

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.020/30/2016**

**Date of Order: 04.12.2018**

Between:

1. S.V.S. Rajasekhar Rao, aged 50 years,  
Ex.HBC/Bapatla Railway Station,  
R/o. D. No. 23-4-26, H. No. 31, Municipal Colony,  
Rajahmundry, East Godavari - 533103.
2. Venkat Rajesh Kumar, Aged years,  
S/o. Sri SVS Rajasekhar Rao,  
R/o. D. No. 23-4-26, H. No. 31, Municipal Colony,  
Rajahmundry, East Godavari – 533103.

... Applicants

And

UOI, Rep. by its

1. The General Manager,  
South Central Railway, Secunderabad.
2. The Chief Personnel Officer,  
4<sup>th</sup> Floor, S.C. Railway,  
Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,  
S.C. Rly, Vijayawada Division, Vijayawada.  
Krishna District.
4. The Chief Medical Director,  
South Central Railway, Secunderabad.
5. The Chief Medical Superintendent,  
Railway Hospital, Vijayawada,  
S.C. Rlys, Krishna District.

... Respondents

Counsel for the Applicants ... Mr. G. Pavan Murthy, Advocate for  
Mr. G.S. Rao, Advocate

Counsel for the Respondents ... Mr. V. Vinod Kumar, SC for Rlys

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)***

***ORAL ORDER***  
***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

The OA is filed for rejection of the request of the 1<sup>st</sup> applicant by the 2<sup>nd</sup> Respondent, to consider the case of his son i.e. the 2<sup>nd</sup> applicant for compassionate recruitment on medical grounds.

2. The 1<sup>st</sup> applicant joined the respondents organisation as commercial booking clerk in 1985 and on 17.6.2013 he had to retire as Head Booking Clerk on medical grounds. The 1<sup>st</sup> applicant suffered many health ailments ranging from Diabetic seizures, high B.P, cataract of eyes, epilepsy, brain tumour, paralysis strikes etc. from 11.8.2011 without any respite despite being treated in Railway, Appolo, Yashoda and CARE hospitals respectively. The medical advice was to undergo Brain surgery with a rider that cure is not assured. In these circumstances the applicant sought voluntary retirement requesting to provide compassionate recruitment to his son as per rules since he has 10 years more to retire and on medical invalidation compassionate recruitment can be considered. The 1<sup>st</sup> applicant represented on 10.5.2012 & 1.7.2012 and when there was no response, he approached this Tribunal by OA 1001/2012, which was disposed of directing the respondents to dispose of the pending representations. In accordance with the said directive the respondents constituted a medical board which recommended that the 1<sup>st</sup> applicant should not be made to work near moving machines, running lines, running trains and passing duties. The 5<sup>th</sup> respondent without taking cognizance of the recommendations of the medical board posted the 1<sup>st</sup> applicant as Head Booking Clerk at Bapatla Railway station based on fitness certificate dated 23.11.2012. The 1<sup>st</sup> applicant joined duty but could not continue to work due to health issues pertaining to orthopaedic problems and hence represented on 26.11.2012 to transfer him to

stations where there is access to good health care. There being no response from the respondents the 1<sup>st</sup> applicant requested for voluntary retirement on 28.12.2012 & 28.1.2013 with a proviso to provide employment for his son i.e. the 2<sup>nd</sup> applicant. In view of the poor health the 1<sup>st</sup> applicant could not attend to duties properly and therefore was subjected to medical examination on 1.4.2013 where again he was declared fit to do duty only in areas other than those near moving machines, running lines etc. The respondents, as per 1<sup>st</sup> applicant version, having failed to accommodate him in a supernumerary post, alternate post or transfer him to stations with good health care facilities, finally conceded to his request for voluntary retirement w.e.f 17.6.2013 based on his representation dated 28.12.2012. After retirement 1<sup>st</sup> applicant represented to the 1<sup>st</sup> respondent on 19.8.2013 for compassionate recruitment plus extend benefits under Disability Act 1955 along with salary for the sick period. However, there being no response the 1<sup>st</sup> applicant approached the Tribunal vide OA 1281/2014 wherein it was directed to dispose of the representation and accordingly the respondents considered the same and rejected it. Aggrieved over the same the present OA has been filed.

