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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/00513/2014

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Kanchan Mishra
Son of Mantul Mishra
Who was an Ex-ELS/LI(E)/BJE
Adra Division under S.E. Railway
And residing at Railway Quarter No-L/90/B
P.O: Anara, P.S: Para, District: Purulia
PIN: 723126. As unemployed.

... Applicant

- Versus -

1. Union of India
Service through the General Manager
South Eastern Railway, Garden Reach
Kolkata-700043.
2. The Divisional Railway Manager
S.E.Railway, Adra, P.O: Adra
Dist: Purulia, PIN: 723121.
3. The Sr. Divisional Personnel Officer
Adra Division, under S.E. Railway
P.O: Adra, Dist: Purulia, PIN: 723121.
4. The Sr. Divisional Mechanical Engineer
Adra Division, S.E.Railway
P.O: Adra, Dist: Purulia-723121.

.. Respondents

For applicant (Adv): Mr.M.Mondal

For respondents (Adv): Mr.P.Prasad

Heard on: 17.05.2018

Date of Order: 14.09.2018

ORDER

MANJULA DAS, MEMBER (J):

In this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following relief(s):-

"a) To directing the respondents to cancelling and/or quash and/or set-aside the impugned speaking order being No. E/CAT/Kol/OA No.1017/12/KM Adra dated 13.9.2013 issued by Divisional Railway Manager, Adra and cancelled the memo No.P/Rech/Group-D/MD/11/Adra dated 15.9.2011 being Annexure 'A-2' which was issued by the respondent No.3 i.e. Sr. D.P.O. Adra and after cancel the same to issue appointment letter in favour of the applicant, Gr. 'D' post on compassionate ground.

b) To direction upon the Railways authority to issue appointment letter to the applicant on compassionate ground for the post of Group "D" in S.E. Rly, Adra.



c) To consider the representation which was made by the applicant to issue appointment letter on compassionate ground in favour of the applicant for the post of Group "D" under the Railway Department.

c) To pass such other or further order or orders as to Your Lordships may deem fit and proper."

2. The facts, in brief, are that applicant has passed 10 + 2 examination. His father Mantulal Mishra, while working as ELS/LI(E)/BJE under Adra Division under South Eastern Railway, was medically de-categorized vide GMS/Adra's letter No.MD/72/1/3690 dated 10.11.09. He took VRS from railway service w.e.f. 30.11.2010. Thereafter applicant submitted an appeal before the respondents on 17.01.2011 for extending employment assistance on compassionate ground in Group D category. However, vide letter dated 15.09.2011, the applicant was informed that his father was medically de-categorized from service subsequently he was screened and found fit for absorption in the post of chowkidar but he took VRS from railway service w.e.f. 30.11.2010 i.e., 05 years 04 months and 01 day before his normal retirement as on 31.03.2016 after completing 36 and ½ years of service. Besides, his father is drawing pension of



Rs.9579/- + DA and he got substantive settlement dues so there was no financial crisis, therefore, the competent authority had not considered his case fit for employment. Applicant submitted representation dated 10.10.2011 praying for compassionate appointment under the respondents followed by another representation dated 12.04.2012.

3. Challenging the rejection order dated 15.09.2011, the applicant had earlier filed OA.1017 of 2012 and this Tribunal vide order dated 16.05.2013 disposed of the said OA directing the respondents to consider his case in the light of provisions of RBE 78/06 by passing reasoned and speaking order within three months. Pursuant to the said order, vide speaking order dated 13.09.2013, the respondents have rejected the prayer of the applicant. The applicant, in support of his claim, referred the cases of Sri Usman Ansary, Electric Driver/BJE and another who retired on medical ground and their pension was fixed over Rs.15000/- + DA and having settlement dues more than his father, yet appointment of their sons have been considered and they have joined railway service. According to the applicant, his case is covered by the Railway Circular bearing Estt. Sl. No.96/2006 RBE



78/2006 dated 03.07.2006 on the subject of "Appointment on compassionate grounds of wards/Spouse of medically de-categorised staff on the Railways" and he has annexed the said circular at Annexure-A-5 in his OA. The contents of the said RBE 78/2006 are reproduced below:-

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 an employee has been medically invalidated/de-categorised where the administration cannot find alternative posts 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 identified or till his retirement, whichever is earlier. As these instructions provided for continuation of service of a medically invalidated/de-categorised 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-3/9(2) dated 29.04.1999 refers).

