

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA No.325/2018

Ahmedabad, this the 24th day of June, 2019

Mr. Vibhanshu Kiritbhai Vasava
(Male- unemployed)
S/o. Late Shri Kiritbhai C. Vasava
Vasava Falia, Village Thuwavi,
Taluka : Dabhoi,
District : Vadodara 390 017. Applicant.

(By Advocate : Shri O.P.Khurana, Shri G.R.Malhotra)

VERSUS

The Divisional Railway Manager (E)
Western Railway, Pratapnagar,
Vadodara 390 004. Respondent

(By Advocate : Ms. Nisha Parikh)

ORDER – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

Being aggrieved by the rejection of the request for appointment on compassionate grounds, the applicant has filed this OA.

2. The crux of contention of the applicant is that the reason assigned for rejecting his request, as per impugned order dated 22.09.2017 (Annexure A/1), is that he is the son of a removed employee and hence is not eligible for

appointment on compassionate grounds but maliciously it was ignored that his father was reinstated in service by order Revisionary/Appellate Authority and was posted as cleaner. The facts, as has been set out in the OA by the applicant briefly are as under :

- (i) The father of the applicant was an ex-employee of Railways, and vide Order dated 12.8.2013 was placed under suspension, with effect from 13.6.2013. That said order of suspension was passed without recording any reason by the authority who was not competent even to pass order of suspension and that order of suspension had become invalid for not reviewing the same before expiry of 90 days.
- (ii) That the father of the applicant was issued show cause notice vide order dated 13.2.2014, invoking Rule 14(i), to impose penalty of Removal from service, inquiry under the mandatory provision under Rule 9 of the RS (D&A) Rules, 1968 was not made and vide NIP No. E/308/7/3/790 dated 28.3.2014, issued by Sr. DEE (TRO) BRC, his father was removed from service granting 2/3rd Compassionate Allowance. That Vide letter dated 24.12.2014 (Annexure A/2), ADRM, in Review Application addressed to CEE/CCG, modified the penalty and instead of “**Removal from**

service” penalty to “ *place him under minimum of the initial grade of recruitment for the period of five years with cumulative effect”* was imposed. That it was not clarified as to from which to which time scale of pay/grade would be reduced. That for long time no posting order was passed and his father due to unwarranted harsh and cantankerous attitude of Authorities and being under tremendous mental pressure fell ill and confined to bed.

- (iii) That on 14.10.2015, vide order Annexure A/3, posting order was issued and father of applicant was posted as cleaner in the C7W depart. i. e. out of his parent cadre aiming to cause much financial loss and further it was also silent about the stage of pay, the period of manning the post and about increment earned till then etc.
- (iv) That his father was not mentally and physically fit to do his assigned duty so he on 16.10.2015 made request, vide Annexure A-4 to send him for Special Medical Examination but respondents did not respond to it and his father, in harness died on 22.8.2017.
- (v) That after death of his father applicant applied for appointment on compassionate ground but his case for appointment on

compassionate ground was rejected stating no compassionate ground appointment can be given to ward/ widow of removed employee as per extant rules on the subject. Hence is the OA.

3. Respondent has entered their appearance, filed their reply and justifying their stand has pleaded that father of applicant was shunter and as per Rule 14(1) of RS (D&A) Rules, 1968, show cause notice to him proposing the penalty of removal from service was issued on 13.2.2014 and subsequently he was removed from service as per NIP No. E/308/3/790 dated 28.3.2014. That on Revision, the ADRM reduced the penalty from 'removal from service' to 'at the stage of initial recruitment grade 4.5 years with cumulative effect'. He was reinstated in initial recruitment post of cleaner but he was not ready to accept that post and wanted to retain the post of shunter, he made representation requesting to retire him on medical ground which was not possible. That father of applicant was given posting as a Cleaner but he did not join the post and he died meanwhile. That as per Master Circler No.16 (Annexure R/2), issued by Railway Board, No. E(NG)II/90RC-1/117 dated 12.12.1990 Ward/Widow of removed employee is not eligible for appointment on compassionate ground.