3. The contentions of the applicant are that as per S1 Circular 24/1997 dt 10.2.1997 appointment on compassionate grounds can be offered when employees are medically de-categorized for the jobs they are holding. Besides, in cases where the medical invalidated employee does not wait for an alternate employment but chooses to retire, then the ward of such an employee can be considered for compassionate appointment. Albeit, the 1<sup>st</sup> applicant sought voluntary appointment with a request to provide compassionate recruitment to his son but since the respondents refused to grant voluntary retirement on this condition, he had no other go but to first accept voluntary retirement due to his

deteriorating health vide his lr dated 28.12.2012. The applicant has more than 10 years of service left and that he has a big family to take care which is under severe financial stress because of loss of pay during his absence on medical grounds. The applicant has put in 26 years of service and that the circumstances forced him to quit service voluntarily. The respondents have not followed Rule 47 of the Disabilities Act 1995. The case of the applicant has to be processed as per Railway Board order RBE No.78/06 dt. 14.6.2006.

4. The respondents contend that the applicant represented on 25.7.2011 requesting to permit him to retire voluntarily or transfer him to a station where Railway hospital is available or change his cadre or direct him for medical examination, as he is not keeping good health. In response the 1<sup>st</sup> applicant was informed that only an unconditional application for voluntary retirement would be accepted. On approaching this Tribunal vide OA No.1001/2012 for medical invalidation and appointment of his son on compassionate grounds the 1<sup>st</sup> applicant was subjected to medical examination on 17.10.2012 by a medical board. Medical Board diagnosed the 1<sup>st</sup> applicant to be suffering from seizure disorder and needs to be kept away from moving machines, running lines etc. Based on the medical report, 5<sup>th</sup> respondent found him fit for the post of Head Booking Clerk on 23.11.2012 and posted him to Vijayawada. The duties of a Head Booking Clerk involve issue of tickets to the passengers. Further the 1<sup>st</sup> applicant was also informed that conditional voluntary retirement cannot be accepted as per rules. The 1<sup>st</sup> applicant again made a representation on 28.12.2012 for voluntary retirement and after a lapse of mandatory 3 months before the Respondents could decide the matter, the 1<sup>st</sup> applicant insisted that he be allowed to retire and accordingly his request for voluntary retirement was accepted on 17.6.2013. Thereafter the 1<sup>st</sup> applicant approached this Tribunal

seeking compassionate appointment of his son on medical grounds and as per the directions of the Tribunal the request was examined and rejected on grounds that the 1<sup>st</sup> applicant retired voluntarily and not on medical grounds. Consequently, the 1<sup>st</sup> applicant approached this Tribunal for compassionate recruitment in the present OA. The respondents state that compassionate recruitment is offered to employees who died while in service and to those who are medically de-categorised for the post with left over service of 5 years. The 1<sup>st</sup> applicant does not come under either of the said category and hence compassionate recruitment of the son of the 1<sup>st</sup> applicant was rejected. The 1<sup>st</sup> applicant also approached the Tribunal vide OA 925/2016 seeking compassionate recruitment but was dismissed for default.

5. Heard the learned counsel and studied the documents placed on record. The learned counsel for the applicants submitted that the 1<sup>st</sup> applicant was incapacitated due to illness and had to perforce seek voluntary retirement on medical grounds so that compassionate recruitment for his son could be considered to take care of his big family. Rules provide for such relief. The learned counsel for the Respondents vehemently resisted the contention stating that the 1<sup>st</sup> applicant retired voluntarily on his own volition and therefore is not eligible for compassionate recruitment. As directed by the Tribunal his case was examined by the respondents in detail and found him to be ineligible for the relief sought.

