the Railway Board's Circular dated 7th December, 2005.'

Hon'ble High Court observed that 'The Tribunal held that the Circulars were contrary to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 (hereinafter referred to as "Disabilities Act").

It further held that the "Railway Board's Circular dated 7th February, 2005 was in consonance with the provisions of the aforesaid Act. Without there being any prayer on the part of either the petitioners or the respondents, the Tribunal suo motu held that all the Circulars of the Railway Board's to the extent that they are inconsistent with Section 47(2) of the Disabilities Act or the 1999 O.M. as amended by the Circular of 7th December, 2005, are bad in law. The Tribunal has set aside all such Circulars. It has further observed that as the Circulars are set aside, there was no scheme for compassionate appointment and, therefore, the petitioner No. 2 could not be considered for such appointment."

Hon'ble High Court opined and held as under:

"The Tribunal has erred in sitting aside all Circulars of the Railway Board. There is no dispute that the Circular of 7th December, 2005 is in consonance with Section 47 of the Disabilities Act. However, thereafter the Railways have issued further Circulars where the wards of persons, who are completely medically incapacitated from performing any kind of work, are entitled to compassionate appointment, irrespective of the length of service left for the employee. In our opinion, these Circulars cannot be treated as inconsistent with the Disabilities Act. The Disabilities Act has been enacted for the protection of the rights of those who suffer from physical and mental disabilities by affording to them equal opportunities. The object of the Act is to remove any discrimination against persons with disabilities by taking positive steps to integrate them into the social mainstream. However, the Act does not in any way impinge upon the employer's right to grant employment on compassionate grounds to the wards of persons, who are declared medically incapacitated. In these circumstances, the decision of the Tribunal to set aside all the Circulars of the Railway Board granting compassionate appointment is unsustainable."

Hon'ble High Court directed as under:


"The impugned order of the Tribunal is, therefore, quashed and set aside. The speaking order passed on 20th January, 2009 is also quashed and set aside. The respondents shall consider the case of the petitioner No. 2 for compassionate appointment by treating the petitioner No. 1 as having voluntarily retired from service with effect from 25th February, 2008, which was the date on which she submitted her application for voluntary retirement."

7. Ld. Counsels were heard and materials on record were perused.

Inasmuch as no time limit to make such application could be discerned from RBE 8/2000, and the order impugned is cryptic, the order is quashed.

8. The respondents are directed to reconsider the matter in the light of the decision supra and issue appropriate reasoned and speaking order within 2 months of receipt of a copy of this order.

9. O.A. accordingly stands disposed of. No costs.


(Bidisha Banerjee)
Judicial Member

DRH