

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 050/00220/2017

Date of order reserved: 23.04.2018

Date of order:- 03.05.2018

CORAM

Hon'ble Shri Jayesh V. Bhairavia, Member [J]

Binod Bihar Mahto son of late Mohi La Mahto Ex Diesel Driver under Senior Divisional Mechanical Engineer, East Central Railway, Dhanbad resident of viallage- Chaita P.O.- Gomoh P.s.- hariharpur District –Dhanbad-826001.

.....Applicant

By Advocate : Shri M.P. Dixit

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur District Vaishaili (Bihar) -844101.
2. The General Manager (Personnel), East Central Railway, Hajipur District Vaishaili (Bihar) -844101.
3. The Divisional Railway Manager, East Central Railway, Dhanbad-826001.
4. The Senior Divisional Mechanical Engineer, East Central Railway, Dhanbad-826001.
5. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad-826001.

.....Respondents

By Advocate: Shri S.K. Griyaghey

ORDER

Jayesh V. Bhairavia, M [J]:- The applicant in this O.A is aggrieved by the order dated 10.03.2017 (Annexure A/5) therefore he prays for quashing the same and to issue offer of appointment letter in favour of the applicant.

2. The brief facts of the case as submitted by the applicant is as under :-

[i] The applicant's father while working as Diesel Driver under the respondent Railway department was sent for medical examination before the Chief Medical Superintendent, Eastern Central Railway, Dhanbad in the year 1999, where

he was examined and declared unfit in medical category 1 & 2 and he was found fit for medical category No.3.

[ii] Vide order dated 24.05.1999 (Annexure A/1) the respondents had accepted the application of the applicant for voluntary retirement filed on 06.03.1999 and the father of the applicant was allowed to retire on voluntary basis with effect from 06.03.1999.

[iii] Vide letter dated 09.11.2009 the respondents had rejected the application for compassionate appointment of the applicant/father of applicant on the ground that the said application had been filed after 10 years of voluntary retirement, and hence not found it appropriate to be considered and accordingly the same was rejected.

[iv] Thereafter, again on 05.12.2013, father of the applicant had submitted an application for appointment on compassionate ground. The applicant had forwarded a copy of the said application to one Member of Parliament, the respondents had informed the office of Member of Parliament that all the necessary points will be considered in respect to the application/claim of the applicant.

[v] No response from respondents was received till the father of the applicant died on 06.12.2015.

[vi] Thereafter, on 16/17.05.2016, the mother of the applicant had submitted a detailed representation to the office of the respondents and requested that she and her son were totally dependent on late Mohilal Mahto, Ex-Diesel Driver and an application for appointment on compassionate

ground filed by her late husband long back has not been considered and therefore it is requested that now her son i.e applicant be offered appointment on compassionate ground.

[vii] Vide communication/letter dated 10.03.2017, the respondent no. 2 informed the mother of the applicant that the case of her son for compassionate appointment did not found to be fit for consideration. (Annexure A/5 refers).

[viii] The learned counsel for applicant submitted that as per the provision of RBE No. 114/1995 dated 06.10.1995, the General Manager is empowered to consider cases of compassionate appointment beyond the limit of 20 years therefore, applicant's case is also required to be considered.

It is further submitted that as per the provision of RBE No. 107/1995 the Railway Board had decided that in the case of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and make such appointment. In the case of the applicant, the father of the applicant was medically decategorised and he choose to take voluntary retirement therefore the claim of the applicant was required to be considered by the respondents in the light of provision of RBE 107/1995. However, the respondents had rejected the claim of the applicant on the ground of delay, the said action of the

respondents is illegal, contrary to the policy adopted for appointment on compassionate ground and also the said impugned action of the respondents is in violation of the order passed by this Tribunal reported in 2002 (2) 86 (ATJ) Avadhesh Kumar Singh vs UOI passed by CAT Lucknow Bench on 15.03.2002 and submitted that in terms of Railway Board Circular dated 07.04.1983, the claim of applicant ought to have been considered. The learned counsel for the applicant placed reliance on the provision RBE No. 114/1995 dated 06.10.1995 and also RBE No. 107/1995 dated 22.09.1995 and also placed reliance on judgement passed by Hon'ble Apex Court reported in 2007 (1) PLJR SC page 151.