6. The facts of the case does reveal that the 1<sup>st</sup> applicant has serious health ailments ranging from Diabetic seizures, high B.P, cataract of eyes, epilepsy, brain tumour, paralysis strokes, orthopaedic issues etc. The medical board on examining the 1<sup>st</sup> applicant tendered advice not to post him near moving machines, running lines etc. The 1<sup>st</sup> applicant had moved this Tribunal in OA

1001/2012, OA 1281/2014 and by OA 925/2016 /2016 mainly seeking relief of compassionate recruitment on medical grounds. The 1<sup>st</sup> applicant prayed for voluntary retirement on medical grounds so that his son could be offered compassionate recruitment to support his family. Moreover, he is eligible as he had 10 years of service left against 5 years required and that he is unable to perform duties due to his poor health. The respondents found him fit for the post of Head booking clerk which involves issue of tickets to passengers and thereby the 1<sup>st</sup> applicant is away from moving machines, running lines etc. The serial circular 134/1995 dt 8.11.1995 clearly lays down that

*“The question whether appointment on compassionate grounds can be considered in the case of a medically de-categorised employee who does not wait for the Administration to identify an alternative job for him but chooses to retire and makes a request for such appointment, has been under consideration of the Board.*

*After careful consideration of the matter Board have decided that in partial modification of Board’s letter no E (NG)III /78/RC-1/1 dt 3.9.83, in the case of medically de-categorised 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 makes a request for such appointment.”*

Further, the Railway serial circular No.24/97 dt 10.2.1997 has provided for compassionate appointment when the employees are crippled during service as stated hereunder:

*“The appointments on compassionate grounds may also be offered in cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc or otherwise become medically de-categorised for the job they are holding. If no alternative job with the same emoluments can be offered to them, one son /daughter should be eligible for compassionate appointment when an employee opts to retire”*

Going a step forward, serial circular No.92/2006 dt 22.6.2006 has further liberalised the issue by ordering to consider even partially medically de-

categorised employee for offering compassionate recruitment to ward/spouse of the concerned staff member as under :

*“Board has 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.”*

On demand of the staff side, the matter was examined and compassionate recruitment on grounds of partial de-categorisation can also be considered as under:

*“Such an appointment should only be given in case of employees who are declared partially de-categorised at a time when they have at least 5 years or more service left.”*

7. Thus as per serial circular 134/1995 dt 8.11.1995 the 1<sup>st</sup> applicant on being medically de-categorised need not wait for an alternate appointment and if he chooses to retire, his request for compassionate recruitment should be considered. The 1<sup>st</sup> applicant on medical grounds sought voluntary retirement which was granted on 17.6.2013. The respondents state that it was not on medical invalidation but it was pure voluntary retirement and hence not eligible. However, it is an undeniable fact that the medical board found him unfit to perform duties near moving machines, running lines etc. It only goes to prove that the 1<sup>st</sup> applicant was partially de-categorised. Cases of partially medically de-categorised employees have to be considered as per serial circular 92/2006 dt 22.6.2006 provided they have 5 years of service left. In the present case the 1<sup>st</sup> applicant has 10 years to go. This circular applies to the case of the 1<sup>st</sup> applicant. Therefore the 1<sup>st</sup> applicant's helplessness to wait for the administration to decide his issue and his request for deemed voluntary retirement after the lapse of

mandatory 3 months time, should not be interpreted as voluntary retirement on own volition, to reject his request for compassionate appointment. Doing so, is not only unfair but it goes against the spirit of the serial circulars namely 134/1995, 24/97 & 92/2006. It further reiterates the desperation to which the 1<sup>st</sup> applicant has been driven to. The serious multiple health ailments with which the 1<sup>st</sup> applicant was suffering are dominating factors which sway the outcome of this case. Under compulsion from the respondents, that 1<sup>st</sup> applicant's voluntary retirement will not be accepted with conditions, he chose to retire voluntarily. In all fairness this should not be used against the 1<sup>st</sup> applicant, more so when serial circulars cited provide succour to him. Besides, he has a proven history of poor health on multiple health parameters. Being in such a state the 1<sup>st</sup> applicant could not perform duties and was repeatedly knocking the door of the Tribunal seeking relief of compassionate recruitment. However, respondents did not consider the same on directions of the Tribunal on grounds that the 1<sup>st</sup> applicant sought voluntary retirement on his own volition although serial circular 92/2006 provides for compassionate recruitment for partially de-categorised employees.

