

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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**OA No.290/00294/2017 &
 MA No.290/00204/2017**

**Pronounced on : 16.01.2019
 (Reserved on : 10.01.2019)**

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Mahesh Gurjar S/o Shri Inder Chand, aged 24 years, by caste Gurjar, R/o Village Deedwana, District Nagaur (Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. Dilip Vyas.

VERSUS

1. Union of India, through General Manager, NW Railway, Jawahar Circle, Jaipur.
2. The Divisional Railway Manager, North West Railway, Jodhpur (Rajasthan).
3. The Senior Divisional Personnel Officer, North West Railway, Jodhpur (Rajasthan).
4. The Senior Divisional Engineer (Cord.), North West Railway, Jodhpur (Rajasthan).

RESPONDENTS

BY ADVOCATE: Mr. Darshan Jain, counsel for R1 to R4.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant seeks the following reliefs:

- "a) That the respondents may kindly be directed to consider the application dated 10.06.2013 of the applicant's father for voluntary retirement on medical grounds and for the appointment of the applicant on compassionate grounds and to direct the respondents to convert the illegally issued superannuation retiral order to the retirement order on the basis of medical grounds, which to be considered from date of

invalidation i.e. 07.06.2013 with all consequential and applicable benefits as per provision of law, and

- b) To direct the respondents to appoint the applicant on compassionate grounds being the dependent ward of Shri Inder Chand Gurjar, from the date of invalidation i.e. 07.06.2013, with all consequential and applicable benefits as per provision of law and the letter dated 09/19.06.2017 may kindly be quashed and set aside."

2. The brief facts as narrated by the applicant are that the father of the applicant was declared unfit for all categories by a letter no.99/Med./Medical Board/Sarvan Kumar, dated 07.06.2013. The applicant's father had submitted an application dated 10.06.2013 which was forwarded by the concerned Section Engineer to the A.D.E.M. Degana vide letter dated 15.06.2013, inspite of repeated personal approach and false assurances of the respondents, timely no action was taken by the respondents. Ultimately vide letter dated 09/19.06.2017, the respondents declined to appoint the applicant on compassionate grounds. It is the case of the applicant that his father was appointed as Trackman and while in service he had developed disease of Hypertension Stage-2, Cerebro Vascular Accident Intra Cranial Haemorrhage, Residual Right Side Hem Paresis with Dysarthria, due to which he remained sick for a long time. It is also clarified that the father of the applicant was unable to carry out his duties as Trackman, and therefore, he was provided alternate appointment and posted as Rest House Chowkidar. The disease of the applicant further aggravated, and therefore, the father of the applicant was compelled for Railway Medical Sick Leave and was put on the said list from July, 2012. There was no improvement in the health condition of his father for about one year, then the Medical Board was constituted in the year 2013 and the father of the applicant was declared unfit for all the categories vide their letter no.99/Med./Medical Board/Sarvan Kumar, dated 07.06.2013. The Medical Board had examined the father of the applicant and had certified

that "he is completely and permanently incapacitated for further service in any category in railways as a consequence of his illness mentioned above and there is no reasonable prospect that he will ever be fit to resume his duty in any medical category in railways, and therefore, his case was recommended for invalidation" (Annexure A2). It is clarified by the applicant that a number of employees are declared medically unfit in all categories in NW Railways and they have been invalidated out of service, and their wards are provided appointment on compassionate grounds. The applicant has also given list of persons at Para 4(vii), who were also provided such benefit, though his case is not considered for such appointment. It is clarified that the father of the applicant was sick and unfit to perform duty for last number of years and it would have been justified, if the respondents would have retired him on medical grounds declaring his father medically invalidated and accordingly granted appointment on compassionate grounds to the dependent wards.

3. Though, the father of the applicant had submitted an application for voluntary retirement and appointment to his dependent ward on 10.06.2013, but the office of respondent no.3 had not responded on the same urgently and the applicant's father was illegally made to retire on superannuation on 30.06.2017. It is the case of the applicant that the illegal retirement on superannuation shown to be given to the father of the applicant cannot be taken as ground for refusal of the appointment of the present applicant, and therefore, the letter dated 09/19.06.2017 is illegal, perverse, non-judicious and is required to be quashed and set aside. The applicant further stated that the respondents be directed to consider the case of the applicant's father as retired being medically unfit for all categories on 07.06.2013 and that the applicant may be directed to be provided compassionate appointment on invalidation grounds. It is also

stated that the father of the applicant expired on 03.02.2014, but due to the serious discrimination on the part of the respondents, the present applicant cannot be made to suffer as his father was seriously ill and was unable to perform any duties since 2012, and therefore, he has a good case and prays for a direction that the respondents be directed to convert the illegally issued superannuation / retiral order of the father of the applicant to that retirement on medical grounds and that the date of invalidation be treated as 07.06.2013 and as the applicant is a dependent ward of deceased Inder Chand Gurjar, his father's case may be treated as medically unfit and accordingly his dependent ward i.e. the applicant may be provided appointment on compassionate grounds.

