

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.740/2016

Reserved on: 28.01.2019

Pronounced on: 06.02.2019

Hon'ble Mr. A.K. Bishnoi, Member (A)

1. Kriti Kumar (Aged about 27 years)
S/o Shri Charan Dass,
Candidate-Compassionate Appointment
Consequent to his father's
Medical decategorization

Residential Address:-

3620, Dariba Pan,
Pahar Ganj, New Delhi.

2. Charan Dass (Aged about 57 years)
S/o Shri Ram Saran,
Gateman/Northern Railway,
Railway Station Amroha,
Moradabad Division

Residential Address:-
Railway Station, Amroha.

-Applicants

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

3. The Chief Medical Director,
Northern Railway, Baroda House,
New Delhi.

-Respondents

(By Advocate: Shri V.S.R. Krishna with
Shri A.K. Srivastava)

ORDER

The brief facts of the case, as stated by the applicants, are that the Applicant No.2 was appointed as a Parcel Porter on 21.02.1996 in the Northern Railway. In the year 2005, a case of unauthorized absence was made out against him and he was removed from service. He had challenged the order of removal in OA No.401/2008 before this Tribunal and the Tribunal quashed the order relating to removal from service, rejection of appeal and revisional orders. He was accordingly reinstated vide order dated 20.02.2009.

2. Subsequently, in the year 2013-14, the Applicant No.2 suffered a paralytic attack and he was screened for suitable alternative employment on 14.08.2014 and was declared unfit (Annexure A-4). Thereafter his condition deteriorated and he was incapacitated and declared unfit for redeployment on any post in Medical Category A-3. However, he was declared fit in Medical Category C-1 for a job not requiring long distance walking and active use of left hand. Since no suitable job could be identified in Medical Category C-1, a supernumerary post of a Gateman was created on which Applicant No.2 was posted.

2.1 In terms of the order of the Railway Board dated 18.01.2000 (Annexure A-8), where an employee has been medically incapacitated and the Railway Administration cannot find a suitable alternative post for him, he may be kept on a supernumerary post in the grade in which he was working on a regular basis, till such time a suitable post can be identified or till his retirement, whichever is earlier. It is also stipulated that if an employee is not in a position to continue on any post because of his medical condition, he may be allowed to opt for retirement. The same is the stipulation under Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2.2 The applicant No. 2 accordingly submitted a request for premature retirement and further requested that his son Mr. Kriti Kumar, Applicant No.1, be granted appointment on compassionate grounds. The request for premature retirement was accepted vide order dated 01.01.2015 (Annexure A-9). Respondent No.2 issued an order dated 27.01.2015 (Annexure A-11) whereby it was ordered that Applicant No.2 will retire on voluntary basis with immediate effect and he was directed to vacate the Railway accommodation, if any, under his possession, failing which outside rent will be recovered from him. The Applicant No.2 submitted a representation dated 26.02.2015 giving the factual matrix and requesting for expeditious payment of his settlement dues (not on record).

2.3 In response to the abovementioned representation dated 26.02.2015, the applicant No. 2 was informed through letter dated 05.04.2015 (Annexure A-1), that he has a balance service of 4 years, 11 months and 27 days, which is lesser than the minimum stipulated period of 5 years required for compassionate appointment hence the case of his son cannot be considered. The computation of dates was by taking date of medical decategorisation as 03.07.2014 and date of superannuation as 30.06.2019. The applicant No.2 submitted a representation (date not mentioned) (Annexure A-2) requesting for grant of compassionate appointment for his son (applicant No.1) in which it is mentioned that he was due to retire on 31.07.2019, the correct date for calculating the remaining period of service was 30.04.2014, and, hence, the balance period of service was 5 years and 2 months and not, as calculated by the respondents. The same was disposed off and the applicant No. 2 was informed that the dates mentioned for purpose of calculating the remaining period of service were the same as mentioned in the earlier letter dated 05.04.2015.

2.4 The applicant No.2 submitted a representation dated 16.09.2015 stating that consequent to his medical decategorization, he was retired from the supernumerary post of Gateman on 27.01.2015. The Railway Rules stipulate that in similar set of circumstances, compassionate appointment is granted

to one of the wards of the de-categorized employee. He has accordingly sought the following reliefs:-

- “i) direct/command the respondents to re-calculate/re-compute the balance of 5 years service at the credit of the Applicant No. 2 by taking 01.07.2014 as the actual date of medical decategorization and his normal date of superannuation as 31.07.2019.
- ii) set-aside and quash the impugned orders dated 05.04.2015, Annexure A-1, and orders dated 04.09.2015, Annexure A-3 being badly vitiated as explained in foregoing paras;
- iii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the respondents, in the interest of justice”.

3. The respondents in the counter reply have submitted that consequent to screening of medically de-categorized staff held on 11.12.2015, the concerned staff members have been absorbed on alternative post. Applicant No.2 Shri Charan Dass has been absorbed on the alternative post of Chowkidar (P. Way)/AMRO. Order in this regard has been issued on 24.02.2016 (Annexure R/1). Letter dated 31.05.2016 has been annexed at Annexure R/2, which mentions that since the employee was not left with 5 years' service, the competent authority has granted approval for screening for alternative job, by placing him on the supernumerary post, on his re-appointment by the letter dated 28.10.2015. One document dated 07.04.2017 has also been annexed, which mentions that applicant No.2 is working in the post of Store Keeper (Annexure R/3).

3.1 Respondents have contended that since applicant No.2 is in service, the question of grant of compassionate appointment to applicant No.1 does not arise.

4. During the course of arguments, the learned counsel from both sides extended arguments in support of the contentions made in the pleadings.

5. I have gone through the pleadings on record as also the arguments advanced by the learned counsel for two sides.

6. During arguments, learned counsel for the applicants did not deny that applicant No.2 is still in service. It is also to be seen that no rejoinder has been filed on behalf of the applicants and there is no written averment denying the submissions of the respondents that the applicant No.2 is still in service.

7. The only fact which is relevant in the present OA is that the applicant No.2 is still in service. This fact has been specifically averred in the counter reply, emphasized during the arguments and not denied by the applicants either through pleadings or during arguments.

8. The applicant No.2 being still in service cannot claim the benefit of compassionate appointment for his son. Any discussion relating to date of his de-categorization or the period of remaining service till

the age of superannuation is totally irrelevant and needs no examination.

9. Under the circumstances, for the reasons given above, the OA is dismissed. No order as to costs.

(A.K. BISHNOI)
MEMBER (A)

cc.