8. The learned counsel for the respondents has cited the judgment of the Honourable High court of Madras in W.P (M.D) NO 1902 of 2013 and M.P (M.D) No.1 of 2013 where in it was observed that:

*28. The Honourable Supreme Court in the matter of compassionate appointment has rendered a judgment setting out the principles, the guidelines and the scope of providing appointment on compassionate ground. Compassionate ground being an exception to that of the general recruitment, the same should be provided with all caution taking note of the fact that compassionate appointment will certainly deprive the eligible meritorious youths and citizens of the country to get public employment. When the courts are providing an exceptional scheme of compassionate appointment to the individual, it is equally relevant to keep in mind that such facilities provided should not affect the rights of other citizens, who are otherwise qualified, meritorious and aspiring to participate in the open competitive process. The*

*granting of relief, if it affects the constitutional rights of other citizens, then the court must be slow in granting such relief.*

**XXX**

37. *In MGB Gramin Bank Vs. Chakrawarti Singh [2014 (13) SCC 583], the Hon'ble Supreme Court has held as under:*

(7) *In Umesh Kumar Nagpal v State of Haryana & Ors (1994) 4 SCC 138, this court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The court observed as under:*

*The whole object of granting compassionate appointment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned. ”*

9. In the present case the 1<sup>st</sup> applicant is partially medically de-categorised and hence is eligible as per serial circular No.92/2006. He has another 10 years to retire in the normal course against the requirement of 5 years as per rule. The 1<sup>st</sup> applicant has a big family to take care. Moreover, it should not be lost sight of that the 1<sup>st</sup> applicant will become a burden on the family because of his poor health status and the attendant medical expenses does put the 1<sup>st</sup> applicant to financial stress as long as he is alive. Hence it is a genuine case for consideration. The family has been engendered by the sudden upturn in the employment status of the 1<sup>st</sup> applicant making it difficult to make both ends meet. The Honourable Supreme Court has directed to consider such cases with caution. In the present case such caution has been exercised in deciding in favour of the 1<sup>st</sup> applicant, since he would not have gone on voluntary retirement but for his deteriorating health. Providing compassionate recruitment on medical invalidation is an accepted norm of the respondent organisation.

10. The Honourable Supreme Court in *V. Siva Murthy vs State of Andhra Pradesh and ors* reported in **2008 (11) SCALE 294** has held:

*"13. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is compassionate appointment in case of medical invalidation cannot be equated with death in harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical invalidation is not as serious as death in harness, exception can be made only in cases of employees dying in harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences of his family, may be much more serious than the consequents of an employee dying in harness. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medical invalidated on account of a serious illness/ accident, will be no less, in fact for more than the consequences of death in harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc.*

XXXX

*15. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many 20 exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and*

*permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.”*

The cited judgment does emphasize the need to provide for compassionate appointment to a medically invalidated employee.

11. In fact, the Hon’ble High Court of Judicature, Andhra Pradesh, in W.P No.2588 of 2006 between Smt M. Pushpa Naga Surya Kala w/o M. Veeraswamy vs U.O.I represented by the General Manager, South Central Railway & Divisional Railway Manager, Vijayawada, submitted by the learned counsel for the applicants, has in a similar case of the nature in discussion held as under :

*“7. The following facts are not in dispute. The date of birth of the deceased is – 6.2.1951. He suffered amputation of left leg, apart from heart ailments and was diagnosed asunder:*

*“Atherosclerotic peripheral vascular disease 100% occlusion of distal right superficial femoral artery 100% occlusion of right external iliac artery.*

*Advise: Percutaneous trasluminal angioplasty of right superficial femoral artery occlusions”*

*The deceased has been requesting for voluntary retirement subject to the condition of his son being appointed on compassionate grounds. He was screened and diagnosed as not fit for other jobs, except for sedentary jobs and it was decided to create supernumerary posts in Class © Category and appointment was made. He accepted for voluntary retirement on 8.9.2004 and within three months thereafter he died on 7.12.2004. Thus the husband of the petitioner not only suffered amputation of left leg, on account of which he became immobile; he was also a diabetic and suffered serious heart ailment, as two of his arteries were affected. He was advised angioplasty – that means he was in a very precarious condition, though in the screening test he was not categorized. The very fact that he died within three months of his voluntary retirement on 8.9.2004 would show the fact that he was seriously ill and in all probability he was completely not in a position to discharge any official duties. Though it is not relevant with reference to Rules, the fact that even after his death on 17.12.2004 he was left with more than six years of service is a fact to be recognized.*

8. In paragraph-6 of the counter, which is extracted above, it is stated that “in case where an employee is totally incapacitated and is not in a position to continue in any post, because of medical condition, he may opt for retirement. In such cases, the request for