2. Even if the employee chooses to retire voluntarily on his being declared medically de-categorised, 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 18.01.2000 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 ground to an eligible ward may be considered if the said employee chooses to retire voluntarily (para 3 of Board's letter of even number dated 18.01.2000).



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/ dependants 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 atleast 5 years or more service left.
- (c) CMD of the Railways 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 decategorised 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 finalised in terms of Board's letters No. E(NG)II/95/RC-1/94 dated 18.1.2000; 10.11.2000 and No. E(NG)II/2000/RC-1/Genl./17 dated 6.3.2002 & 26.5.2004 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 & 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 refers).

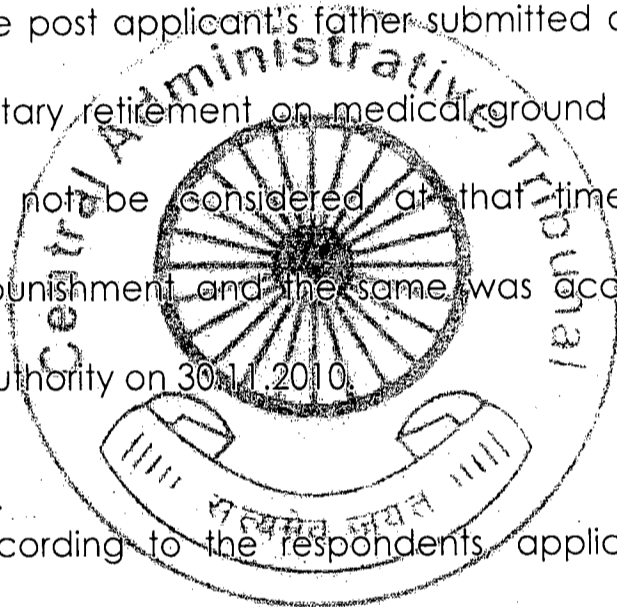
Please acknowledge receipt.

(Hindi version will follow)

4. The respondents have denied and disputed the claim of the applicant in their written statement. According to the respondents, the father of the applicant was declared medically



unfit in Aye & Bee categories but fit in Cee Two Medical Category in terms of Chief Medical Superintendent/Adras No.MD/72/1/3690 dated 10.09.2009. In order to absorb him in alternative post as per his medical fitness, applicant's father appeared before the Screening Committee. The said Committee recommended him for absorption to the post of chowkidar vide order dated 08.12.2009 and 04.03.2010. But instead of joining in the alternative post applicant's father submitted an application seeking voluntary retirement on medical ground on 28.04.2010 which could not be considered at that time as he was undergoing punishment and the same was accepted by the competent authority on 30.11.2010.



5. According to the respondents, applicant's case of employment assistance was put up before the competent authority in terms of the circular quoted above, but his case was not considered by the competent authority on the ground that the ex-employee has retired from railway service 5 years 4 months and 1 day before his normal retirement on 31.03.2016 and completed almost 36 ½ years of service. The ex-employee is entitled to draw pension amount of Rs.9579/- + DA which would

be revised in each pay commission. Besides, he retired voluntarily with full pensionary benefits and has got adequate settlement dues, as such, there is no financial crisis. Therefore, respondents claimed that applicant's claim is baseless.