4. The respondents after issuance of notice have filed their reply dated 16.08.2018 and have stated that the applicant's father had submitted an application for retirement on medical grounds, but the same was not received in the office till 28.06.2013 from the office of ADEN-DNA. The said application of the applicant's father was received only on 28.06.2013 in the afternoon and as 29.06.2013 and 30.06.2013 were weekly holidays, therefore, no action could be taken by the respondents on these two dates. Accordingly, the father of the applicant was treated as retired on 30.06.2013 on attaining the age of superannuation. As the applicant's father retired on attaining the age of superannuation, therefore, the applicant is not entitled to get appointment on compassionate grounds. The respondents refused the receipt of any application dated 10.06.2013. It is further clarified that those employees, who were allowed to retire on medical grounds only their dependent wards were granted appointment on compassionate grounds. It is further stated by the respondents that since the applicant's father retired from service on attaining the age of superannuation, therefore, applicant is not entitled to get appointment on

compassionate grounds. From the perusal of the service book, it is clear that the date of birth of the applicant's father is 18.06.1953, and therefore, he attained the age of superannuation in the month of June, 2013 and accordingly on 30.06.2013, he stood retired on superannuation. The respondents reiterate their stand that as the father of the applicant retired on attaining the age of superannuation and not on medical grounds, therefore, the present applicant does not deserve to be considered for appointment on compassionate grounds. It is further submitted that although the applicant's father was declared unfit for service by Medical Board but he could not be made retired on this ground as in the mean time he attained the age of superannuation. Therefore, the applicant has no justification for any relief in the present OA, and therefore, the OA deserves to be dismissed.

5. The applicant has filed a Miscellaneous Application No.290/00204/2017 for condonation of delay and has stated that any delay in approaching this Tribunal is only due to bonafide and justified reasons. It is the case of the applicant that the father of the applicant stood illegally superannuated on 30.06.2013, but in fact, his father was medically unfit, he should have been made to retire on medical grounds. Though, the father of the applicant had made an application in 2013 itself, but the respondents only vide order dated 09/19.06.2017 have denied the appointment to the present applicant. Therefore, the submission of the applicant is that there is actually no delay on the part of the applicant in approaching the Tribunal as he has filed the present OA on 21.07.2017 itself.

6. The respondents have replied to the said Miscellaneous Application stating that the cause of action accrues on 10.06.2013, but the present OA

is filed in 2017. No reasonable explanation has been given by the applicant for the delay in approaching the Tribunal, and therefore, the delay cannot be condoned. Hence, the MA filed by the applicant for condonation of delay deserves to be dismissed.

7. The applicant has filed a rejoinder on the reply of the respondents dated 20.08.2018. The applicant has reiterated his stand made earlier and stated that the father of the applicant was taken into Railway Medical Sick list from July, 2012. Since the father of the applicant was appointed as Trackman but as he had developed several diseases, he was given alternate appointment and posted as Chowkidar. Though, his case did not improve finally, the Medical Board was constituted in the year 2013 and his father was declared unfit for all categories vide letter no.99/Med./Medical Board/Sarvan Kumar, dated 07.06.2013 (Annexure A2). It is clarified by the applicant that A.D.E.N. is the Controlling Officer of the father of the applicant and is directly working under respondent no.4 and respondent no.2. Therefore, the submission of the respondents that no application was ever received from the father of the applicant till 28.06.2013 cannot be agreed and hence denied. The applicant further stated that a bare perusal of the letter of the father of the applicant of 10.06.2013 (Annexure A5) was clearly forwarded to the A.D.E.N. on 15.06.2013 by SSE P-WAY, Sujangarh. Therefore merely stating that the respondents had not received the letter within time and so the father of the applicant was retired on superannuation on 30.06.2013 is unjustified. It is clarified by the applicant that the employees, who had retired on medical invalidation after attaining the age of 59 years in Jodhpur Division and their wards are also considered for compassionate appointment, a list of which have been provided by the applicant in the present OA. It is further submitted that the respondents have purposely chosen not to take

any steps on the application of his father and was forcibly made to wait and had finally made him retired on superannuation on 30.06.2013. The applicant therefore prays that his OA may be considered in the interest of justice and that his case may be considered for compassionate appointment on invalidation grounds.

8. Heard Shri Dilip Vyas, learned counsel for the applicant and Shri Darshan Jain, learned counsel for respondents no.1 to 4 and perused the material available on record including the original record produced by the respondents.