*appointment on compassionate grounds to an eligible ward may be considered. No doubt, the subsequent paragraphs shows that in case where the employee is found to be medically unfit for the post held, but he is fit to perform the duties in an alternative suitable post in lower medical category, the request for appointment on compassionate grounds to an eligible ward would not be admissible, even if the employee chooses to retire voluntarily.”*

*9. In our opinion, in the present case, the case of the deceased falls in the category where the employee was totally incapacitated and was not in a position to continue in any post, because of his medical condition. Though the screening test conducted by the department did not refer to the same. The fact that he suffered amputation of left leg and serious heart ailment, two of his arteries were completely damaged, he was an acute diabetic at that stage and he demised within three months of his retirement, would support this conclusion. Obviously, the conditions referred to in the circular dated: 18-1-2000 are incorporated to discourage cases of false medical invalidation taken solely with the object of getting their wards appointed by the employee. But, in the present case, as held by us, the circumstances would show that the deceased-employee, the husband of the petitioner herein was not in a position to continue in any post, because of his critical condition and desired voluntary retirement with an option for compassionate appointment to his son.*

*10. Both sides have relied on several authorities in support of their respective contentions with regard to the appointment in case where an employee retires voluntarily on medical invalidation. We are of the opinion that these authorities have no application to the facts of this case, in view of our finding that it is a case where, on facts the deceased employee was not in a position to discharge any duties and was in fact, comes within the scope of Circular No.21/2000 daed:18.1.2000 referred to in the counter. “*

Moreover, Section 47 of the PWD Act, 1995 as per Office Memorandum No.18017/1/2014-Estt(L) of Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, the 25<sup>th</sup> February, 2015, services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he

would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. In *Kunal Singh v. Union of India, (2003) 4 SCC 524*, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

12. In the case in question the respondents could not find an alternate post after the second medical re-examination nor did they place the 1<sup>st</sup> applicant in a supernumerary post. In the meanwhile 1<sup>st</sup> applicant unable to discharge duties due to his poor health in the erstwhile post identified, sought voluntary retirement, though he liked to retire on medical grounds. As can be understood from the case history the 1<sup>st</sup> applicant was in no position to undertake any official work. This pertinent factor was glossed over. Realities of the circumstances are to be appreciated and thereafter apply the rule. Interpretation of the rule and its proper application is the hall mark of a forward looking organisation, like the Railways. Serial circular 92/2006 covers the case of the 1<sup>st</sup> applicant and its application would have resolved the long pending grievance of the 1<sup>st</sup> applicant.

13. To sum up, the 1<sup>st</sup> applicant could not discharge his duties because of his precarious health condition. He was partially de-categorised as per medical board findings of the respondent organisation. According to serial circular 92/2006 the 1<sup>st</sup> applicant is eligible for compassionate appointment. The 1<sup>st</sup> applicant has 10 years of residual service and has a sizeable family to take care. Being perennially unwell the 1<sup>st</sup> applicant is a burden on the family plus the factor of enhanced expenses towards medicines need to be reckoned while evaluating 1<sup>st</sup> applicant's request for compassionate recruitment to his son. The serial circulars discussed

does provide the requisite latitude to offer the compassionate recruitment. The observations of the Honourable Supreme Court are in favour of the applicants. In particular the judgment of the Honourable High Court of Andhra Pradesh more or less covers the case. The case also attracts Rule 47 of the Disabilities Act which could not be complied in time.

14. Thus as rules provide for granting compassionate recruitment to the ward of the 1<sup>st</sup> applicant and the judgments of superior judicial forums inclining towards the 1<sup>st</sup> applicant's cause, the OA succeeds. Therefore the respondents are directed to consider

- i) processing of the request of the 1<sup>st</sup> applicant to provide compassionate recruitment to his son i.e. the 2<sup>nd</sup> applicant, as per serial circulars referred to and the observations of the superior judicial forums cited.
- ii) Time allowed to implement the order is 3 months from the date of receipt of the order.

15. In the result, the OA is allowed. No order to costs.

**(B.V. SUDHAKAR)  
(MEMBER (ADMN.))**

Dated, the 4<sup>th</sup> day of December, 2018

*evr*