

**Central Administrative Tribunal
Principal Bench**

OA No. 2740/2016

**Reserved on: 17.05.2019
Pronounced on: 14.08.2019**

Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Sh. Tara Singh S/o Mawasi Ram,
2. Amit Solanki S/o Sh. Tara Singh,

Both are R/o Railway, Harthala Colony,
Qtr. No. H-196A, Near Chota Chauraha,
Muradabad, UP.

...Applicants

(By Advocate: Mr. U. Srivastava)

Vs.

1. Union of India through the GM,
Northern Railway, Baroda House,
New Delhi.
2. The Chief Medical Director,
Baroda House, New Delhi.
3. The Divisional Railway Manager (P),
Northern Railway, Muradabad, UP.

...Respondents

(By Advocate: Mr. Satpal Singh)

ORDER**Mohd. Jamshed, Member (A):-**

The applicants in this OA are father and son. Applicant No. 1 is the father of Applicant No. 2. Applicant No 1 was working as Group 'D' employee under Divisional Railway Manager, Moradabad Division, Northern Railway as Hospital Attendant since 08.05.1985. It is stated that he was given treatment for certain ailments and was subjected to a medical examination by a Medical Board on 11.04.2015. In view of the findings of the Medical Board, the Applicant No. 1 is a case of vision malingering, hence, he should be dealt as per Indian Railway Manual guidelines, and that he is psychologically not fit to remain in service and accordingly declared unfit for all classes. These recommendations of the Medical Board were duly accepted by the concerned authority and consequently a notice was issued to the applicant by the respondents and he was declared medically unfit for all classes and was retired on medical grounds w.e.f. 06.01.2016. The Applicant No. 1 on his retirement on medical de-categorisation requested for compassionate appointment of his son (Applicant No. 2) and made a representation. The respondents vide order dated 18.05.2016 (impugned

order) rejected the representation of the applicant for compassionate appointment as in cases of malingering there is no provision for compassionate appointment. The applicant has challenged the said order and prayed for the following reliefs:-

"(a) Directing the respondents to place the relevant records pertaining to the present OA before their Lordships for the proper adjudication in the matter, in the interest of justice.

(b) Quash and setting aside the impugned orders dt. 18.05.2016, 11.04.2015 & notice dt. 08.12.2015 including the para 28 of master circular 16 with all other consequential benefits admissible to the applicants in accordance with the relevant rules and instructions on the subject.

(c) Allowing the OA of the applicants with all other consequential benefits and costs.

(d) Any other fit and proper relief may also be granted to the applicants."

2. The applicant has not only sought quashing of the impugned order dated 18.05.2016 but also the recommendations of the Chief Health Director (CHD) dated 11.04.2015 and the notice for retirement dated 08.12.2015. The applicant is also seeking quashing and setting aside of para 28 of master circular 16 of the Railway Board.

3. The respondents in their short counter reply have opposed the OA and submitted that the applicant who was working as Peon in Health Wing of Northern Railway was declared medically unfit for all classes because of Vision

Malingering. He was declared unfit under Para 512 (2) sub note (ii) of IRMS 2000 vide CMD's letter dated 11.04.2015. The applicant was, thereafter, retired from service in accordance with rules vide letter dated 06.01.2016. The applicant made a representation for appointment of his son (Applicant No. 02) on compassionate ground. The case was considered and it was not found covered under rules.

4. Learned counsel for the applicants reiterated the averments made in the OA and argued that the provision under para 512(2) sub note (ii) of IRMS 2000 are discriminatory as it lays down that in case where a Railway servant is declared unfit for all posts in terms of the said Rule of the medical manual and is retired from Railway service, compassionate appointment to the ward of such a Railway servant would not be admissible. Thus, it is discriminatory and should be set aside.

5. Learned counsel for the respondents on the other hand have opposed the OA and argued that this case is entirely covered by extant rules and in accordance with the rules and regulations governing the conditions for compassionate appointment as contained in Master Circular 16 of the Railway Board. In terms of para 512 (ii)

of the Medical Manual, compassionate appointment cannot be granted to his son and the respondents have taken the final decision in accordance with law.