9. It is the case of the applicant that his father was appointed as a Trackman in the Railways. Thereafter, he suffered from several diseases and remained sick for a long time as he was unable to carry out his duties, he was given alternate appointment and posted as Chowkidar. As the disease of his father aggravated, the name of his father was entered in the Railway Medical Sick list from July, 2012. As there was no improvement in the health condition of his father for about one year, then the Medical Board was constituted in the year 2013 and the Medical Board vide its letter dated 07.06.2013 had declared his father unfit for all categories. The Certificate of the Medical Board clearly reveals that "Inder Chand is unfit to resume his duties in any medical category in railways and had recommended his case for invalidation". Thereafter, the father of the applicant had submitted an application for Voluntary Retirement on 10.06.2013 to respondent no.2, which was forwarded by Section Engineer, Degana through its letter no. SSE/PW/SUJH/29 Se.Li/Inder Chand/X, dated 15.06.2013 to Assistant Divisional Engineer, Degana, for further action on the said letter. It was clearly mentioned in the said letter to provide appointment to the present applicant on compassionate grounds.

The applicant further states that no action was taken by the respondents at the relevant time and the respondents had purposely waited for his father to be superannuated on 30.06.2013. The applicant has provided a list of cases which were considered by the respondents even after attaining the age of 59 years in Jodhpur Division. It is, therefore, the request of the applicant that his case may also be considered on the said grounds as his father was illegally shown to be retired on superannuation on 30.06.2013. The applicant further clarified that the respondents be directed to pass appropriate orders and consider the case of the father of the applicant from the date of invalidation i.e. 07.06.2013, and accordingly, appoint the applicant on compassionate grounds being the dependent ward of Inder Chand Gurjar, who was declared medically unfit since 07.06.2013 with all consequential benefits.

10. On the other hand, the respondents besides reiterating their submissions, have clarified that they were not in receipt of the application of the applicant dated 10.06.2013, and it is only in the meantime, the father of the applicant stood superannuated on 30.06.2013. Therefore, the respondents are justified in passing the impugned order dated 09/19.06.2017.

11. Heard the rival contention of both the parties.

12. It is undisputed fact that the father of the applicant was appointed as Trackman but as he was suffering from several diseases, he was given alternate appointment as Chowkidar. The father of the applicant was continuously ill and as his disease aggravated, he was not able to work and was bedridden. The name of the father of the applicant was also entered in Railway Medical Sick list from July, 2012. As there was no improvement in the medical conditions for about one year, the Medical

Board was constituted in 2013 and the father of the applicant was declared medically unfit for all categories vide letter no.99/Med./Medical Board/Sarvan Kumar, dated 07.06.2013. It is also clear that the Medical Board had examined the condition of the father of the applicant and had clarified that the father of the applicant is completely and permanently incapacitated for further service in any category in railways as a consequence of his illness and there is no reasonable prospect that he will ever be fit to resume his duty in any medical category in railways, and therefore, the Medical Board recommended his case for invalidation. The Medical authorities had issued a Certificate to that effect. Accordingly, the father of the applicant had submitted his application for voluntary retirement on 10.06.2013 to respondent no.2 and the same was forwarded by the Section Engineer, Degana, vide its letter dated 15.06.2013 to ADE, Degana for taking necessary action for providing appointment to the present applicant on compassionate grounds. No decision was taken by the respondents in the meantime. However, the applicant retired on superannuation on 30.06.2013. It is also clear that there is no age limit for consideration of such appointments pertaining to the cases of invalidation on medical grounds. It is clear that the respondents waited for the applicant's father to retire on superannuation and did not consider his case for invalidation immediately. Had the respondents taken immediate action, the father of the applicant could have been retired on medical invalidation as he was medically unfit, which is clear as the father of the applicant was unable to work since last several years.

13. On humanitarian grounds also the respondents ought to have considered the case of the father of the applicant and could have provided appointment to the present applicant on compassionate grounds. But the submissions made by the respondents that the letter dated 10.06.2013

was received by the respondents only on 28.06.2013 afternoon and as 29th and 30th June, 2013 were weekly holidays, no action was taken on his application cannot be a ground, denying the appointment to the present applicant on compassionate basis inspite of the fact that the father of the applicant was declared medically unfit by the Medical Board.

14. In view of the observations made above, the OA is allowed and the respondents are directed to consider the case of the applicant's father treating his application for voluntary retirement dated 10.06.2013 and considering the report of the Medical Board and seeing the condition of the father of the applicant at that relevant time and consider the case of the applicant for appointment on compassionate grounds with all consequential benefits thereby treating the father of the applicant medically unfit for all categories in railways as per the Sick Certificate of the applicant's father.

15. MA No.290/00204/2017 filed by the applicant for condonation of delay is allowed as the applicant is challenging the order dated 09/19.06.2017 for quashing and setting aside the same and has filed the present OA on 21.07.2017 which is well within time. Therefore, there is no question of any delay.

16. Accordingly, OA is allowed with above directions. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: .01.2019
Place: Jodhpur

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