

Reasoned

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: BILASPUR

Original Application No.203/00567/2019

Bilaspur, this Tuesday, the 16th day of July, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Zahir Bux, S/o Late Nabi Bux , Aged about 32 years,
Unemployed, R/o House No.477/4, Bunglaw Yard
SEC Railway, Railway Colony,
Bilaspur 495004 (Chhattisgarh)
(By Advocate-**Shri B.P. Rao**)

-Applicant

V e r s u s

1. Union of India Through : The General Manager
S.E.C. Railway Bilaspur Zone, Headquarters' Office
Bilaspur 495004 (CG)

2. The Chief Personnel Officer, S.E.C. Railway
Bilaspur Zone, G.M. Office Bilaspur 495004 (CG)

3. The Sr. Divisional Personnel Officer S.E.C. Railway, Bilaspur
Division DRM's Office, Bilaspur 495004 - **Respondents**
(By Advocate-**Shri Vivek Verma**)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved by denial of compassionate appointment to him.

2. The brief facts of the case as submitted by the applicant are as follows:-

2.1 His father Nabi Bux, while working under the respondent-Railways was medically decategorised and vide letter dated 12.10.1999 (Annexure A-2) the Chief Medical Superintendent has

held that his father was not fit to work as Diesel Assistant in Category Aye/One but as per visual standard he is fit in category Aye/One. Hence he was decategorised and declared fit only for sedentary job in category Aye/one or below permanently.

2.2 On screening of medically decategorised staff for providing alternative post, in the office of Sr.DPO, Bilaspur on 26.10.1999 (Annexure A-1) the applicant's father was found to be suitable for the alternative post of Junior Clerk.

2.3 However, the applicant's father vide his letter dated 26.10.1999 (Annexure A-3) has submitted that he is not in a position to serve in any alternative job in the Railways and he may be retired on medical grounds.

2.4 Accordingly, vide order dated 24.12.1999 (Annexure A-4), the applicant's father was voluntarily retired with effect from 26.10.1999.

2.5 Thereafter, the applicant's father submitted an application dated 13.03.2000 (Annexure A-5) for grant of compassionate appointment to applicant's mother Smt. Noor Begum and also submitted a reminder on 17.04.2000 (Annexure A-6).

2.6 His father expired on 12.10.2000.

2.7 Thereafter his mother again submitted an application on 03.01.2001 (Annexure A-7) for compassionate appointment.

2.8 However, vide impugned order dated 15.05.2001 (Annexure A-8) the case was rejected. Again, on 24.01.2002 (Annexure A-9) the respondent-railway rejected the claim for employment assistance on compassionate ground on the ground that the death of the ex-employee took place after his retirement.

2.9. Thereafter, the applicant's mother submitted various applications for her/applicant's appointment on compassionate grounds, which were rejected vide orders dated 12.03.2003 (Annexure A-10), 30.11.2006 (Annexure A-14) and 21.04.2011 (Annexure A-16) on the ground that the claim is not covered under the rules.

3. The applicant in this Original Application has prayed for the following reliefs:-

“(8.1) That, the Hon'ble Tribunal be pleased to call for records of Applicant's case from the possession of the Respondents for its kind perusal and to decide the grievance of the poor applicant.

(8.2) that the Hon'ble Tribunal be pleased to set aside the Respondent No.2's Office Letters dated 15.5.2001 (A-8) dated 24.1.2002 (A-9), dated 12.3.2003 (A-10) dated 30.11.2006 (A-14) & dated 21.4.11 (A-16) in the interest of justice.

(8.3) That, the Hon'ble Tribunal be pleased to pass an order, directing the Respondents to reconsider the Applicant's case for compassionate appointment in the interest of justice.”

4. The applicant has submitted that his father died on 02.10.2000 and he attained majority on 20.10.2005 and passed 8th class. As such he sought compassionate appointment for himself as being dependent son of deceased railway employee.

5. The applicant has also filed Misc .Application No.203/00827/2019 for condonation of delay. In the said application he has submitted that he is very poor and less educated person having no knowledge about limitation period and further that he was not able to meet the advocate's expenses.

6. Heard on admission.

7. In the instant case we find that the father of the applicant died as early as on 12.10.2000 and the present application has been filed for compassionate appointment after a lapse of more than 18 years. Therefore, the same is clearly barred by limitation. The grounds submitted by him for condonation of delay are not sufficient to condone such a huge delay.

8. On merits also we find that the Chief Medical Superintendent vide his letter dated 12.10.1999 held that his father was not fit to work as Diesel Assistant in Category Aye/One but as per visual standard he is fit in category Aye/One. Hence he was declared fit for sedentary job in category Aye/one or below permanently. Thereafter on screening, vide letter dated 26.10.1999

(Annexure A-1) the applicant was found to be suitable for the alternative post of Junior Clerk. However, instead of joining on the alternative job, the applicant's father vide his letter dated 26.10.1999 (Annexure A-3) chose to take voluntary retirement. Accordingly, vide order dated 24.12.1999 (Annexure A-4) the applicant's father was voluntarily retired with effect from 26.10.1999. Only after accepting voluntary retirement, the applicant's father submitted an application dated 13.03.2000 for grant of compassionate appointment to applicant's mother.

9. Thus, the short issue involved in this Original Application is whether the spouse/ward of a railway servant who was declared medically unfit for the post occupied by him but declared fit in the same medical category and thereafter offered alternative post of the same level suitable for his medical category is entitled for employment on compassionate grounds.

10. In this regard, it would be relevant to reproduce the relevant extract of Railway Board's letter No.E (NG)/ II/95/RC-1/94 dated 18.1.2000 (RBE No.8/2000) on the subject of appointment on compassionate grounds in cases of medical invalidation/ decategorisation, as under:

“Pursuant to the notification of “The persons with Disabilities (Equal Opportunities, protection of Rights and

Full participation), Act, 1998”, instructions were issued vide Board’s letter no. E (NG)I / 96/RE-3/9(2) dated 29.4.99, laying down inter-alia that, in cases where an employee has been medically invalidated/ decategorised and where the Administration cannot find a suitable alternative post for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time a suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation in service of a medically invalidated decategorised employee, there would be no occasion for an employee to be retired from service on a medical ground. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been 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.

In the cases of medical decategorisation i.e., those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward”

(emphasis supplied by us)

11. Thus, on a perusal of the above Railway Board’s order it is very much clear that in cases of medical decategorisation i.e., those

cases in which an employee becomes medically unfit for the post held but is fit to perform duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Thus, since the father of the applicant, who was found fit for sedentary job and was also found suitable for the post of Junior Clerk, did not accept the alternative job and choose to take voluntary retirement, his spouse/ward is, therefore, clearly not entitled for compassionate appointment in terms of the above Railway Board's order.

12. Accordingly, we do not find any merit in this Original Application. The same is dismissed in limine both on merits as well as being barred by limitation.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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