6. The applicant has filed the rejoinder reiterating the contentions made in the OA and relied on the decision of the Hon'ble Calcutta High Court in the case of **Smt. Angurbala Maity & Anr vs State of West Bengal & Ors, 2012 (1) CLJ (Cal) 279** stating that his case is covered by said judgment.

7. I have heard Mr.M Mondal, learned counsel for the applicant and Mr.P.Prasad, learned counsel for the railways, perused the pleadings, decisions and the judgment relied upon.

8. I have perused the speaking order dated 13.09.2013 passed by the authority in compliance of the order of this Tribunal dated 16.05.2013 passed in OA.1017 of 2012. In my opinion, the respondents have shown sufficient reasons for not being able to consider employment assistance to the applicant. Though the applicant was found unfit for the post held by the applicant but



was found fit and recommended for absorption for alternative post of chowkidar. The ex-employee did not accept the appointment and opted to retire voluntarily. Till the date of his voluntary retirement, the ex-employee had almost completed 36 ½ years of service and he had voluntarily retired on 30.11.2010 with full pensionary benefits. As prescribed in para 6 of the RBE 78/2006, quoted above, while considering the cases for compassionate ground appointments, the authority should satisfied 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 case is justified. In the facts and circumstances of this case, I am of the opinion that the decision in the case **Smt. Angurbala Maity (supra)**, as relied by the applicant, is not applicable in his case.

9. The object of the scheme for compassionate appointment is to tide over the sudden crisis faced by family due to untimely death of Govt. servant/bread earner. It is further well settled law that such appointment is not a vested right, which cannot be claimed as a matter of right. Satisfying the indigency criteria is the first and foremost requirement. On examination of

the speaking order dated 13.09.2013, I have noticed that competent authority has taken into account various aspects while testing applicant's case, whether family falls with penury condition, without any means of livelihood or otherwise. In the case of **Eastern Coalfields Ltd. v. Anil Badyakar & Ors., 2009 (13) SCC 112**, the Hon'ble Supreme Court has held as under:-

"The compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over."

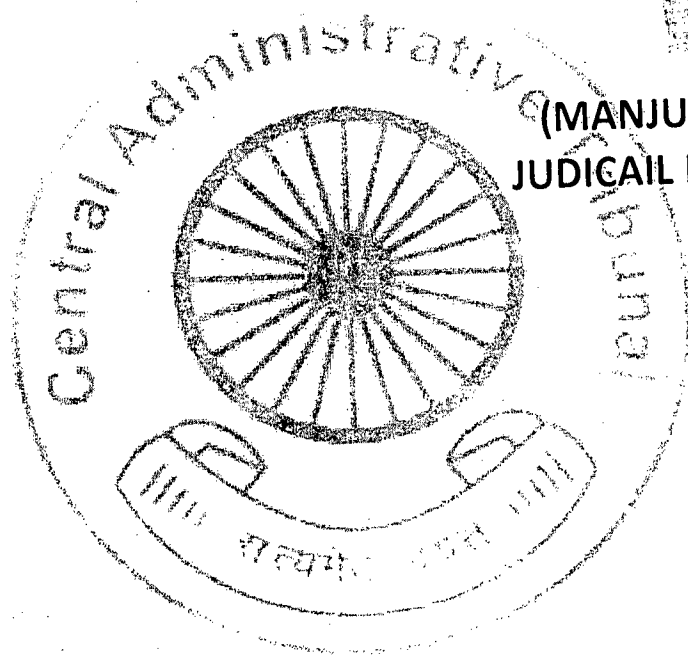
In the case of **Umesh Kumar Nagpal vs State Of Haryana, 1994 SCC (4) 138**, the Hon'ble Supreme Case has held as under:-

"...the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment



cannot be claimed and offered whatever the lapse of time and after the crisis is over."

10. In view of the forgoing reasons, I do not find any reason to interfere with the matter. Accordingly, OA is dismissed finding no merits. There shall be no order as to costs.



(MANJULA DAS)
JUDICIAL MEMBER

/BB/