6. Heard Mr. U Srivastava, learned counsel for the applicant and Mr. Satpal Singh, learned counsel for the respondents, perused the records and relied on judgments.

7. The applicant No. 1 in this case was working in the Railways as Group 'D' employee since 1985. Before his retirement which was due on 30.11.2016, according to him, he was suffering from certain ailments and was subjected to medical examination by the Medical Board. On the Medical Board's recommendations that Chief Health Director vide his letter dated 11.04.2015 advised the Chief Medical Superintendent., Northern Railway, Divisional Hospital, Moradabad, that in view of the findings of the Medical Board, the applicant's case is a case of vision malingering, hence, may be dealt as per Indian Railway Medical Manual guidelines. It is stated that he is psychologically not fit to remain in service and was declared unfit for all classes, with endorsement on his unfitness certificate that "he has been declared unfit

under para 512 (2) subnote (ii) of IRMS 2000 (Railway Board letter No. 87/h/5/8 dated 11.05.1987).

8. Accordingly, notice dated 08.12.2015, was issued to the applicant that he has been declared a case of Vision Malingering and unfit for all classes of service. The applicant was retired from service w.e.f. 06.01.2016. He, thereafter applied for compassionate appointment of his son (Applicant No. 2). The respondents considered the case and vide letter dated 18.05.2016 advised the applicant that he was declared unfit from the post of Hospital Attendant on the basis of medical malingering in terms of para 512 (2) sub note (ii) of IRMS 2000 in all categories. His request for compassionate appointment of his son has been considered and it was found that the case for compassionate appointment cannot be considered in accordance with law, as in cases of malingering there is no provision for compassionate appointment. The respondents rejected the case of Applicant No. 2 for compassionate appointment.

9. It is pertinent to note here that Malingering has been clearly defined vide Railway Board letter No. 2013/H/5/1/policy dated 31.12.2013, which reads as under:-

"Sub:- Correction Slip to Note (ii) of Para 512 (@), IRMM 2000 relating to Malingering.

The issue of rationalising of provisions relating to malingering contained in Note (ii) below Para 512(2), IRMM 2000 has been felt for some time. Based on the feedback received from field units and the views of Chief Medical Directors expressed during annual conference held at South Eastern Railway, it has been decided to modify the provision as under:-

"Note (ii) below para 512(2) Malingering: It may sometime happen that an employee belonging to an unattractive category may deliberately fail during medical re-examination in expectation of being absorbed in a more attractive alternate employment like goods clerk/booking clerk etc. In case, there a person is found to be feigning his illness with regard to colour perception, visual acuity or any other disorder such as seizure disorder, the person concerned should be declared as a malingerer. Where such malingering is suspected, the Administration should ensure that the person does not get any attractive alternate employment but only an unattractive post. Obviously a decision in such cases has to be taken very judiciously. If malingering is established, he is not fit to remain in service and may declared unfit for all classes. The medical unfitness papers should carry an endorsement that "he has been declared unfit under Para 512(2) sub note (ii) of IRMM."

Correction Slip to Para 512 is accordingly enclosed."

10. Such rules are further incorporated in the Railway Board's Master Circular. In terms of rules governing the appointment on compassionate grounds, the Master Circular No. 16 of the Railway Board, it is clearly mentioned as under:-

(a) In a case where a railway servant is declared unfit for all posts in terms of para 512 (ii) of the Medical Manual and is retired from railway service, compassionate appointment to the ward of such a Railway servant would not be admissible.

(b) In all cases of persons being declared unfit on account of malingering, medical unfitness papers should invariably carry an endorsement that he was

declared unfit under para 512 (ii) of the Indian Railway Medical Manual."

11. Thus, in cases, where employees are declared unfit on account of malingering by the Medical Board, they are retired from Railway service and compassionate appointment to the ward of such Railway employees is not admissible, as per rules.

12. In view of the above mentioned, it is evident that the respondents have acted in accordance with rules and rejected the representation of the Applicant No. 1 seeking appointment of his son (Applicant No. 2) on compassionate grounds. I do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)
Member(A)**

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