4. Learned counsel Shri G.R.Malhotra, appearing for the applicant submits that impugned order reflects that sole ground assigned by the applicant, to refuse compassionate appointment to the applicant, is that his father has been

removed from service by imposing NIP of removal from service vide order dated 14.5.2014 but from reply of the respondents as well it is evident that said NIP of removal from service has become non est. He explained that father of applicant did prefer appeal and the Authority concerned did not confirm the NIP of removal from service but did direct to place father of applicant in the minimum of initial grade of recruitment for a period of five years with cumulative effect. That, in view of the order of appellate authority it cannot be said that father of the applicant was not in service and impugned order being based upon the Order of the Disciplinary Authority, which in fact was not in force, is not legally sustainable. He urged that it may be quashed and matter may be remitted back to respondent authority to re- consider the case of the applicant as fresh on its own merits.

5. Ms. Nisha Parikh, learned counsel appearing for respondent urged that dependant of an employee removed from service is not entitled for compassionate appointment and that the Disciplinary Authority have passed the order of removal from service of the father of the applicant. She did admit that Appellate Authority modified the Order of Disciplinary Authority and instead of 'removal from service', did inflict penalty of placing the employee at minimum of initial grade of recruitment but contended that though penalty was modified but father of the applicant did not join the service and rather made

request for retirement which was turned down. Upon query whether for non joining of the service by the employee any further proceedings was initiated by the respondents, she only submitted that refusal of the appointment on compassionate ground in given circumstances is justified.

6. Considered the submissions and perused the record. Impugned order, Annexure A-1 reveals that pursuant to application of applicant for compassionate appointment applicant was, advised that he is not eligible for appointment on compassionate ground, as his father was removed from Railway service and no compassionate ground appointment can be given to ward/ widow of removed employee as per extant rules on the subject. The operative portion of impugned order reads:- ***“With reference to the above your application, it is advised that you are not eligible for appointment on compassionate ground, as ex-employee (your father) was removed from Railway service vide NIP No.E/308/7/3/790 dated 28.3.2014. No compassionate ground appointment can be given to ward/ widow of removed employee as per extant rules on the subject.”*** The facts of the matter have elaborately emerged in the submissions quoted above, and refraining to reiterate suffice would it be, to say that the way in which said representation of applicant was handled, is perturbing one particularly when NIP No.E/ 308/7/ 3/790 dated 28.3.2014 has not been affirmed by appellate authority. The

Appellate Authority, on appeal of father of applicant modified the order of NIP and the order passed by the Appellate Authority is ***“Place the C.O. in the minimum of initial grade of recruitment for the period of five years with cumulative effect with further direction to controlling officer not to post the C.O. in running duties or any safety category.”***

7. Order of removal from service has no legal sanctity and has merged into the order of Appellate Authority. After passing of the Order by the Appellate Authority, the order of removal from service become *nonest*. It is evident from pleadings that applicant's father, after order of Appellate Authority was reinstated and was posted as cleaner but applicant's father, on medical ground made request that he is unable to perform duty on the basis of the offer made to him and lastly he made request for retirement on medical ground. According to respondents his request was turned down and he did not join service. Anyhow, no further proceedings for non joining the duty by the father of the applicant was conducted and the applicant's father died. In the given circumstances of above said facts, admitted by the respondents, at least, it cannot be construed that father of the applicant was an employee removed from service. Impugned order solely based upon the plea that applicant being son of employee who was

removed from service is not entitled for appointment on compassionate ground thus, is not legally sustainable.

8. In totality of facts and in interest of justice, it warrants that the Order, Annexure A-1, be quashed and matter be remanded back to official respondent to re-consider the same afresh and to decide the same as early as possible. Accordingly, the assailed order No.E/890/1(VKV/17) dated 22.9.2017 (Annexure A-1 herein) is quashed and official respondents are directed to re-consider the case of applicant for appointment on compassionate ground and to decide the same, on merits by passing speaking order, within three months from the date of receipt of a copy of this order.

9. With aforesaid observation and direction this O.A. stands disposed of. No order as to costs.

(M.C.Verma)
Member (J)

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