3. The respondents have filed their written statement, denying the submissions of the applicant. The learned counsel for applicant submitted that the father of the applicant late Shri Moti Lal Mahto was partially medically decategorised and found unfit in A/1 to A/2 and was found fit for A/3 & below with glass category with effect from 01.03.1999 at the age of 56 years 01 months and 29 days thus he was left less than 05 years service at the time of medical decategorisation. The late Moti Lal Mahto retired on voluntarily basis and his application for compassionate appointment was submitted after 10 years of his retirement was rejected vide order dated 09.11.2009 in accordance with instructions issued under letter dated 06.01.1997 of Railway Board. It is submitted that as per the said instruction of Railway Board, the cases of wards of medically decategorised are considered for appointment on compassionate ground only within a period of 05 years from the date of medically decategorised of ex-employee. It is further submitted that as per the Railway Board's letter dated 14.06.2006, compassionate appointment to the wards of dependents of medically

decategorised staff who seeks voluntary retirement may be given subject to fulfilling certain provisions, as per para 4 B of the said letter, such an appointment should only be given in case of employee declared partially decategorised at a time when they have at least five years or more service left. It was found in the case of applicant that less than five years service was left at the time of medical decategorisation. The learned counsel for respondents further submitted that as per the RBE no. 78/2006 dated 14.06.2006, the applicant is not entitled for appointment on compassionate ground. (Annexure R/2 refers).

4. Heard the parties and perused the record. It is undisputed fact that the father of the applicant was declared unfit in medical category for A/1 to A/2 and found fit in medical category for A/3 and below with glass by the medical officer Eastern Railway, Dhanbad vide its letter dated 01.03.1999 (Annexure R/1 refers). It is also not in dispute that the said late Mohilal was retired on voluntarily basis with effect from 06.03.1999. after span of 10 years the said late Mohilal submitted an application dated 05.10.2009 for appointment on compassionate ground for his ward and the said application was rejected by the respondents vide the decision dated 09.11.2009. Thereafter, the father of the applicant had not taken any further step till 2013 and submitted another application only on 05.12.2013. The said ex-Railway servant Mohilal died on 06.12.2015 and thereafter the mother of applicant had submitted an application for appointment on compassionate ground in favour of the applicant. The said application was rejected vide impugned order dated 10.03.2017.

5. The main contention of the I/c for the applicant was that the respondents had not considered the claim of the applicant in accordance with the provision of RBE No. 114/1995 dated 06.10.1995 and also RBE No. 107/1995 dated 22.09.1995. It is submitted by the learned counsel that as per the provisions stipulated in the said RBE No. 114/1995 Circular the

General Manager had been given authority/power to consider the case for appointment on compassionate ground beyond the limit of 20 years and as per the condition stipulated in RBE No. 107/1995 as medically decategorised Railway Employee chooses to retire from service on that event compassionate appointment of eligible wards required to be considered. Therefore, though the father of the applicant retired on 06.03.1999, the General Manager has ample power to consider the case of the applicant as per the said Circular/RBE and erroneously rejected the claim of the applicant.

6. It is seen that the father of the applicant who was medically decategorised with effect from 01.03.1999 and voluntarily retired with effect from 06.03.1999 had submitted his application first in time for compassionate appointment of his ward only on 05.10.2009 at that relevant time the existing relevant instructions/circular issued by the Railway Board vide RBE No. 78/2006 dated 14.06.2006 with respect to consideration of application for compassionate appointment of ward of medically decategorised staff will hold the field and based on that, the claim of the father of the applicant was not found fit for consideration by the respondents. As per the provision of para 4(B) of RBE 78/2006, the compassionate appointment should only be given in case of employee who are declared partially decategorised at a time when they have at least five years or more service left. It is an admitted fact that at the time when the father of applicant was declared partially decategorised i.e on 01.03.1999 the said ex-railway employee was left with less than five years of service. Therefore, the benefit of policy for compassionate appointment cannot be extended to the applicant. Moreover, the claim for compassionate appointment was made in the year 2009 which was in fact belated claim and the respondents had rejected it. Thereafter again the applicant had submitted same claim in the year 2013 as also in the year 2015 which have

resulted with the same fate. In view of provision stipulated in RBE 78/2006 dated 14.06.2006 which is admittedly subsequent to the RBE No. 107 and 115 of 1995 therefore, the respondents are under the obligation to follow their policy and accordingly the claim of applicant does not meet the requirement of the provision of para 4 (B) of RBE No. 78/2006. The judgement relied upon by the applicant is not applicable in the facts and circumstances of the present case. The impugned decision of the respondents cannot be said to be contrary to their policy for compassionate appointment and hence no interference is required. The O.A is devoid of merit. Accordingly, the O.A is dismissed with no order as to costs.

(Jayesh V. Bhairavia) M [J]

/mks/

