

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 228 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Narayan Mohanty, aged about 34 years, S/o Sadasiba Mohanty, resident of Sripatipur, PO – Hakapada, PS – Delanga, Dist. – Puri.

.....Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway At/Po – Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. The Divisional Railway Manager, Khurda Road Division, East Coast Railway At/PO- Khurda Road, PS – Jatni, Dist. – Khurda.
3. The Senior Divisional Personnel Officer, Khurda Road Division, East Coast Railway At/PO- Khurda Road, PS – Jatni, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.L.Jena, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 1.3.2019

Order on : 6.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(a) The original application may kindly be allowed.
- (b) The operation of the order under Annexure A/5 may be quashed.
- (c) The respondents may be directed to reconsider the case of the applicant for an appointment under the rehabilitation assistance scheme, and;

Such other order(s) direction(s) may be given in giving complete relief to the applicant, in the ends of justice."

2. The applicant's father submitted an application for voluntary retirement to the authority on 1.10.2012, which was accepted vide order dated 14.12.2012. It is stated that after order dated 14.12.2012, the applicant's father was relieved on 1.1.2013 on health ground after 33 years of service. On 10.11.2013 the father of the applicant submitted a representation seeking employment of the applicant on compassionate ground to save his family due to the financial difficulties faced on account of his premature retirement on

health ground. The applicant filed a fresh representation as per the direction of the Tribunal vide order dated 19.11.2014 and the respondent no. 3 passed the order dated 10.12.2014 (Annexure-A/5) rejecting the representation of the applicant who has approached the Tribunal challenging the aforesaid order of rejection dated 10.12.2014.

3. The main grounds advanced in the OA are as under :

- (i) The applicant's father had serious eye sight problem for which there was no treatment facility with the respondents. Hence, he was forced to take VRS.
- (ii) Due to wrong treatment in Railway hospital, the applicant's father had lost his eyesight and hence, he has decided to
- (iii) The applicant's father had to apply for voluntary retirement in view of his health problems.

4. The counter has been filed by the respondents in which it is stated that the father of the applicant had submitted an unconditional letter dated 1.10.2012 (Annexure-R/1) to the authorities for voluntary retirement due to his health and Family problems. The application was processed and accepted vide order dated 14.12.2012 (Annexure-R/2). After voluntary retirement, the applicant's father submitted his settlement documents with his family composition and accordingly, the benefits were released with the pension amount of Rs. 7770/- per month. Thereafter, the present applicant filed the OA No. 822/2014 stating that after voluntary retirement of his father the family is in financial distress for which a letter dated 10.11.2013 (Annexure-A/3) has been submitted by his father to the respondents for appointment of the applicant on compassionate appointment.. The OA was disposed of with liberty to the applicant to submit a representation in the prescribed format for compassionate appointment which is to be disposed of by the respondents. The application so submitted has been rejected by the competent authority on the following grounds as mentioned in the impugned order dated 10.12.2014 (Annexure-A/5):-

- (i) As per the guidelines of the Railway Board vide RBE No. 78/2006, the compassionate appointment is permissible to the employee who opts for voluntary retirement after he is declared medically de-categorized by the railway medical authorities without accepting alternative absorption provided he has at least 5 years of service left at the time of being declared medically de-categorized. The applicant's father was not medically de-categorized by the railway medical authorities and hence, the applicant is not entitled for compassionate appointment as per the RBE No. 78/2006.

(ii) The applicant's father had only 5 months of service left at the time of taking voluntary retirement on 1.1.2013 in pursuance to his application as his normal date of superannuation was 31.5.2013.

5. It is further stated in the Counter that at the age of 34 years, the applicant cannot be treated as a dependent of his father. The conditions specified under the rules for considering compassionate appointment in the cases of a Railway servant are not fulfilled in this case. Regarding poor treatment of the applicant's father, it is stated that he never complained to the authorities about it and in the earlier OA, no such allegation was made.

6. Heard learned counsels for both sides. The applicant's counsel stated that the certificate of disability has been issued by the medical board and a copy is enclosed at Annexure-A/5 to the OA. The respondents' counsel opposed by stating that the said certificate was not issued by the Railway medical authorities before voluntary retirement as required under the rules for compassionate appointment on the ground of medical de-categorization.

7. I have perused the pleadings on record and considered the submissions of the learned counsels of rival parties. Undisputedly, the Railway Board's instructions regarding compassionate appointment on health ground is permissible if the employee concerned is declared by the Railway medical authorities as medically de-categorized after which the employee opts for voluntary retirement and there should be 5 years or more service left before is due date of retirement on superannuation. This circular RBE No. 78/2006 has not been challenged in this OA and the averments that the applicant's father did not fulfil the requirements for compassionate appointment have not been refuted by the applicant on the strength of any guidelines of Railway Board or rules.

8. The settled law with regard to the compassionate appointment is that the applicant does not have any right for such appointment, but he is to be considered fairly in accordance with the scheme/rule for compassionate appointment formulated by Government. In the case of **Bhawani Prasad Sonkar vs. Union of India and others reported in (2011) 4 SCC 209**, it was laid down by Hon'ble Apex Court as under:-

"19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

....."

9. Hon'ble Apex Court reiterated above position in the case of **MGB Gramin Bank vs Chakrawarti Singh** [(2015) 1 SCC (L&S) 442] in the judgment dated 7 August, 2013 in which it is stated as under:-

"15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In SBI, this Court held that in such a situation, the case under the new Scheme has to be considered."

10. In view of the facts of the case and the judgments discussed in the preceding paragraphs, I am of the considered opinion that the claim of the applicant for compassionate employment on the ground of the health of his father is not in accordance with the rules/scheme approved by the Railway Board on the subject. Hence, the OA is devoid of merit and is liable to be dismissed. Accordingly, the OA is dismissed with no order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath